

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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March 1, 2016

The Honorable Jeb Hensarling  
Chairman  
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 Hensarling and Ranking Member Waters:

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. 3798, the "Due Process Restoration Act"; H.R. 4096, the "Investor Clarity and Bank Parity Act"; H.R. 4166, the "Expanding Proven Financing for American Employers Act"; H.R. 4498, the "Helping Angels Lead Our Startups Act"; and H.R. 4620, the "Preserving Access to CRE Capital Act of 2016." Each of these bills would improve the efficiency of the regulatory framework for companies seeking access to capital in order to grow, innovate, and create jobs.

The Chamber views a strong and fair Securities and Exchange Commission (SEC) as a critical and essential element needed for efficient capital markets. In recent years, serious questions about the SEC's enforcement procedures—in particular, concerns over its use of administrative rather than judicial proceedings and the adequacy of its rules of practice—have eroded the regulator's effectiveness and credibility. In light of these concerns, the Chamber issued a July 2015 report entitled [\*Examining U.S. Securities and Exchange Commission Enforcement: Recommendations on Current Processes and Practices\*](#) to propose solutions to ensure clear, predictable, and efficient practices for market participants while eliminating unnecessary ambiguity. H.R. 3798 would advance that goal by permitting a party who is the subject of an SEC enforcement proceeding simply to require that the SEC proceed with its activity in federal court rather than before an in-house administrative law judge. The reforms contained in this bill would not only vindicate the due process right of those against whom the SEC enforces the securities laws but would also inure to the perception of fairness that ought to prevail over any regulator's enforcement program.

The Chamber supports H.R. 4096, which would rectify an unnecessary Volcker Rule prohibition and provide bank-affiliated investment managers the flexibility to name their funds freely without creating any additional risks to an investor or affiliated bank. One significant consequence of the Volcker Rule is the prohibition of any covered fund's using the same name

or a variation of the same name as a banking entity, or an affiliate or subsidiary thereof, as well a prohibition on the word “bank” in the name. While well-intentioned, this prohibition is unnecessary for sophisticated investors in hedge funds and private equity funds. Moreover, the prohibition is inappropriate given the inability of banking entities to guarantee obligations or performance of a covered fund under the Volcker Rule, in addition to required disclosures stating that risk of loss is borne entirely by investors, and not a banking entity.

Additionally, the Chamber supports H.R. 4166, which would create a “qualifying CLO” exemption to the Risk Retention rules, similar to the current exemption for Qualified Residential Mortgages, reducing the amount of capital to be held to five percent of the equity tranche of a CLO—the tranche with the most “skin in the game”—rather than five percent of the face value of a portfolio. This meaningful change would support continued investment in CLOs, while still ensuring adequate safeguards through standards on the quality of assets, portfolio diversification, minimum capital, alignment of interests, and proper reporting and disclosure and manager regulation. CLOs are an important source of capital to the American economy as they provide business financing to companies in 47 states and the District of Columbia that collectively employ over five million Americans. CLOs are primarily used as a non-investment grade vehicle and give small-, midsize-, or challenged-businesses a stream of capital formation; they experienced very few aggregate losses during the financial crisis. A broad swath of corporate America participates in this market, including companies from the health care, energy, retail, entertainment, and telecommunications sectors.

The Chamber also supports H.R. 4498, which would improve the flow of market information and, in so doing, expand the appeal of angel investing for start-up businesses that need access to capital to grow, innovate, and create jobs. Importantly, this bill would amend applicable regulations on presentations or communications made by issuers to angel investors only in circumstances where other investor protections are present. H.R. 4498, therefore, is consistent with the Chamber’s longstanding effort to encourage cost-benefit analysis of the SEC’s regulatory framework, to examine how SEC regulatory burdens may diminish access to capital, and to remove those barriers when costs outweigh benefits. The Chamber would also support including in this bill a requirement that the SEC periodically review whether businesses are acquiring the financing they need to grow based on the changes made in H.R. 4498.

Finally, the Chamber supports H.R. 4620, which would exempt single loan commercial real estate securitizations and qualified commercial real estate loans from risk retention requirements. Broadly, this bill would create a new exemption for certain qualified commercial real estate loans and make the risk retention requirements applicable to third-party purchasers of commercial real estate loans less onerous. These changes would encourage continued investment in the CMBS market after the Risk Retention rule becomes effective later this year while also diversifying any potential risk among multiple third-party purchasers of commercial real estate loans. These changes would help ensure the vibrancy of the CMBS market without undermining the goal of the Risk Retention rule.

These five bills offer meaningful procedural and substantive reforms to the SEC’s implementation of the federal securities laws that are consistent with its tripartite mission to

promote capital formation, protect investors, and facilitate orderly markets. The Chamber urges the committee to report these bills favorably to the House and to push for their expeditious consideration.

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

cc: Members of the Committee on Financial Services