



March 19, 2021

The Honorable Patrick J. Toomey
Ranking Member, Committee on Banking Housing and Urban Affairs
U.S. Senate
455 Dirksen Senate Office Building
Washington, D.C 20510

Subject: Request for Proposals to Foster Economic Growth and Capital Formation

Dear Senator Toomey,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ and its member firms strongly support your efforts to improve the market for private capital, enhance retail and institutional investment, encourage companies to be publicly traded, protect investors, and generally foster innovation and economic growth by promoting public policies to enhance the capital markets. We thank you for the opportunity to provide input.

Robust and efficient capital markets bring capital to the best ideas and enterprises as well as bring investment opportunities to retail and institutional investors. The historic success of the U.S. capital markets has been bolstered by a regulatory framework focusing on investor protection, transparency, and safety and soundness. The U.S. market regulatory structure was first put in place over 85 years ago, and Congress and policymakers have continually reviewed and supplemented it to keep pace with market and technological developments and a changing national and global economy. At SIFMA, we believe that public policy and financial regulation should support these key tenets:

- Ensure high standards of market integrity and investor protection;
- Encourage pools of capital through private and public pensions;
- Promote financial literacy and a strong retail investor culture;

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

- Calibrate supervision and regulation with robust capital formation and growth.

Below please find our recommendations in response to your request.

Capital Formation

Small and mid-sized businesses are a critical source of economic growth and job creation. Financial regulation, especially as the COVID-19 pandemic abates, should be better tailored to support their access to capital. A continued decline in the number of public companies and a decline in the number of initial public offerings (IPOs) raises concerns that regulatory burdens are unduly hampering capital formation generally and may reduce small investors' ready access to investment opportunities.

Many opportunities exist to reduce regulatory burdens for issuers and enhance capital while maintaining important protections for investors. In the 115th and 116th Congress, several legislative proposals were introduced to enhance access to financing and promote economic growth and job creation. We believe they merit consideration in the 117th Congress. They include the following:

- **The Fostering Innovation Act** (S.2126) would grant a five-year exemption from the auditor attestation requirements found in Section 404(b) of Sarbanes-Oxley for emerging growth companies and companies with less than \$50 million in annual gross revenues. These tailored and narrow exemptions will reduce the compliance and reporting costs for small public companies, while leaving requirements in place for management to assess the internal controls at those companies. SIFMA applauds this bill and urges both Committee and Senate passage of this commonsense legislation. We appreciate the bipartisan attention that has been paid to this issue.
- **The Fair Investment Opportunities for Professional Experts Act** (S. 2756) would allow Americans to qualify as accredited investors by virtue of their education and job experience. Financial professionals are uniquely well-suited to evaluate the risks and merits of prospective investments, and access to accredited investors is critical for private businesses unable to access public capital markets. Unfortunately, the current definition of accredited investor relies on net worth thresholds for individuals and households irrespective of the sophistication of the would-be investors. By excluding individuals whose professional experience or financial knowledge qualifies them to purchase restricted securities, the current standard unfairly limits Americans' participation in capital markets and should be amended. S. 2756 will facilitate capital formation by increasing the total number of Americans eligible to purchase restricted securities and allowing broker-dealers and financial advisors and other sophisticated investors to invest in early-stage and private companies. SIFMA applauds this bill and urges both Committee and Senate passage of this commonsense legislation. We appreciate the bipartisan attention that has been paid to this issue.
- **The Small Business Audit Correction Act** (S. 3004) would provide much-needed regulatory relief to small, privately held, non-custodial broker-dealers from the requirement to use a Public Company Accounting Oversight Board (PCAOB) registered audit firm for their annual audits. The Dodd-Frank Act required that all broker-dealers hire a PCAOB registered audit firm to conduct audits using more complex guidelines that are designed for larger, public companies. This requirement has been burdensome for small broker-dealers. In 2015, the FINRA Small Firm Advisory Board surveyed members to quantitatively determine the impact of PCAOB audits to small firms. Below are the results:
 - 80% of respondents saw an increase in audit costs.
 - 59% of respondents stated that the increase in audit cost would materially impact the operation of their firms. • 37% of respondents have had to replace their PCAOB-registered auditor at least once since the standards went into effect.

- 35% found it somewhat to very difficult finding a PCAOB auditor either initially or as a replacement. S. 3004 would exempt these privately held, smaller non-custodial broker-dealers from having to hire a PCAOB-registered audit firm in connection with their annual reporting under Securities Exchange Act of 1934 ('34 Act) Rule 17a-5, instead reinstating Generally Accepted Audit Standards (formally AICPA auditing standards).

SIFMA supports this bill and urges both Committee and Senate passage of this commonsense legislation. We appreciate the bipartisan attention that has been paid to this issue.

- **The Options Markets Stability Act (S. 3283)** would rationalize Federal banking regulators' treatment of listed options positions for market makers when calculating a bank's counterparty credit risk exposure. Listed options are an important tool used by investors to hedge their exposure in our markets and U.S. bank holding company subsidiaries play an important role clearing trades for market makers. Unfortunately for investors, bank holding companies are subject to counterparty credit rules that place risk-insensitive capital requirements on the notional amount of option positions instead of their actual exposure. Current regulations require banks to calculate charges for cleared options using the current exposure method (CEM), which is disproportionate to the actual economic exposures presented by listed options positions. Market makers routinely take offsetting positions to reduce their own risk, and accordingly, capital requirements should be calculated on a net basis to better capture the actual exposure of any given firm. Without netting, the current capital regime constrains the ability of options market makers to accumulate positions (even off-setting positions), which hinders their ability to provide liquidity. Most investor orders are executed against market-maker quotations, and due in part to the dispersion of trading interest across hundreds of options series in a single options class, most individual options series would have limited displayed liquidity if market-makers were not present. The impact of the capital regulations on liquidity is concerning to SIFMA's members because it is passed along to end-users in the form of reduced access to the listed options market, potentially reducing market stability in times of stress. S. 3283 will improve the health of the listed options market and help both retail and institutional investors hedge their positions. SIFMA applauds this bill and urges both Committee and Senate passage of this commonsense legislation. We appreciate the bipartisan attention that has been paid to this issue.

Tax Policy

Although these issues do not fall under the jurisdiction of the Senate Banking Committee, the proposals are in some cases complementary and in others antithetical to promoting resilient and efficient capital markets. We appreciate your consideration of our views in your capacity as a member of both the Senate Banking and Finance Committees.

Taxes impact the savings and investment decisions of individuals and corporations and are a necessary means for funding the government. SIFMA believes reasonable taxation and economic growth are not mutually exclusive and encourages policy makers to consider both when contemplating changes to the tax code. Many of SIFMA's members are global taxpayers as well, therefore international standards for raising revenue should consider the highly regulated nature of the financial services industry. SIFMA's member firms are willing and prepared to help policymakers wade through the nuances and goals of their respective tax policy. Below please find some key tax policies that we believe merit your consideration.

Municipal Finance

As the Senate Banking Housing and Urban Affairs Committee considers legislation under its jurisdiction to enhance America's infrastructure, SIFMA strongly supports complementary tax proposals that will reduce the cost of funding for state and local bond issuers and result in additional bonding capacity to fund critical infrastructure, benefiting taxpayers and the local economy. Additionally, infrastructure

investment and in particular tax-exempt bonds can be a key component to sustainable finance. State and local governments are increasingly turning to municipal green bonds to finance projects which align with environmental, social and governance (ESG) goals. SIFMA advocates for the following changes which would allow for increased infrastructure spending:

- Secure the passage of legislation to permit issuers to advance refund their municipal debt on a tax-exempt basis;
- Authorize a new direct payment bond program on a permanent basis;
- Expand the volume cap and uses for Private Activity Bonds (PABs); and
- Increase the annual limit on the amount of tax-exempt obligations that may be issued to qualify for the small issuer exception to the tax-exempt interest expense allocation rules.

Retirement Savings

In May 2019, the House passed H.R. 1994, the SECURE Act of 2019, which includes several provisions to enhance and support increased retirement savings, including expand the use of open multiple employer plans (open MEPs), repeal the maximum age for traditional IRA contributions, expand 529 plans, and increase the required minimum distribution (RMD) age. SIFMA believes this legislation takes important steps toward enhancing the private retirement system, including common-sense provisions with bipartisan support that would encourage small businesses to offer retirement savings plans and encourage individuals to save more. The legislation is currently awaiting action by the Senate.

