CFA Institute

1401 New York Ave. NW
Suite 330
Washington, DC
20005-2269 USA

+1 (202) 908 4520 tel
+1 (202) 908 4538 fax
info@cfainstitute.org
www.cfainstitute.org

Re: Jobs Act 4.0 Views

Ranking Member Patrick Toomey (R-PA)
455 Dirksen Senate Office Building
Washington DC 20510

June 15, 2022

Senator Toomey,

The CFA Institute is pleased to submit the following comment letter to all Members of the Senate Committee on Banking, Housing, and Urban Affairs in regard to the Republican Committee member discussion draft entitled, "Jumpstart Our Business Startups Act 4.0" (JOBS Act 4.0).

CFA Institute[1] is a global, not-for-profit professional association with more than 80,000 U.S.- based members who function as chief investment officers, investment advisers, and portfolio managers on the buy side of the market; as brokers, investment bankers, and financial analysts on the sell side; and as consultants, chief financial officers, regulators, and academics elsewhere in the financial markets. Our membership is bound by a common commitment to the CFA Institute Code of Ethics and Standards of Professional Conduct ("Code and Standards") that requires all members and candidates to "place their clients' interests before their employer's or their own interests."[2] CFA Institute speaks on behalf of professional financial analysts and CFA charter holders globally. Its mission includes advocating for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide.

CFA Institute is providing comment on the discussion draft in two categories: sections of the draft CFA Institute supports, and sections of the draft CFA Institute opposes. CFA Institute remains neutral on all remaining sections while we continue to review the draft, but is unlikely to vigorously support or oppose the remaining provisions of the draft. We look forward to meeting with you and your staff to discuss our views further.

CFA Institute supports the following Sections:

Sec. 101: S.3980 - Middle Market IPO Cost Underwriting Act. This section directs the SEC to further study the middle-market IPO underwriting costs to determine how to encourage more middle-market IPOs. As we have previously indicated to regulators and policymakers, CFA Institute is supportive of various vehicles including direct listings, SPACs and the existing IPO structure in an effort to increase the volume

[1] CFA Institute membership includes more than 185,000 investment analysts, advisers, portfolios managers, and other investment professionals in 163 countries, with more than 178,500 holding the Chartered Financial Analyst (CFA®) designation.
[2] CFA Institute Code of Ethics and Standards of Professional Conduct: https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.pdf

CFA Institute

1401 New York Ave. NW
Suite 330
Washington, DC
20005-2269 USA

+1 (202) 908 4520 tel
+1 (202) 908 4538 fax
info@cfainstitute.org
www.cfainstitute.org

of emerging growth opportunities for retail investors. While economic conditions and market sentiment generally control the level of IPO activity, we encourage additional study on how to bolster middle-market interest and access to public markets.

Sec. 107: S.3097 - The Main Street Growth Act. CFA Institute has long supported the idea of a separate public stock exchange designed to accommodate early-stage firms and venture capital like opportunities for investors.[3] Such exchanges could provide adequate but reduced compliance and financial reporting requirements in order to ease the burden on new public companies looking to access public markets. Most importantly, such an exchange would automatically signal to investors that listings on such an exchange come with less rigor in regulation, financial disclosures and signal higher risk opportunities. It is important that the quality and level of financial information required of these venture exchange listings maintain levels that are consistent with fair representation, are not misleading and do not omit key details that are material to a proper risk assessment by investors. We support the bill's goal of having a clear differentiation of various listed companies; how listing requirements will reduce certain investor information and highlighting the effects of those "lighter-touch" regulatory requirements.

Sec. 108: S.3947 - The Intelligent Tick Study Act: CFA Institute has previously supported Tick Size pilot programs and supports further study as to whether and how wider tick sizes may enhance capital formation. The premise is that by allowing small issuers to trade in increments (spreads) that are wider than most liquid and established public companies (often in sub-penny increments), increased analyst coverage and trading will occur.

Sec. 205: S.3922 - Unlocking Capital for Small Businesses Act of 2022. This concept of exempt "finders," has been a consideration by several Securities and Exchange Commissions ("SEC") over the years and we support the notion of a legislative fix to establish exempt finder status. It addresses a long-standing interest among "friends and family" investors, local small businesses and individuals who help match such companies with available capital and local investor interest. Such exemptions should be clear as to the limits on scope, number of investors and amounts of capital raised so as to not be confused with more professional sales / brokerage activities that require a license. It is also important to differentiate the finding of investors and making the connection with the company on the one hand, but not allowing finders to handle any investor funds or company securities on the other. The latter activities should continue to require SEC broker registration.

