

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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February 3, 2016

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, supports H.R. 1675, the "Capital Markets Improvement Act of 2016," and H.R. 766, the "Financial Institution Customer Protection Act of 2015," which would assist small business capital formation and consumer protection.

As multiple studies have shown, job creation expands significantly once a company goes public. The JOBS Act streamlined the ability of startups to obtain financing from public capital markets more efficiently, which has reversed a long period of decline in the number of IPOs and the number of public companies generally. The Chamber urges Congress to continue focusing on efforts to make the public markets more attractive for growing companies.

H.R. 1675, the "Capital Markets Improvement Act of 2016," contains a number of innovative provisions, including:

- Title I, "Encouraging Employee Ownership," that would raise the threshold from \$5 million to \$10 million under SEC Rule 701, which would give private companies the opportunity to sell securities to employees under certain compensatory benefit or compensation plans without having to incur the costs of SEC registration. This title would allow the JOBS Act's amendments to section 12(g) of the Securities and Exchange Act of 1934 to reach their full potential and index Rule 701 to inflation. Modernizing Rule 701 would produce benefits for American private businesses as well as workers who would have increased opportunity to build wealth by investing in the companies that employ them.
- Title II, "Fair Access to Investment Research," which would remove existing impediments that prevent investors from obtaining useful information regarding Exchange Traded Funds (ETFs) and that prevent ETFs from achieving their full potential. Under the securities laws, broker-dealers currently have safe harbors under which they may publish public research on equity offerings; ETFs and open-ended funds, however, do not have similar specific safe harbors. This disparity creates legal uncertainty that restricts information and research that may be helpful to investors. This title would confirm that ETFs and open-ended funds fall within the safe harbor so that they may provide investors with more information and improve the efficiency of the overall capital markets.

- Title III, “Small Business Mergers, Acquisitions, Sales and Brokerage Simplification,” which would simplify registration requirements for M&A brokers (whose clients are sophisticated businesses, not retail investors) without sacrificing important safeguards for investors and markets. This title would exempt M&A brokers from registration with the SEC, but only if the M&A broker neither participates in the actual transfer of securities between businesses or participates in an issuer’s public offerings. In other words, this title would provide relief to M&A brokers who perform simple “matchmaking” functions and therefore pose no risk to investors. Eliminating unnecessary regulatory burdens from those who pose no risk to investors would improve market efficiency and divert capital currently devoted to regulatory compliance to better uses: growth, innovation, and job creation.
- Title IV, “Small Company Disclosure Simplification,” which would provide a temporary and optional exemption for small issuers from the eXtensible Business Reporting Language (XBRL) requirements of the SEC. While XBRL was created in order to move away from a paper-based system of financial disclosures, it remains a work in progress and has experienced a number of growing pains. This title would allow the SEC to fix some of the deficiencies associated with XBRL. The optional exemption from XBRL reporting for Emerging Growth Companies (EGCs) and small issuers would give boards and their shareholders the authority to decide whether using XBRL is in the best interest of the company.
- Title V, “Streamlining Excessive and Costly Regulations Review,” which would require the SEC to conduct a periodic retrospective review of existing regulations to determine whether they need to be amended to meet changing market conditions or are outdated or unnecessary. Such a review is based upon Executive Order 13563, issued by President Barack Obama, which ordered executive agencies to conduct a retrospective review of existing regulations to determine how such regulations can be improved. Many of the improvements in regulatory policy contained in the JOBS Act were actually within the SEC’s pre-JOBS Act authorities; a regulatory review process, like the one proposed in this title, could have catalyzed them. This title would ensure that the SEC will adapt to ever changing dynamic markets by periodically updating its regulations to fulfill its goals of investor protection, maintenance of fair and orderly markets, and facilitation of capital formation.

H.R. 766, the “Financial Institution Customer Protection Act of 2015,” would curtail the regulatory enforcement program popularly known as “Operation Chokepoint.” Specifically, this bill would prohibit federal banking agencies from formally or informally requesting or ordering a bank or credit union to terminate a customer relationship solely on the basis of so-called “reputation risk.” In recent years, financial institution regulators, in partnership with the Department of Justice, have used their authority to discourage banks and credit unions from providing banking services to entire categories of lawful businesses and industries solely because

those business and industries were politically disfavored. H.R. 766 would ensure the continuity of banking services to these lawful businesses by requiring a financial institution regulator's request that a bank or credit union end a customer relationship to be predicated upon a material reason *other than* "reputation risk" alone.

These bills would give American businesses greater opportunity to grow and create jobs, while allowing consumers to have access to products and services to fit their needs. The Chamber urges the House to pass these bills and report them to the Senate as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten