ACG®
Association for Corporate Growth

April 14, 2017

The Honorable Mike Crapo
Chair
Senate Committee on Banking, Housing
and Urban Affairs
534 Dirksen Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Building
Washington, DC 20510

RE: ACG Comments to Senate Banking Committee Chairman Mike Crapo and Ranking Member Sherrod Brown on Legislative Proposals to Increase Economic Growth

Dear Chairman Crapo and Ranking Member Brown:

We write to you on behalf of the Association for Corporate Growth ("ACG") and its 14,500 members who are all dedicated to advancing policies that will promote the growth of small and middle-market businesses and facilitate job creation. We sincerely appreciate your efforts to solicit legislative proposals designed to increase economic growth. We have outlined below several proposals that ACG believes will help business owners, market participants, and financial companies responsibly participate in the economy in a more effective and efficient manner, ultimately leading to overall economic and job growth.

Background:

I. Middle Market

The middle market is broadly defined to include companies with annual revenues between $10 million and $1 billion[1], clearly constituting a vital segment of the U.S. economy. Just under 200,000 companies make up the middle-market ecosystem and create over $10 trillion in combined revenues annually. Overall, these middle market companies are responsible for one-third of private employment in the United States, amounting to nearly 44.5 million jobs. If it were to be a stand-alone economy, the middle-market would rank fifth in the world.[2]

[1] See National Center for the Middle Market (last accessed April 13, 2016), http://www.middlemarketcenter.org/about-the-middle-market-center (showing the National Center for the Middle Market's purpose is to "ensure that the vitality and robustness of Middle Market companies are fully realized and fundamental to our nation's economic outlook and prosperity").
[2] *See,* http://www.middlemarketcenter.org/

II. Association for Corporate Growth

ACG was founded in 1954 and has more than 14,500 members and 57 chapters throughout the world, 45 of which are located within the United States. ACG members are people who invest in, own, advise or lend to growing small businesses and middle-market companies. This includes professionals from private equity firms, corporations, banks and other lenders to middle market companies, as well as professionals from law firms, accounting firms, investment banks and other advisors to middle-market deal making.

The mission of ACG is to "drive middle-market growth." ACG helps to facilitate growth by bringing together small business and middle-market dealmakers and capital providers who build value in companies. ACG accomplishes this by hosting hundreds of chapter events every year, providing online tools for its members, structuring networking opportunities and providing leading-edge market intelligence and thought leadership.

III. Middle Market Private Equity

A particular focus of ACG is middle-market private equity (MMPE). ACG's membership includes over 1,000 private equity firms that focus on the middle-market. Middle-market private equity firms invest in small and midsize businesses. According to Preqin data, private equity deals under $500 million accounted for 82 percent of all deals in 2016.[3]

In 2015, ACG updated its database, growtheconomy.org, its ground-breaking research survey using multiple independent databases to better support the positive impact that private capital investment has on corporate growth and job creation in the United States.[4] The research found that between 1998 and 2013:

- Private equity-backed companies grew jobs by 83.7%, while all other companies in the U.S. economy grew jobs by 26.5%;
- Private equity-backed companies grew sales by 134%, while all other companies in the U.S. economy grew sales by 31%; and
- Middle-market private equity-backed companies created more than three times the amount of new jobs (970,869) than any other employment stage.[5]

Almost half of all private equity investment comes from pension funds, foundations and university endowments. These investors have realized a 10-year annualized return in excess of 10% and superior to all other asset classes[6] – helping enable these organizations to meet their ongoing obligations, including paying pensions for retirees and providing scholarships to college students. MMPE firms provide this rate of return by improving market strength, governance, and operational efficiency, all with a focus of growing the companies in which they invest.

These data points are among the reasons that private equity continues to attract the investment and trust of highly demanding, sophisticated investors.

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[3] Global Buyout Deals Set for Record Year in 2016 (2017), https://www.preqin.com/docs/press/Buyout-Deals-2016.pdf.

[4] Driving Growth: The Impact of Middle-Market Private Equity on the U.S. Economy, Growth Economy (2015), http://www.growtheconomy.org.

[5] *See Id.*

[6] Global Buyout Deals Set for Record Year in 2016 (2017), https://www.preqin.com/docs/press/Buyout-Deals-2016.pdf.

Specific Legislative Proposals.

I. Modernize The Investment Advisers Act.

The Dodd-Frank Act required nearly all private equity firms to register as investment advisers with the SEC, thereby subjecting them to the regulations under the Investment Advisers Act of 1940 ("Act").[7] While some benefit has resulted from this requirement, the Act was never intended to be applied to private equity firms since the private equity model was not in existence when the statute was drafted. This has resulted in private equity firms having to spend a significant amount of time, energy, money and effort complying with regulations that are ill-fitting for their business model, while not reducing the systemic risk of our economy.

ACG has advocated modernizing certain aspects of Act to make it relevant for private equity investment advisers. Ultimately, these updates to the Act will allow private equity firms to focus their time, attention and energy on continuing to deliver positive returns for their investors, while adhering to a culture of compliance and operating under the regulatory structure created by the Dodd-Frank Act.

II. Modernize the Definition of an "Accredited Investor."

In 2015, SEC staff released a report reviewing the definition of an "accredited investor."[8] As the report noted, "qualifying as an accredited investor is significant because accredited investors may, under Commission rules, participate in investment opportunities that are generally not available to non-accredited investors, such as investments in private companies and offerings by [private] funds."[9]

Currently, individuals who do not meet the income or asset thresholds for qualifying as an "accredited investor" are effectively excluded from participating in private offerings of securities, regardless of their sophistication or financial knowledge. This deprives them of the opportunity to diversify their portfolio and participate in potentially lucrative private offerings.

In order to allow sophisticated persons to better participate in the economy, Congress should revise the definition of an "accredited investor" to, among other things:

- Permit individuals with certain professional credentials to qualify as accredited investors;
- Permit individuals with experience investing in exempt offerings to qualify as accredited investors;
- Permit knowledgeable employees of private funds to qualify as accredited investors for investments in their employer's funds; and
- Permit individuals who pass an accredited investor examination to qualify as accredited investors.

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[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[8] Report on the Review of the Definition of "Accredited Investor," SEC (Dec. 18, 2015), https://www.sec.gov/files/review-definition-of-accredited-investor-12-18-2015.pdf.
[9] *Id.,* at 2.

III. Implement The Recommendations Advanced by the SEC's Government-Business Forum on Small Business Capital Formation.

We applaud you for soliciting proposals to encourage economic growth. It is important to focus on public policies that encourage economic growth. Considering our focus in the middle market, we would like to point out that the SEC holds an annual Forum on Small Business Capital Formation.[10] After each Forum, a Final Report[11] is published that contains multiple recommendations for improving small business capital formation. ACG believes that the recommendations emanating from these Forums should help to inform and be implemented in, future legislation.

IV. Conclusion.

ACG appreciates the opportunity to provide recommendations to the Senate Banking Committee on how to encourage economic growth. We welcome the opportunity to discuss further any of the issues addressed in this letter. If you have any questions, or if we can provide any additional information, please feel free to contact Christine Melendes, Vice President of Public Policy, at cmelendes@acg.org or at (312) 957-4277.

Sincerely,

Christine Melendes
Vice President, Public Policy
Association for Corporate Growth

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[10] Government-Business Forum on Small Business Capital Formation, SEC (Nov. 17, 2016), https://www.sec.gov/info/smallbus/sbforum.shtml.

[11] SEC Government-Business Forum on Small Business Capital Formation Final Report, SEC (Mar., 2016), https://www.sec.gov/info/smallbus/gbfor35.pdf.