Sec. 301: Small Business Audit Correction Act. We support the idea of expanding the universe of audit firms available and qualified to audit small non-custodial broker-dealers. Current rules require the use of a PCAOB-registered audit firm for their annual audits. In the context of small, non-custodial broker dealers, allowing access to non-registered audit firms which are better suited in terms of cost efficiency, while professionally qualified for the size and complexity of such broker dealer operations is appropriate to reduce regulatory burdens for small investment brokers.

---

[3] See https://www.cfainstitute.org/-/media/documents/issue-brief/policy-brief-us-venture-exchange.ashx

CFA Institute

1401 New York Ave. NW
Suite 330
Washington, DC
20005-2269 USA

+1 (202) 908 4520 tel
+1 (202) 908 4538 fax
info@cfainstitute.org
www.cfainstitute.org

Sec. 308: Retirement Savings Modernization Act. CFA Institute supports the expansion of investment options permitted to be offered by retirement plan sponsors to a growing base of retirements savers that have been closed out of participating in various asset classes that potentially offer higher, risk adjusted returns in the alternative asset categories, including private equity. This Section would give defined contribution plan savers, including 401(k) savers, access to the same asset classes that are already included and utilized extensively in all professionally managed defined benefit plans. It is important to note that in the context of defined contribution plans, the inclusion of alternative asset class options must be carefully scrutinized by the plan sponsor and their advisors to ensure the products and funds being offered to the plan participant are well established, professionally managed, have reasonable fee structures and are appropriately diversified.

Sec. 403: S.3716 - Tracking Bad Actors Act of 2022. CFA Institute supports efforts to modernize and provide easier access for retail investors and other retirement savers to public database information on financial service practitioners (persons) who are bad actors subject to criminal, civil, and administrative actions relating to their financial service activities. Organized correctly, this would make it easier for investors to do appropriate background checks on their existing and potential service providers, better protecting average investors from financial fraud.

CFA Institute is unable to support the following Sections:

Sec. 102: Emerging Growth Company Extension Act. CFA Institute understands the importance of allowing companies with emerging growth company (EGC) status to be eligible for regulatory relief, applicable for small and newly public companies looking to grow and expand their operations. The concept was based on the notion this should be a temporary condition and that once well established as a public company and accessing capital from public markets for five years, such status should sunset. The proposal to extend the time period for regulatory relief to ten years is contrary to quality public markets and allows struggling public companies, in many cases ill-suited to remain public, an exemption from proper and more comprehensive regulation. This adds unnecessary risk and a lack of transparency to companies already struggling to meet public company standards. Rather than giving temporary regulatory relief to new public companies that are "up-and-comers," it merely extends weak disclosure and lesser financial transparency to a full decade. We are concerned about continuing to enable many of these so-called zombie companies through reduced regulation with few prospects for economic growth and job creation.

Sec. 103: S.3923 – Dodd-Frank Material Disclosure Improvement Act. We support the original objectives of the Dodd Frank disclosure obligations that serve to provide more complete, specific, and specialized disclosures on conflict minerals, mine safety, resource extraction, and pay ratio matters. These disclosure details are now part of standard practice for issuers and financial analysts alike. They are routinely considered as part of a fulsome investment analysis in the practice of investment management. Investors seek a continued flow of information in these areas and look to issuers to continue to provide more clear and detailed information on an entire range of material environmental and governance matters. This is information that is readily and easily available to issuers operating in the relevant businesses and is

CFA Institute

1401 New York Ave. NW
Suite 330
Washington, DC
20005-2269 USA

+1 (202) 908 4520 tel
+1 (202) 908 4538 fax
info@cfainstitute.org
www.cfainstitute.org

provided at little or no extra cost. We would not support removing these disclosures or view such removal as disclosure an improvement

Sec. 104: S.3919 – Reporting Requirements Reduction Act of 2022. For decades, financial analysts and professional investors have rejected calls for issuers to move to semiannual financial reporting. Public companies must continue to report quarterly information particularly in light of the ease of production and access to such information. After considerable research and survey work, it is clear that CFA Institute membership values the established practice of quarterly financial information, its critical importance to long-term, durable research and its importance to the continuity and integrity of U.S. markets. Of particular note on the issue of short-term corporate behaviors, providing quarterly earnings guidance and then managing corporate earnings to meet such guidance stands as the main driver for short-sighted thinking and actions by public companies. Filing high-quality, quarterly financial information is both necessary and a critical check and balance on corporate management accountability.