The American retirement system has helped millions of Americans prepare for a secure retirement. However, increased life expectancies, higher health care costs, and low interest rates has increased the need for American workers to save more for retirement.

SIFMA supports policies that increase participation and savings in IRAs and plans by expanding the use of critical tax incentives, policies that remove barriers and expand the availability of employer sponsored savings plans, and initiatives to enhance investor education and preserve access to advice.

Wall Street Tax Act (H.R. 328) would impose a 0.1% excise tax on purchases of stocks, bonds and derivatives. SIFMA is strongly opposed to this legislation and to any new tax on financial transactions as they would unnecessarily raise costs for investors, pension funds, and issuers who help drive economic growth, negatively impacting those saving for retirement, college or to buy a home by decreasing the amount of their savings. Moreover, major economies that have adopted such taxes have had overwhelmingly negative results, including reduced asset prices, trading moving to other venues, market dislocation and decreased liquidity.

Past experience suggests that it would raise less revenue than supporters often claim. In addition to the cost on American savers, a financial transaction tax (FTT) would reduce the competitiveness and liquidity of the U.S. capital markets. As shown in SIFMA's report entitled "The Ramifications of a Financial Transaction Tax", an FTT would increase volatility as trading volumes decline, increase financing costs for municipalities, the federal government and corporations, increase prices for consumer goods, and generally damage economic growth by decreasing revenues and jobs in the U.S.

Hong Kong is occasionally cited as an example of a market that has successfully implemented the FTT (stamp duty), however the facts tell a different story. In Hong Kong, the average cost to trade is 19.2 basis points. Of this, 17.5 basis points stems from the stamp duty or 91% of the cost to trade. While the explicit cost of the stamp duty is 10 basis points, there is a secondary increase in implicit costs from the widened bid-ask spread. More generally, across 14 separate transaction tax changes in Asia-Pacific markets, a 23% rise in transaction costs causes an immediate 1% decline in daily market returns. A 1% tax on equity trades in Sweden resulted in a market decline of 5.3% in the 30 days leading up to the introduction of the tax. Given the lack of revenue raised and the amount of trading migration by the end of 1991, the FTTs in Sweden were eliminated, but trading volume never returned and the markets never

fully recovered. In Italy, volatility and bid-ask spreads increased and while volumes did not decrease significantly in the second stage of implementation, academics believe this is because the volumes declined in the first stage when the high frequency trading tax was added. Finally, in France, the FTT resulted in 16% declines in trading within two months at the NYSE Euronext Paris, a 21% decline in volumes in the French CAC 40 in the first ten days and 16% in the first 40 days. Order book depth declined almost instantly after adoption. SIFMA also strongly opposes the imposition of a stock transfer tax (STT) due to the cost to retirement savers, investors, businesses and the economy.

LIBOR

SIFMA supports legislative and regulatory efforts to ensure a smooth transition from the London Interbank Offered Rate (LIBOR) to alternative reference rates while avoiding market disruption and providing legal certainty to market participants, consumers and investors. Many existing financial contracts do not include provisions to deal with the end of LIBOR or they include provisions that would have negative economic impacts which parties may not have anticipated. Hundreds of thousands of financial contracts including mortgages, student loans, credit cards, business loans, business contracts, and securities are impacted. Federal legislation is critically needed to ensure a smooth transition, avoid market disruption, and create legal certainty for consumers, investors, lenders, and other market participants. SIFMA is currently working with members of the House Financial Services and Senate Banking Committees on draft legislation to address this issue.

Sustainable Finance

Sustainable finance and ESG investing will have significant market impacts over the next several decades. There is high demand for sustainable investment products across all investor types and we do not expect that interest to wane in the short term but only to expand further and take a larger role in our financial markets.

Policymakers around the world are grappling with how to engage on this issue and are taking a variety of tactics. The US government has taken a more measured approach which provides an opportunity to assess how these policies have impacted other jurisdictions. Over the past few years, the SEC, CFTC, Federal Reserve, and other federal policymakers have taken increasing interest in sustainable finance and ESG issues. Most recently, the SEC has begun a review of public company climate disclosures and is looking more closely at broader ESG issues as well. Sustainable finance policies developed now will likely shape our economy for the next several decades and therefore must be flexible and account for market factors and allow for innovation in products and services offered by the financial services industry. Further, most of the existing U.S. disclosure and risk management policies are substantially broad enough to consider climate and other sustainable finance factors. SIFMA welcomes the opportunity to work with Congress and the administration on any additional proposed policies intended to further bolster these existing regimes.

