August 22, 2017

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

We appreciated the opportunity to participate in a roundtable with Department of Treasury staff on July 28 to discuss ways to increase access to capital for businesses and, in particular, how to help more companies go public. While we represent different segments of the American economy, we all share a common concern that the decline in U.S. public companies inhibits economic growth, job creation, and the ability of households to create sustainable wealth. To help inform your upcoming report on the capital markets pursuant to the President's February 3 Executive Order, this letter provides additional information and recommendations related to the topics discussed at the roundtable.

The public company model has been a key source of strength and growth, and it has helped to make the United States economy the strongest and most prosperous in world history. When businesses go public, jobs are created and new centers of wealth are formed. Regrettably, the United States is now home to about half the number of public companies that existed two decades ago, and we have roughly the same number of public companies as existed in 1982.[1] In 2012, Congress passed the Jumpstart Our Business Startups (JOBS) Act in large part to address this decline. While there is little doubt that the JOBS Act contributed to a significant uptick in the initial public offering (IPO) market immediately after its passage, many long-term issues still remain and the public company model still remains unattractive for many businesses.

We believe that encouraging more companies to go public through regulatory and legislative reform is a pro-growth and pro-opportunity agenda that can help our

[1] America's Roster of Public Companies is Shrinking Before our Eyes." Wall Street Journal January 6, 2017. https://www.wsj.com/articles/americas-roster-of-public-companies-is-shrinking-before-our-eyes-1483545879

economy escape the 1-2% growth rut we have unfortunately become accustomed to over the last decade. As such, we believe that policymakers should adopt the following reforms:

- **Extend the "on-ramp" accommodations of Title I of the JOBS Act from five years to ten years for all emerging growth companies (EGCs) and revise the EGC definition to eliminate the premature phase-out of those accommodations;**

- **Make the JOBS Act on-ramp available for all companies seeking an IPO for five years, regardless of whether they meet the definition of an EGC;**

- **Modernize the regulatory regime for internal control reporting requirements under the 2002 Sarbanes-Oxley Act;**

- **Modernize the disclosure regime administered by the Securities and Exchange Commission (SEC), including elimination of outdated or duplicative disclosures, repeal of immaterial social and politically-motivated disclosure mandates, as well as further scaled disclosure requirements for EGCs;**

- **Reform the outdated rules governing shareholder proposals under Rule 14a-8 of the Securities Exchange Act, including modernizing the thresholds for shareholder proposal resubmissions by increasing the shareholder support thresholds;**

- **Enhance regulatory oversight of the proxy advisory firm industry;**

- **Promote an equity market structure that enhances liquidity for EGCs and other small capitalization companies; and**

- **Incentivize both pre-IPO and post-IPO research of companies.**

While this list is far from exhaustive, we believe these ideas could help reinvigorate an IPO market that continues to languish behind its historical norms to the detriment of our economy.

Discussion

Public companies have long been a critical source of job creation, innovation, and growth for the United States economy. A 2012 study by the Kauffmann Foundation estimated that the 2,766 companies that went public from 1996-2010 collectively employed 2.2 million more people in 2010 than they did before they went public, while total sales amongst these companies increased by over $1trillion after going public.[2] Another study done by IHS Global Insight in 2010 found that 92% of a company's job growth occurs after it completes an IPO.[3] The JOBS Act has also lived up to its name: an estimated 250,000 jobs have been created by companies that went public as an EGC from 2012 until today.[4] These EGCs represent a wide range of different industries including technology, healthcare, energy, and retail enterprises.

The public capital markets are also not static and help to support innovation. Only about 12% of the Fortune 500 companies in 1955 were still on the list in 2014, while the other 88% have either gone bankrupt, merged, or fallen out of the Fortune 500.[5] This system of creative destruction has forced businesses to change with the times or be replaced by new entrants with innovative ideas and products meeting the needs of consumers and an ever changing marketplace.

Importantly, when businesses go public, it allows "Main Street" employees and investors the opportunity to participate in the financial success of an enterprise. During the 1980's and 1990's, stories of the Microsoft executive assistant or the UPS driver becoming millionaires were not uncommon after a company completed an IPO. While robust private markets bring with them many benefits, it is worth noting that the returns on investment in those markets are typically reserved for institutions and accredited (i.e. wealthy) individuals and households. Middle or lower income households do not have the opportunity to participate financially in the growth of most private companies, and therefore, rely on strong public markets for their financial or retirement security.