Sec. 105: S.3945 – Restoring Shareholder Transparency Act. CFA Institute does not support this Section which is similar to past efforts to regulate independent advice services. In particular, investment managers seek independent advice on many aspects of their investment management process including advice/recommendations on various proxy voting matters. Previous legislative efforts have sought to either block or regulate proxy advice on the mistaken premise that proxy advisers have too much control/power over proxy voting and regularly dispense proxy advice that is either "incorrect or inaccurate." Two key reasons drive our opposition to this provision.

First it is important to note that proxy advisers are not shareholders, they do not vote proxies, they provide a recommendation on how the shareholder might vote proxies, and the shareholder ultimately decides whether to accept or reject that advice when they vote their proxies. Second, no evidence or data on the level of proxy "mistakes" or incorrect proxy advice has been presented to date.

In our view, legislative or regulatory attempts to either require preclearance of the proxy advice by the issuer or to require the proxy advisor to include the issuer's rebuttable or statement in opposition to the proxy advice will infringe on analyst independence and free speech. They also place the SEC in the position of the proxy "referee" on whether proxy advice is correct or incorrect.

In our extensive experience with analyst retaliation, analysts that give opinions contrary to the issuer's views, whether it be downgrades or sell recommendations on the issuer's stock or on management proxy proposals, the issuer will typically malign the advice and the analyst. Efforts to block proxy votes until the issuer previews or otherwise signs off on proxy advice or require issuer clearance before such analysis is given to proxy clients is a direct violation of the Code of Ethics and Standards of Professional Conduct of CFA Institute on maintaining analyst independence and professionalism.

Sec. 306: S.3921 – Equal Opportunity for all Investors Act. This provision would allow individual investors to self-certify their accredited investor status under Rule 506I and expands the definition of an accredited investor by (1) requiring the SEC to establish an examination to allow an individual to obtain accredited investor status regardless of their income level and (2) allowing anyone to invest in Regulation D (private

1401 New York Ave. NW
Suite 330
Washington, DC
20005-2269 USA

+1 (202) 908 4520 tel
+1 (202) 908 4538 fax
info@cfainstitute.org
www.cfainstitute.org

placement) securities up to 10% of their income. The objective is to "ensure that all Americans can access high-growth investment opportunities and expand access to capital for private companies." While expanded access to potentially higher returning asset classes like private equity and venture capital for a broader set of accredited investors (i.e., investors who are more experienced, skilled, and financially prepared) is a worthy objective, -- the approach of this provision would encourage many unprepared investors to venture into very high-risk investments. What concerns us most is allowing self -certification of skill and preparedness in combination with allowing up to 10% of annual income into these high-risk, alternative investments. These factors will quite possibly lead to many ill-prepared investors taking on an overly aggressive and risky asset allocation strategy.

Sec. 402: S.39–6 - Increasing Opportunities for Retail Investors Act. CFA Institute is concerned that this Section would allow the SEC to increase any statutory exemption ceiling, such as those governing offering sizes, if the SEC determines it appropriate. Our securities laws that regulate the issuance and sale of securities into the portfolios of public investors has long struck a balance between investor protection and facilitating capital formation. Regarding the types, amounts and purchasers of securities subject to full Securities Act application and attendant investor protections, the Commission has established an appropriate set of thresholds for exemptions. Replacing that process with an ad hoc approach to applying exemptions that reduce regulatory requirements must take investor protection into consideration. While it might make it easier for the SEC to reduce the regulatory burden on smaller entities, it would water down investor protections for an area of the markets (small private issuers) that generally represent riskier, more volatile, and less liquid investments. Existing exemption thresholds have worked well, and any adjustments should be the product of formal and consistent administrative process.

Thank you for the opportunity to present our views. As we examine more of the discussion draft, CFA Institute will provide additional commentary where we believe it would be helpful.

Sincerely,

Paul P. Andrews
Managing Director, Research, Advocacy & Standards
CFA Institute