SIFMA and SIFMA Asset Management Group (AMG) recommends that the Senate Banking Committee use its oversight authority to encourage the administration to engage with other global policymakers and standard setters to encourage a more consistent taxonomy. Currently, definitions used across laws, policies, and standards are vastly inconsistent causing further challenges and confusion. Creating a more harmonized definition set will require global leadership and perseverance but will be an effective tool in the execution of climate change policies. SIFMA AMG has largely welcomed Europe's efforts to develop an ESG taxonomy, believing that they will ensure all interested parties are speaking the same language and guard against so-called "greenwashing." However, the industry still harbors concerns that the European regulators will go too far in pushing investors toward investments deemed sustainable and/or penalizing investment advisers for following client mandates, if they are not deemed to be green. Therefore, we continue to argue that any regulatory efforts, in the U.S. or abroad, should focus on clarity, harmonization, and flexibility for future developments.

Regulation Best Interest

Since early 2009, SIFMA has consistently advocated for the establishment of a uniform best interest standard for financial professionals when providing investment advice. In June 2019, the SEC voted 3-1 to finalize Regulation Best Interest. Reg BI requires broker-dealers to act in the best interest of their retail customers when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. The SEC also finalized a Form CRS Relationship Summary and interpretive guidance for Broker-Dealers and Investment Advisers and an interpretation regarding the standard of conduct for Investment Advisers. Reg BI has a compliance date of June 30, 2020.

SIFMA appreciates the work of the Department of Labor on issuing a class exemption for the receipt of fees in connection with the provision of investment advice. The exemption is a step forward as it will encourage a variety of investment advice approaches and it will provide retirement investors with the services they seek. SIFMA supports permitting financial professionals to provide investment advice in a flexible fashion. We appreciate that the Department has sought to align this new class exemption with the SEC's Regulation Best Interest, which the industry is working diligently to implement.

As SIFMA members continue to implement the regulations, we encourage the Senate Banking Committee to exercise its oversight authority to encourage regulators to allow for implementation of the regulations.

Consolidated Audit Trail

The Protecting Investors' Personally Identifiable Information Act would prohibit the Securities and Exchange Commission (SEC) from requiring that personally identifiable information (PII) be collected under Consolidated Audit Trail (CAT) reporting requirements. SIFMA strongly supports this legislation. The securities industry has long supported the goals of the CAT, and broker-dealers have been diligent in complying with their obligations to report transaction data. At the same time, we have consistently raised material security and privacy concerns about the amount of and need for investor PII to be reported to and maintained in the CAT.

SROs' recent proposed amendment to the National Market System (NMS) Plan governing the CAT. The amendment would force all CAT Reporters to effectively assume all liability associated with a breach of the CAT system. It also would permit the SROs, which currently have the ability to bulk download data from the CAT into their own systems, to disclaim liability for a breach or misuse of CAT data beyond the regulatory context in which they already enjoy immunity.

We recently issued a report analyzing the economic impact of that proposed plan amendment which concludes that it would reduce investor welfare by: (1) providing less incentive to the SROs as the operators of the CAT to invest in data security to protect investors' personally identifiable information and trading data in the CAT, which would place investors at greater risk of having their data compromised; and (2) requiring industry members to absorb litigation-related expenses for an event over which they have no direct control, the amendment will lead to the inefficient purchase of insurance with additional costs likely passed downstream to investors.

Data Privacy

Privacy and data protection laws and regulations should enhance customer protection, but often, they can cause customer confusion and inconsistent treatment of customers based on where they live and what entity held their information.

State and federal laws and regulations may conflict and cause financial institutions to comply with those conflicting regimes, further adding to the confusion and inefficiency. Adopting a federal preemptive

standard for privacy and data breach would greatly improve customer protection by minimizing confusion and inequality.

Congress has recognized the sensitivity of financial information and has provided protections for it in the Gramm-Leach Bliley Act of 1999 (GLBA). These protections should apply wherever data is held.