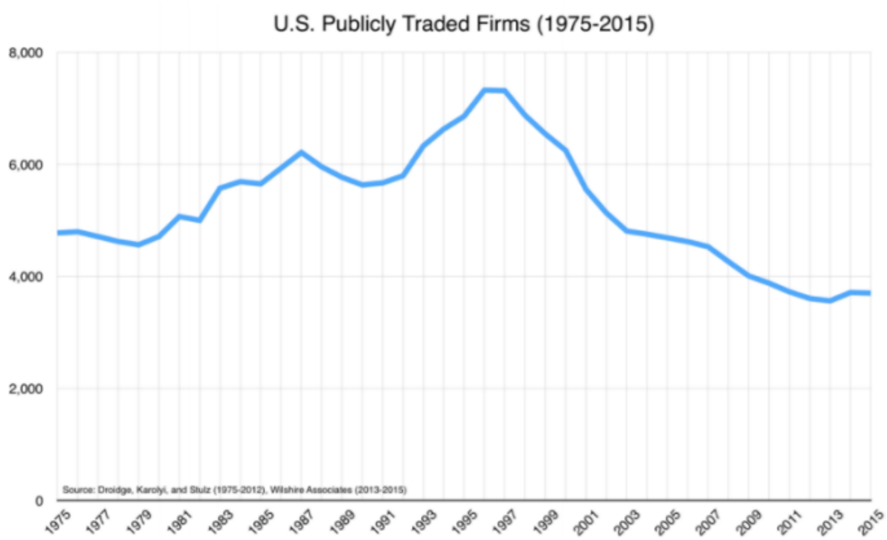
Regrettably, the public company model has fallen out of favor for an increasing number of businesses. The number of U.S. public companies has declined in

---

[2] Kauffmann Foundation, Post-IPO Employment and Revenue Growth for U.S. IPOs June 1996-2010
[3] IHS Global Insight, Venture Impact Study 2010
[4] Capital IQ, Bloomberg and ECM Analytics unaudited data and company filings as of August 4, 2017. Includes all IPOs between 2012 and June 29, 2017. Excludes SPACs, blank check companies, BDCs,
REITS and closed-end funds. (Compiled report included as attachment to this letter.)
[5] Mark Perry, AEIdeas, August 18, 2014

nineteen of the last twenty years, with the lone annual increase being attributable to the JOBS Act. While we recognize that there are a variety of reasons for this decline, we believe that there are issues squarely within the purview of policymakers that can and should be addressed.

Not only are fewer companies going public, but the ones that do are typically going public much later in their lifecycle. From 1990 to 2000, "small" IPOs (deal size <$60 million) accounted for roughly 2/3 of all IPO activity in the United States. From 2012 to 2016, however, those small IPOs accounted for only about 1/5 of all IPOs.[6] Again, Main Street investors who would typically enjoy the post-IPO gains of a company are now investing much later in the process, leaving institutions and accredited investors to reap much of the financial benefit in private markets.



Fortunately, SEC Chairman Jay Clayton has made the public company crisis one of the Commission's top priorities. In a recent speech, Chairman Clayton stated that "…the reduction in the number of U.S.-listed public companies is a serious issue for our markets and the country more generally. To the extent companies are eschewing our public markets, the vast majority of Main Street investors will be unable to participate in their growth. The potential lasting effects of such an outcome…are, in two words, not good."[7]

---

[6] Dealogic as of June 9, 2017. IPO data excludes REITs, closed-end funds, SPACs, and transactions with <$5mm in proceeds

[7] Remarks at the Economic Club of New York July 12, 2017

We emphatically agree with Chairman Clayton and appreciate the Commission's newfound focus on access to capital for businesses that are looking to go public. A number of us were members of the 2011 IPO Task Force, a group that was created after Treasury's Access to Capital Conference that year and which produced many of the recommendations that were ultimately adopted as Title I of the JOBS Act. Most of the issues that the Task Force identified six years ago still remain, and we are eager to get to work with the SEC, Treasury, the Administration, and Congress to address these critical issues.

