

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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March 8, 2017

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 strongly supports the following bills, which the Committee has scheduled for markup on March 9th: H.R. 1343, the “Encouraging Employee Ownership Act”; H.R. 910, the “Fair Access to Investment Research Act of 2017”; H.R. 1219, the “Supporting America’s Innovators Act of 2017”; H.R. 1312, the “Small Business Capital Formation Enhancement Act”; and H.R. 1257, the “Securities and Exchange Commission Overpayment Credit Act.”

The Chamber commends the Committee for continuing to prioritize bills that would promote capital formation, sustainable economic growth, and sound regulatory policy. We are particularly encouraged that the Senate Banking Committee is scheduled to mark up many of these same measures on the same day. Each of these bills to be considered have garnered broad, bipartisan support previously in the House of Representatives and would help create a system that allows businesses greater access to capital, while also providing more opportunities for middle and lower income American households to create wealth. The Chamber strongly believes the U.S. economy has much greater potential than the 1-2% growth that is regrettably the trend over the last decade, and these bills are an important step towards boosting economic prosperity.

H.R. 1343, the “Encouraging Employee Ownership Act,” would raise the threshold from \$5 million to \$10 million under SEC Rule 701, which gives private companies the ability sell securities to employees under certain compensation packages, without having to incur the costs of registering with the Securities and Exchange Commission (SEC). Rule 701 is an important tool that can help non-executive employees participate financially in the success of their employer, but the low ceiling for eligibility has limited the positive impact that Rule 701 can have on American workers and their families. H.R. 1343 would also ensure that the modernized Section 12(g) thresholds included in the 2012 Jumpstart our Business Startups

(JOBS) Act reach their full potential, and businesses do not find themselves in a position of having to become SEC-registered when it is not in the best interest of their shareholders to do so.

H.R. 910, the “Fair Access to Investment Research Act of 2017,” would provide a much-needed legal safe harbor for broker-dealers who publish research reports on exchange-traded funds (ETFs). Broker-dealers currently have a safe harbor under the securities laws for research related to equity offerings, but do not have a similar safe harbor for ETFs despite the growing popularity of the product, particularly amongst retail investors. While the global ETF market has grown to over \$3 trillion in assets, there is a relative dearth of research surrounding ETFs, creating an information desert for investors. H.R. 910 would provide legal certainty for broker-dealers who wish to publish research and analysis on this vital product, which would help facilitate the flow of capital without compromising investor protection.

H.R. 1219, the “Supporting America’s Innovators Act of 2017,” would fix what has come to be known as the “99 investor problem” – that is, the requirement that certain venture capital funds register with the SEC once they reach their 100th investor. This low threshold – which was set in place in 1940 – now works at cross-purposes with several provisions in the JOBS Act, including provisions that enhance the ability of companies to raise capital under Regulation D, and the increase in Section 12(g) registration thresholds that dictate when a company must go public. By imposing a regulatory burden on a group of sophisticated investors, the “99 investor problem” threatens to choke off capital from businesses that most need it. H.R. 1219 would address this issue by raising the threshold for registration from 100 investors to 250 investors.

H.R. 1312, the “Small Business Capital Formation Enhance Act,” would simply require that the SEC review the findings and recommendations of the annual Government-Business Forum on Small Business Capital Formation, and disclose any action the SEC intends to take with each recommendation. The SEC has held this annual forum since 1982, but has routinely ignored many of the positive recommendations made by market participants. Requiring the SEC to at least take notice and be responsive to the recommendations each year would better help the agency fulfill its mandate to facilitate capital formation.

H.R. 1257, the “Securities and Exchange Commission Overpayment Credit Act,” would allow national securities exchanges and self-regulatory organizations (SROs) to credit overpayments made under Section 31 of the Securities Exchange Act of 1934 against future Section 31 liabilities. Under Section 31, exchanges and SROs are required to pay transaction-based fees to the SEC in order to defray costs that the agency expends overseeing and examining these bodies. Given the uncertainty inherent in projecting Section 31 liabilities, exchanges or SROs can often overpay what they owe — however, no mechanism exists to credit these overpayments in the future. Since these fees are often passed onto the investing public, allowing exchanges and SROs to discount their future liabilities by the overpayment amount will ultimately benefit investors who trade in the public markets.

Collectively, these bills would improve the ability of businesses to raise capital, contribute to stronger economic growth, and provide certainty for market participants. The Chamber urges the Committee to report these measures to the full House as expeditiously as possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley

cc: Members of the Committee on Financial Services