



Invested in America

April 13, 2017

The Honorable Mike Crapo
Chairman, Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

The Honorable Sherrod Brown
Ranking Member, Senate Committee on
Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Crapo and Ranking Member Brown,

On behalf of the Securities Industry and Financial Markets Association (SIFMA)¹, I want to thank you for the opportunity to respond to your bipartisan request for legislative proposals to facilitate capital formation, economic growth, and job creation.

SIFMA believes that the time is right for a review of the financial regulatory framework put in place over the last several years. While the U.S. financial system is significantly stronger, better capitalized, and more resilient than it was in 2008, the economy has performed subpar as compared to prior post-recession periods. Small and mid-sized businesses have been the most disadvantaged by the impact of many of the new rules, which have curtailed the allocation of credit and capital. We believe several rules should be considered for recalibration to free up capital and increase lending capacity.

SIFMA welcomes the review currently underway at the Department of the Treasury to evaluate the coherence and effectiveness of financial regulations and believe it is consistent with the European Union's 2015 call for evidence on the impact of post-crisis financial regulations as well as efforts in Japan. We believe that in order to spur economic growth, capital formation and job creation there must be a rebalancing of the financial regulatory landscape.

We also believe there are many opportunities to enhance capital formation that will reduce regulatory burdens and support entrepreneurs while maintaining protections for investors. U.S. capital markets are a critical source of financing for businesses and governments— especially small and mid-sized businesses – and we are troubled by the continued decline in the number of public companies and the number of companies going public through initial-public offerings (IPOs). The number of publicly listed companies has declined from 7,322 in 1996 to just 3,671 last year, and in 2016 there were just 107 IPOs, down from a 1996 peak of 847. Congress should aggressively address these concerning trends by reassessing regulations to allow more businesses to access U.S.

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

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capital markets. We believe the proposals below will enhance entrepreneurs' access to financing, providing the opportunity for greater economic growth and job creation.

First, Congress should extend several Jumpstart Our Business Startups Act (JOBS Act) accommodations that are currently available for Emerging Growth Companies (EGCs) to all issuers of public securities. EGCs have made good use of the confidential filing and testing the waters provisions of the JOBS Act, as well as the streamlined requirements on producing audited, historical financial statements. Specifically, Congress should amend Sections 6(e) and Section 5(d) of the Securities Act to permit all issuers to file confidentially and test the waters. Congress should also amend Section 7(a) of the Securities Act and Section 13(a) of the Exchange Act to permit all first-time registrants to submit two rather than three years of audited financial statements in their registration. Amending the General Instruction to Form S-1, to permit all issuers to omit from pre-market filings any audited financial statements that are not required at the time of marketing, will also reduce the cost to companies of accessing capital markets.

Additionally, if certain smaller issuer exemptions are extended to a wider range of companies, Congress can encourage more companies to enter U.S. capital markets. Congress should adopt an SEC proposal from 2016 to raise the threshold on the "small reporting company" definition from \$75 million to \$250 million of public float. Congress should also consider permitting all issuers to use Forms S-3 and F-3 during their first year as a public company, and consider allowing certain business development companies (BDC's) to take advantage of the registration and offering-related accommodations currently available to other issuers. Finally, Congress should expand the Rule 139 safe harbor to allow continuing coverage by research analysts of any issuer, without such research constituting an offer for sale. By extending the aforementioned accommodations to broader sets of issuers, Congress can encourage more firms to raise capital in the public markets, which will grow the economy while simultaneously creating new opportunities for institutional and retail investors to benefit from those companies' success.

Second, Congress should promote private investment and secondary market trading in restricted securities by amending the definition of accredited investor. By extending the definition of accredited investor to any person licensed or registered as a broker or investment adviser, small companies can draw investment from a wider universe of investors. Congress should also require the SEC to develop alternative tests for determining who qualifies as an accredited investor. These reforms should be supplemented with a revision of the "bad actor" prohibition in Regulation D which have disproportionately acted as a deterrent to issuers. By revising the substance of scope of bad actor disqualifications to a) actions that cause material violations of securities laws and to b) company bad acts only, Congress can help fulfill the original intent of the JOBS Act.

Third, Congress should promote greater liquidity in secondary market public resales by making several amendments to Rule 144. These changes should include eliminating the 3-month lag post-exiting affiliate status, as well as setting 20% ownership as the presumptive dividing line between nonaffiliate and affiliate status for shareholders. Additionally, Congress should reduce the holding period for restricted securities of reporting issuers from 6 to 3 months and make Rule 144 available to investors faster. These changes to Rule 144 would eliminate

complex and unnecessary resale requirements and encourage more investment in U.S. public companies (and early stage companies that wish to go public). This should, in turn, encourage more companies to consider going public. Liquidity is critical for smaller firms to attract investment, and expanding liquidity will help smaller companies and the economy.

Congress could also take steps to aid state and municipal issuers. SIFMA believes that the recently introduced bill S.828, which would require Federal banking agencies to treat certain municipal securities as level 2B liquid assets, is another way that Congress can encourage growth through changes in the treatment of securities. SIFMA has long argued that investment-grade municipal securities satisfy regulators' liquidity criteria and should be treated as High-Quality Liquid Asset (HQLA)-eligible. S.828 will encourage bank investment in the U.S. municipal securities market and help state and local governments finance vital investment in domestic infrastructure. The measure will also improve liquidity in municipal securities markets and will especially help less-frequent issuers of municipal debt. It should be noted that a similar bill already passed the House of Representatives during 114th Congress on a voice vote.

We appreciate the bipartisan approach being taken towards capital formation legislation and welcome this chance to submit recommendations on improvements to U.S. capital markets. We look forward to engaging with the Committee in the future on these and other matters.

Sincerely,

A handwritten signature in blue ink that reads "Andy Blocker". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Andy Blocker
Executive Vice President, Public Policy and Advocacy