Recommendations

Extend the on-ramp accommodations of Title I of the JOBS Act from five years to ten years for all EGCs, and eliminate the premature and unnecessary phase-out of those accommodations, including for large accelerated filers. There is little doubt that the creation of the EGC as a class of issuer has been a boon to the IPO market. Since 2012, the vast majority of companies filing for an IPO have done so as an EGC, with 75% of IPOs classified as EGCs in 2016.[8] The on-ramp exempts EGCs from a number of mandates, including several under the Sarbanes-Oxley Act and the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Importantly, in the five years since the JOBS Act was passed, there has been no evidence that these exemptions have compromised investor protection in any way or undermined confidence in the markets. We believe that as companies continue to mature five years after going public, extending the on-ramp to ten years would be a further incentive for businesses to go public in the first place. Further, the benefits of Title I of the JOBS Act have been impaired by eliminating those accommodations for companies that qualify as large accelerated filers. The premature termination of those benefits is not necessary for investor protection and unnecessarily increases costs for recently public companies.

Make the JOBS Act on-ramp available for all companies seeking an IPO for five years, regardless of whether they meet the definition of an EGC. By definition, an EGC is company with less than $1 billion in revenues for its most recent completed fiscal year. While most companies seeking an IPO will fit within that arbitrary threshold, others do not and therefore would be unable to benefit from the on-ramp and other accommodations that the JOBS Act provides. As stated above, with companies tending to go public much later in their lifecycle than they

[8] SEC Staff Report "Access to Capital and Market Liquidity" August 8, 2017

have historically, allowing all issuers to use the EGC model would further incentivize companies to complete an IPO. Given the five years of experience that we have with the JOBS Act, we also do not believe that this recommendation would erode investor protections in any way.

Modernize the regulatory regime for internal control reporting requirements under the 2002 Sarbanes-Oxley Act. Section 404(b) of Sarbanes-Oxley requires an outside audit of the effectiveness of internal controls. The SEC predicted in 2003 that Section 404 of Sarbanes-Oxley would "discourage some companies from seeking capital from the public markets" because the related requirements "increase the cost of being a public company" (Release No. 33-8828). However, the SEC significantly underestimated annual costs at $91,000 per company (excluding the costs associated with the auditor's attestation report.) For example, a 2005 survey of large public companies complying with the new rules under Section 404 during the first year indicated that compliance costs in fact totaled $4.36 million and 27,000 hours on average. Congress has recognized the costs these requirements can impose on small public companies, and Section 989G of the 2010 Dodd-Frank Act exempted companies with a public float of less than $75 million from 404(b) internal controls, while the JOBS Act exempted EGCs from the requirement. In addition to costs, much of the problem with 404(b) comes from its implementation: Middle market companies have particularly been affected and often report elevated costs associated with internal control requirements due to the Public Company Accounting Oversight Board (PCAOB) inspection process. There has also been an increasing trend towards a "one-size-fits-all" approach that favors processes and controls that are not appropriate for every business. For example, businesses report that auditors are often using generic templates to walk through PCAOB inspection points which are time-consuming and do little to enhance the overall quality of controls. We believe that Congress, the SEC, PCAOB, as well as the Financial Accounting Standards Board (FASB) should explore further ways to provide relief for small and mid-size public companies from some of the more onerous aspects of 404(b) without compromising investor protections.

Modernize the disclosure regime administered by the Securities and Exchange Commission (SEC), including elimination of outdated or duplicative disclosures, repeal of immaterial social and politically-motivated disclosure mandates, as well as further scaled disclosure requirements for EGCs: The IPO Task Force 2011 report showed that 92% of public company CEOs found that the "administrative burden of public reporting" was a significant challenge to completing an IPO.[9] In 2013, the SEC estimated that it costs companies and their shareholders on average $2.5 million in regulatory costs for undergoing an IPO, with an ongoing annual reporting burden of $1.5 million.[10] For a company looking to go public that may have a $50 million market cap, this is not an insignificant amount of money that it must spend simply to comply with the SEC's complex disclosure regime. The SEC should continue to make progress on its Disclosure Effectiveness Initiative started by then-Chair Mary Jo White as well its mandate from Congress in 2015 to simplify disclosure.[11] The SEC and Congress should also reject any further attempts to use corporate disclosure in order to drive agendas that are unrelated to providing investors with material information. For example, the Dodd-Frank Act's pay ratio and conflict minerals requirements do not provide investors with decision useful information, but shareholders will spend billions of dollars in order to comply with these misguided mandates. These efforts to "shame" companies using disclosure only serve as yet another disincentive to companies that are looking to go public and should ultimately be rescinded. The Supreme Court-articulated materiality standard[12] should be the lodestar that determines what a company should be required to disclose. While EGCs are exempt from the pay ratio rule, we believe that further exemptions – such as from conflict minerals or other Dodd-Frank rules – would be warranted.