A provision solely including an information-level GLBA exception would create confusion and additional compliance headaches without providing meaningful consumer protection or benefits. Additionally, without an entity-level exception, laws that follow an information-level exception framework could inadvertently facilitate unauthorized access to sensitive personal information about consumers. Because of this threat, financial institutions should be exempt from laws that allow a consumer to request access to sensitive information. A full financial institution exemption will allow financial institutions to instead focus on compliance with the existing federal and state financial privacy frameworks and improving meaningful consumer protections while ensuring the proper function of financial markets.

Activities-based Regulation for Non-bank financial Institutions

The Financial Stability Oversight Council Improvement Act (H.R. 3561) would require the Financial Stability Oversight Council to consider alternative approaches before determining that a U.S. nonbank financial company shall be supervised by the Board of Governors of the Federal Reserve System. SIFMA strongly supports this legislation.

SIFMA has long advocated shifting away from focusing on designating asset managers as systemically important to a focus on products and activities, given the nature of the business model. Asset managers are directed by investor clients, generally do not hold custody of assets and, therefore, have small balance sheets. The focus should instead be on (1) ensuring all products and activities, such as money market funds, are strong and stable, and (2) other regulatory safeguards, such as counterparty margin requirements, are adequate and effective. The SEC and other primary regulators for the asset management industry are already proceeding with these reviews and monitoring for potential risks. Should they decide that additional measures are necessary, these concerns can be addressed with appropriate supervisory tools.

International Finance

Financial services are a major export in their own right but the industry also provides substantial support to the overseas competitiveness of businesses throughout the economy – internationally active financial institutions are part of the foundation for international success in manufacturing and agriculture. SIFMA therefore supports an open, rules based, global economy in which financial services can do its part to boost exports, investment and inclusive, sustainable global economic growth. SIFMA believes that trade agreements should be comprehensive and address issues specific to today's economy in digital trade to enhance U.S. economic competitiveness in the 21st century. To that end, we encourage policymakers to leverage international finance to bolster recovery by: expanding the free flow of goods and services around the world and maximizing cross-border investment opportunities; coordinating regulatory approaches across borders to ensure a level playing field for domestic and international firms; and addressing the rise of impediments to the free flow of data.

- SIFMA supports efforts to level the playing field in the U.S.-China economic relationship including by promoting further opening of China's financial markets to U.S. and other non-Chinese participants.
- SIFMA believes that a major obstacle to enhanced trade and investment is uncoordinated and often divergent approaches to financial regulation. As such, we strongly support financial services regulatory dialogue and cooperation. Addressing cross-border regulatory issues through robust dialogues can reduce conflicting rules that add frictions to financial markets, enhance efficiency in cross-border trade and investment, and promote transparency in the rule-making process.

- In the 21st century, the ability to transfer data across borders and locate servers wherever needed is crucial for financial service and other firms operating cross border. Yet many markets in recent years have pursued policies that hinder the free flow of data. The United States, Mexico and Canada Agreement was the first trade agreement to include a prohibition on forced data localization (subject to regulator's access). Going forward, future trade and investment agreement – and possibly other forms of understandings – should build on this foundation. Moreover, the current U.S. position reflects work by administrations of both parties over the years so, should garner bipartisan support. SIFMA believes strongly in free, rules-based international trade and cross-border investment. With the United Kingdom (UK) having set out its negotiating objectives for trade discussions with the U.S., we look forward to the opportunity to feed into the creation of a comprehensive and forward-looking UK-United States (U.S.) free trade and investment agreement (FTA).

Electronic Delivery and E-SIGN

SIFMA commends efforts to modernize communications with retirement plan participants and other investors. In this increasingly digital age, such modernization would enable investors to receive information in a timely fashion and allow for an interactive investor experience, facilitating greater financial literacy and positive savings behavior. SIFMA recommends permanently moving to the electronic delivery of investor communications such as account statements, customer confirmations of sale, and investor advisor brochures.

On behalf of SIFMA's member firms, I thank you for your leadership and giving us the opportunity to provide input on these critical issues. As always, my staff and I are available to discuss our proposals further.

Sincerely,



Kenneth E. Bentsen Jr.
President & CEO