U.S. Chamber of Commerce

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April 26, 2023

The Honorable Patrick McHenry
Chair
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters:

The U.S. Chamber of Commerce appreciates the Committee holding the markup scheduled for April 26, 2023. We write to express our views on several bills that will be considered.

The Chamber is committed to enhancing and broadening the opportunities for businesses to obtain capital. We have been at the forefront of the policy conversation regarding the Jumpstart Our Business Startups (JOBS) Act and subsequent reforms passed by Congress. The passage of the JOBS Act was a rare bipartisan victory that continues to deliver results today. Leveraging the success of the bipartisan JOBS Act, we must continue to bolster businesses' access to capital and uphold the United States' dominance in its capital markets.

Businesses are facing a capital crunch in the wake of the COVID-19 pandemic and rising inflation that has stunted growth and deterred expansion. In the final quarter of 2022, investments in North American startups fell 63% compared to the previous year.[1] We appreciate the Committee's work to expand investment opportunities for all Americans.

The Chamber supports the following bills:

H.R. , "Expanding Access to Capital Act"

This legislation is a compilation of 23 individual bills that would collectively improve the regulatory environment for pre-IPO and small public companies, expand the ability of private businesses to raise capital and connect with potential investors, and expand research coverage in the public markets. The Chamber has been on record supporting several of these bills in recent years, several of which have garnered bipartisan support.

The Chamber appreciates that many of the provisions of the Expanding Access to Capital Act mirror recommendations included in a 2018 joint trade report[2] that the Chamber

[1] https://www.cnbc.com/2023/01/12/startup-investment-fell-in-late-2022-amid-recession-fear-crunchbase.html
[2] Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public, available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/04/IPO-Report_EXPANDING-THE-ON-RAMP.pdf

spearheaded and would build upon the IPO "on ramp" established by the JOBS Act. The Chamber is especially supportive of the following provisions:

- A five-year extension of certain regulatory exemptions for emerging growth companies (EGCs);
- Expanding JOBS Act protections for research coverage to research reports for all issuers and permitting brokers to receive hard dollar payments for research without having to register as investment advisers;
- Expanding eligibility for "well known seasoned issuers" (WKSIs);
- Amendments to the smaller reporting company and accelerated filer definitions that will permit more public companies to benefit from tailored regulations;
- Adjusting the assets under management threshold for inflation to determine when a private fund must register with the SEC;
- Increasing the amount that companies are able to raise under "Reg A+" offerings;
- The HALOS Act which clarifies the general solicitation rules for private offerings under the JOBS Act and will allow more businesses to participate in "demo days";
- Expanding SEC Rule 701 to allow more gig workers to receive equity compensation;
- Further expanding criteria and investment opportunities for individual "accredited" investors.

H.R. 835, "Fair Investment Opportunities for Professional Experts Act"

The Fair Investment Opportunities for Professional Experts Act would provide an innovative way to expand accredited investor definitions in a limited manner to bring more sophisticated investors into the market. Traditionally, the accredited investor threshold has been determined through asset and income tests, resulting in both an under and overinclusive definition that leaves out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

We supported an August 2020 rule from the Securities and Exchange Commission (SEC) which allows an individual who has met the educational and licensing requirements to sell securities and investments to be deemed an accredited investor. However, the SEC should consider further ways to expand the accredited investor definition through notice and comment rulemaking. This process would help balance investor protection concerns with the need to facilitate capital formation.

H.R. 1579, "Accredited Investor Definition Review Act"

This legislation would expand upon the SEC's August 2020 rulemaking by requiring the SEC to consider additional professional certifications that could make an individual eligible for accredited investor status. These certifications – some of which did not exist when the accredited investor rules were first adopted – more effectively demonstrate an individual's financial sophistication than arbitrary income or net worth thresholds. We believe the SEC should further review the types of certifications or licenses that currently equate to accredited investor status and expand this universe as appropriate. Importantly, under this bill, the SEC

would be required to continuously review professional certifications every five years so that accredited investor criteria do not become outdated.

H.R. , "Equal Opportunity for All Investors Act"

The August 2020 SEC rule expanded the definition of "accredited investor" to include more individual investors, such as those with professional qualifications in the financial industry. This legislation would further expand the definition of accredited by allowing an individual to become accredited regardless of income status based upon an examination and test of financial sophistication administered by the SEC or a self-regulatory organization such as FINRA.

