

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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May 6, 2014

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 nine bills that would help promote small business capital formation that the Committee is expected to mark up on May 7, 2014. The Chamber has testified before this Committee in support of several of these bills.

**H.R. 4200, the "SBIC Advisers Relief Act,"** would provide regulatory certainty for advisers to small business investment companies (SBICs) and venture capital funds. Under current law, advisers to SBICs and venture capital funds are exempt from registration under the Investment Advisers Act of 1940, but someone who advises *both* an SBIC and venture capital fund would have to register. The exemptions for advisers to SBIC and venture capital funds are there for good reason, and no valid reason exists for requiring advisers to register simply because they advise both. H.R. 4200 also includes a number of provisions that would address some of the unintended regulatory consequences currently facing advisers to private funds.

**H.R. 4554, the "Restricted Securities Relief Act,"** would help foster a more robust secondary market for the restricted securities of reporting companies, thereby lowering the cost of capital for businesses that obtain financing through private channels. This bill would reduce the holding period for restricted securities from 6 months to 3 months, and would also provide regulatory certainty by adding Rule 144A securities to the definition of "covered securities" under Securities Act of 1933. Because these are securities of reporting companies, there is already sufficient public information about them, which allows for investor protection through regulatory oversight. Many of the provisions in this bill stem from the Security and Exchange Commission's 2012 Government-Business Forum on Small Business Capital Formation.

**H.R. 4466, the "Financial Regulatory Clarity Act of 2014,"** is an innovative bill that would promote smart regulation and protect the economy from outdated or duplicative regulatory requirements. While regulators have gone about implementing 400 rules as required by Dodd-Frank, too little attention has been given to examining similar regulations that are already on the books. H.R. 4466 would require the federal financial regulators to determine whether any new

rule overlaps or is inconsistent with existing rules, and to address such deficiencies through the rulemaking process. This bill would also require that regulators submit a report to Congress making recommendations as to outdated or duplicative regulations that could be eliminated. The Chamber has long been concerned about the cumulative cost of regulation and redundancy that has developed over the years, and this bill would help address this very serious issue.

**The “Small Business Freedom to Grow Act of 2014”** would allow smaller reporting companies to incorporate on their S-1 registration statement any Security and Exchange Commission (SEC) filing that is made after the date which the S-1 becomes effective. The bill would also create a less burdensome registration process under form S-3 for certain businesses, thereby allowing them to raise additional capital. These provisions would help streamline the filing process for companies and allow them to devote more time and resources toward growing their business and creating jobs, rather than dealing with unnecessary compliance requirements.

**The “Encouraging Employee Ownership Act of 2014”** would raise the Rule 701 threshold under the Securities Act from \$5 million to \$20 million. Rule 701 is intended to allow businesses to sell securities to its employees without having to comply with additional reporting requirements, but the current low threshold disqualifies a number of businesses from using it. This bill would modernize Rule 701 by raising the threshold to \$20 million and, importantly, index it for inflation every five years. This would help make Rule 701 a viable tool for businesses to use, and allow more rank and file employees to participate in the success of the company where they are employed.

**The “Disclosure Modernization and Simplification Act of 2014”** would help address the problem of “disclosure overload,” which has developed over the course of several years as proxies have become voluminous, and many disclosures have become duplicative or obsolete. This bill would allow businesses to submit a summary page on form 10-k in order to provide investors with a comprehensible picture of a company’s operations. This bill would also direct SEC to scale certain disclosures for emerging growth companies and other small issuers, and to eliminate any outdated or duplicative disclosures required of all issuers. This bill is a good step towards enhancing the ability of investors – particularly retail investors – to make better informed decisions in the markets.

**The “Private Placement Improvement Act”** would help preserve the intent of Title II of the Jumpstart Our Business Startups (JOBS Act), which was to improve the private offering market by giving businesses the ability to solicit investors under Regulation D. When the ban on general solicitation was lifted in 2013, SEC also issued a rule proposal – not required by the JOBS Act – that would impose new burdens on Regulation D issuers and potentially even make Regulation D offerings *less* attractive than they were prior to passage of the JOBS Act. Such an outcome would be harmful to our economy and contrary to the intent of Congress. The Private Placement Improvement Act would help clarify Congressional intent under the JOBS Act and help increase the attractiveness of Regulation D to issuers.

**The bill to require the Securities and Exchange Commission to revise the definition of a well-known seasoned issuer to reduce the worldwide market value threshold under the definition** is also supported. This bill would revise the definition of a “well known seasoned issuer” (WKSI) by reducing the public float threshold a WKSI must meet from \$700 billion to \$250 million. WKSI are a class of issuers created by the SEC in 2005 that are eligible for less

burdensome registration requirements, including being able to use shelf registration statements that become effective immediately upon filing. It should be noted that WKSIs are known issuers by the SEC and have acted in accordance with various securities laws. By lowering the public float threshold for eligibility, more of these businesses will be able to use a more streamlined registration process, which will enhance their ability to access the public markets.

**The “Startup Capital Modernization Act of 2014”** would clarify several regulatory provisions related to Regulation A offerings in order to make such offerings more attractive to both issuers and investors. This bill would exempt Regulation A issuers that provide investors with audited financial statements from the 12(g) registration requirements under the Securities Exchange Act, and would also clarify the state registration requirements for Regulation A issuers. SEC’s rule proposal to implement Regulation A - while a positive step forward - left open a number of questions for issuers and investors, many of which would be addressed by this legislation. This bill also includes an important provision to help foster a secondary market for securities that were acquired in an exempted transaction.

Collectively, these bills would address some of the unintended consequences of regulation and give American businesses greater opportunities to raise capital. The Chamber urges the Committee to report these bills to the full House of Representatives as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

cc: Members of the House Committee on Financial Services