Reform the outdated rules governing shareholder proposals under Rule 14a-8 of the Securities Exchange Act, including modernizing the thresholds for shareholder support resubmissions by increasing the shareholder support thresholds. The shareholder proposal system under Rule 14a-8 has become a costly distraction for companies and shareholders, who often find themselves having to grapple with immaterial proposals year after year. We believe that reform of this system is long overdue, and at a minimum the SEC should raise the thresholds which determine when a proposal is allowed to be re-submitted after it has previously received a low level of support.

Enhance regulatory oversight of the proxy advisory firm industry. Two proxy advisory firms – Institutional Shareholder Services and Glass Lewis – wield enormous influence over corporate governance in the United States, yet operate with little

---

[9] Rebuilding the On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth. Report of the IPO Task Force, October 2011

[10] SEC 2013 proposed rules on crowdfunding https://www.sec.gov/rules/proposed/2013/33-9470.pdf

[11] Section 72002 of P.L. 114-94

[12] *TSC Industries, Inc. vs. Northway Inc.* 1976 "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote…there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available."

transparency and are rife with conflicts of interest. Newly public companies have found dealing with proxy advisory firms to be one of the more difficult aspects of being public. In 2013, the U.S. Chamber of Commerce issued a report that outlined a number of best practices for the industry, [13] and in 2014 the SEC staff issued guidance to address many of the issues that have arisen over the years within the industry.[14] While this guidance was a positive step in the right direction, companies are still finding it challenging to deal with the proxy advisory firms, and we believe that the SEC should continue to explore ways to bring more accountability to the industry.

Promote an equity market structure that enhances liquidity for EGCs and other small capitalization companies. Over the last two decades, a "one-size-fits-all" structure has taken hold in our nation's equity markets. While the current environment is appropriate for very large, highly-liquid companies, it is less supportive of small capitalization stocks and in particular, EGCs that have recently gone public. Liquidity-challenged securities face a trading environment with a highly fragmented architecture designed by the SEC to accommodate venue competition, while sacrificing order interaction. EGC and small cap issuers are given no alternative choices for the treatment of their securities in the capital markets. We believe that the SEC should continue to examine alternative market structures more appropriate for EGCs and other stocks that struggle to trade well in today's secondary markets.

Incentivize both pre-IPO and post-IPO research of companies. One of the more troubling developments over the years has been the drastic decline in research coverage of small capitalization companies, even as the percentage of individual ownership of small caps has increased. Having little research coverage typically translates into lower interest and liquidity in these companies, and is another example of how today's equity market structure is more suited for large cap companies. The 2003 Global Research Settlement has certainly been a contributing factor to the decline in research, in addition to the overall fear of litigation. We believe that creating a mechanism which allows investment banking and research analysts to jointly attend "pitch" meetings, as well as the creation of safe harbor for pre-IPO research would be constructive developments that would incentivize research of small capitalization companies and ultimately improve the trading environment for these stocks.

---

[13] Best Practices and Core Principles for the Development, Dispensation, and Receipt of Proxy Advice. Center for Capital Markets Competitiveness, March 2013.

[14] Proxy Voting: Proxy Voting Responsibilities of Investment Advisers and Availability of Exemptions from the Proxy Rules for Proxy Advisory Firms. Staff Legal Bulletin No. 20 June 30, 2014

Looking Forward

As stated above, these recommendations are simply a beginning and, in the coming weeks and months we will develop further ideas that would help incentivize more companies to go public. Importantly, we also believe that these recommendations would help more companies access the public markets without compromising important investor protections. We look forward to working with the Administration, Treasury, Congress, and the SEC on these critical issues and stand ready to assist in any way that we can.

Sincerely,

Intercontinental Exchange
Nasdaq
Biotechnology Innovation Organization
Equity Dealers of America
U.S. Chamber of Commerce
Steven Bochner, Partner, Wilson Sonsini Goodrich & Rosati
Joseph D. Culley, Jr., Janney Montgomery Scott LLC
Kate Mitchell, Co-Founder and Partner, Scale Venture Partners
Jeffrey M. Solomon, President, Cowen Inc.
Joel H. Trotter, Partner, Latham & Watkins