H.R. 1548, "Improving Access to Small Business Information Act"

Small businesses are essential in our country and our communities; enacted policies must support their growth and development. This bill would promote the growth of small businesses across the United States by clarifying obligations for the Advocate for Small Business Capital Formation at the SEC and enabling this office to focus on its important mission.

H.R. 2792, "Small Entity Update Act"

Small and startup businesses often bear a disproportionate cost of regulation. The Chamber has long held concerns that many SEC rules are not properly calibrated in a way that balances investor protection with the SEC's mandate to facilitate capital formation. This bill would direct the SEC to modernize the criteria it uses to define a "small entity" to reflect the growth of the U.S. economy and the evolution of the capital markets since the last time the small entity definition was addressed. However, the Chamber believes that requiring the SEC to issue a study every five years on the definition of "small entity" is a duplicative and unnecessary requirement that could delay future revisions of the small entity definition.

H.R. 2793, "Encouraging Public Offerings Act of 2023"

This legislation would allow any business, regardless of whether it meets the current definition of EGC, to submit confidential draft registration statements with the SEC to "test the waters" and communicate with potential investors before filing for an IPO. In the 10+ years of the JOBS Act being law, no investor protection concerns have arisen related to the ability of companies to test the waters. While the SEC has taken action to expand eligibility of this JOBS Act provision, this bill is necessary to codify the reform into statute.

H.R.2610 and H.R.2608

These two bills would permit entities to provide two years – rather than the customary three years – of audited financial statements when entering into a spin-off transaction from an Emerging Growth Company (EGC). EGCs would also not be mandated to provide audited financial statements for acquired businesses for fiscal years that predate the first financial

statements disclosed by the EGC in conjunction with its IPO. There is no justifiable regulatory or investor protection reason for EGCs to provide several years' worth of audited financials for businesses that predate the information provided to the SEC at the time of the IPO. This bill would make certain that the SEC does not mandate such disclosure and would prevent costs from being imposed upon EGC investors.

H.R. , "Promoting Opportunities for Non-Traditional Capital Formation Act"

This bill would amend the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital Formation to provide education resources to help promote capital-raising options for traditionally underserved small businesses.

The legislation would assist underserved and underrepresented small business owners by providing educational resources and the tools needed to grow their businesses. In addition, the legislation would help build coordination between regulators by requiring the Advocate to engage with state regulators at least annually. Such ongoing discussions between regulators would help foster opportunities to assist small business.

H.R. , "CFPB Transparency and Accountability Reform Act"

The Chamber has long advocated for reforms to promote increased transparency and accountability of the Consumer Financial Protection Bureau (CFPB) to put the agency on a firm footing for the future and promote the policy certainty that industry and consumers expect. The CFPB can play a critical role in protecting consumers; however, the agency's credibility, interest, and ability to fulfill that mission are in doubt. The CFPB's credibility must be restored to achieve the critical consumer protection mission prescribed by Congress. We have previously spoken in favor of the below provisions, as included in the CFPB Transparency and Accountability Reform Act, to ensure that the Bureau is transparent to all stakeholders and protects all consumers:

- **Consumer Financial Protection Commission Act.** This bill would amend the Consumer Financial Protection Act of 2010 to make the Bureau an independent agency led by a commission. Due to the single-director structure, Presidential transitions can usher uncertainty given each Presidential administration brings different philosophies. A commission structure, by contrast, would provide more stability in the rulemaking process and the interpretation and enforcement of consumer protection laws across administrations.

  This concept has a bipartisan history and merits bipartisan support. In 2008 in the *Journal of Consumer Affairs*, now Senator Elizabeth Warren (D-MA) authored an article titled *"Product Safety Regulation as a Model for Financial Services Regulation"* that states that "A Financial Product Safety *Commission* [emphasis added] would provide coherent regulation of financial products, eliminating their most dangerous features."[3]

[3] https://onlinelibrary.wiley.com/doi/full/10.1111/j.1745-6606.2008.00122.x

We agree that replacing the single Director with a multi-member commission would make the Bureau's regulatory actions more coherent more fair. The article concludes by finding, "Personal responsibility will always play a critical role in dealing with financial services products, just as personal responsibility remains a central feature in the safe use of any other product, but a Financial Product Safety *Commission* would be the consumers' ally." Again, we agree, and we believe a five-member commission representing multiple perspectives and positions will serve as a stronger ally to consumers than a single Director.

- **TABS Act of 2023.** The CFPB would be required to justify its spending and policies to Congress, not just make empty promises. Subjecting the Bureau to the Congressional appropriations process would make its funding mechanism constitutional and align it with similar agencies. The Federal Trade Commission (FTC) has a similar consumer protection mandate. The Consumer Product Safety Commission (CPSC), which Senator Warren has described as the model for the CFPB, is also subject to the Congressional appropriations process.

- **CFPB IG Reform Act of 2023.** The CFPB does not have an independent inspector general (IG) like other agencies. Instead of creating an independent IG for the CFPB, the Dodd-Frank Act expanded the remit of the Federal Reserve Board's IG. The Federal Reserve's IG is limited in the oversight it can conduct on the CFPB given it must dedicate resources to review the work of two agencies. And, unlike most major agency IGs, the Federal Reserve's IG is a "designated federal entity IG" that is hired by the Chair of the Fed instead of being appointed by the President subject to the advice and consent of the Senate. By contrast, the Consumer Product Safety Commission, an agency that has been pointed to as a model for the CFPB's structure, has an independent and dedicated IG.

- **CFPB Dual Mandate and Economic Analysis Act.** This bill would establish an Office of Economic Analysis within the CFPB to review and assess proposed guidance, orders, rules, and regulations. The new office would measure the success of the proposed guidance and prepare a thorough analysis of the potential impact of regulations on consumers resulting in a more efficient regulatory environment.

  The CFPB has a growing record of inadequately and inappropriately weighing whether the benefits of its regulations will exceed the costs. Oftentimes its proposed rules and guidance do not consider all the possible costs, including opportunity costs, of the regulations it is considering imposing on market participants. And when the agency does recognize there may be new costs imposed, it disregards the severity of these costs and how they might cause the market to reduce choices, or increase costs, for consumers.

- **Transparency in CFPB Cost-Benefit Analysis Act.** This bill would promote responsible decision-making by the CFPB by requiring it to provide a detailed analysis of the costs and benefits of proposed regulations. It is an important step towards ensuring that CFPB actions are justified and do not unnecessarily burden businesses or their customers.

High-quality cost-benefit analysis is foundational to balanced and informed regulatory decision-making.

- **Making the CFPB Accountable to Small Businesses Act.** This legislation would strengthen the process the CFPB should follow under the Small Business Regulatory Flexibility Act (SBREFA). This process should be used to understand how to tailor regulations to fit the specific needs and concerns of small entities, not simply a check-the-box exercise when imposing new regulations across the industry.

The Chamber **opposes** the following bills:

H.R. , "Middle Market IPO Act"

While this bill ostensibly only involves a study by the SEC, we worry that the underlying premise is misguided and misses the mark about why companies are choosing not to go public. The legislation seeks to question the underwriting fee that companies pay when they go public, which many observers have noted has remained around the same level (roughly 7%) for decades. While there may be legitimate questions as to whether companies are paying too much or too little to go public, it is better left to market negotiators to determine the optimal price.

The underwriting spread itself historically has not appeared to be a reason companies forego an IPOs. This bill could distract policymakers from addressing the real reasons companies are not going public. At worst, it will lay the foundation for government price controls in the IPO market.

H.R. 2795, "Enhancing Multi-Class Share Disclosures Act"

This bill would mandate new disclosure requirements for companies that have dual-class or multi-class share structures. These types of corporate structures have come under increasing and, in the Chamber's view, misguided criticism for allowing some stockholders to maintain a certain level of voting rights. The reality is that many companies have adopted multi-class structures in response to a rise in aggressive shareholder activism, some of which is not motivated by the best long-term interests of a particular company. Further, voting rights within a particular multi-class structure are already well understood and disclosed to the market and investors. The Chamber is concerned that new mandates for multi-class share companies will serve as a disincentive for such corporate structures, even if a multi-class approach is in the best interests of all shareholders. A better approach would be for policymakers to focus on the underlying reasons why companies are choosing multi-class share structures and whether they are a symptom of a broken public company model.

We thank the members of the Committee for considering our views and look forward to working with you as the legislative process continues.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: Members of the House Committee on Financial Services