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on behalf of the Securities Industry and Financial Markets Association

before the Committee on Financial Services

Subcommittee on Capital Markets and Government Sponsored Enterprises

U.S. House of Representatives

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Chairman Garrett, Ranking Member Maloney, and distinguished members of the Subcommittee, thank you for providing me the opportunity to testify today on behalf of SIFMA[1] and to share our views on such a critically important topic.

To put any discussion of capital formation in context, I would highlight that the U.S. securities industry employs nearly 900,000 people across the country. There are over 4,000 registered broker-dealers with 378,000 financial advisors in 162,000 branch offices, serving clients with over $16 trillion in assets. Those firms, in aggregate, raised $2.4 trillion for businesses and municipalities in the U.S. last year, playing a crucial role in the capital formation that fuels economic growth and job creation. SIFMA member firms participate in nearly all of those underwritings and some 75% of the financing that fuels the American economy comes from our capital markets. For those reasons, the work this Committee is doing to fine-tune and improve our securities laws is important and appropriate.

We applaud your focus on promoting capital formation and decreasing burdensome friction in our securities laws while upholding necessary customer protections. For too long, the pendulum of regulation has been swinging against capital formation without due consideration for the consequences on job creation. Market reforms like decimalization, Sarbanes-Oxley, and various

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 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). For more information, visit http://www.sifma.org.

SEC rulemakings and disclosure requirements have produced benefits for investors but have also resulted in unintended obstacles standing in the way of capital formation and created a "one-size-fits-all" market structure that fails to provide adequate flexibility for small cap issuers. Many of the proposals that SIFMA and the other panelists have been asked to discuss today seek to establish a more common sense balance between investor protection and capital formation. These proposals build on the success of the Jobs Act and on efforts like that by Reps. Duffy and Carney to experiment with wider tick sizes for small cap stocks. We appreciate the opportunity to comment on the bills or discussion drafts before us today and on some of the other proposals that are also currently being debated in this Committee.

Access to Research

SIFMA strongly supports Rep. French Hill's "Fair Access to Investment to Research Act of 2015," which aims to reduce obstacles to the provision of research on exchange traded funds and registered investment companies. Anomalies and conflicts in current regulation result in disparate treatment for research on different types of securities. Rep. Hill's legislation rightfully attempts to rationalize and clarify the securities laws by providing a statutory safe harbor for certain covered ETF research reports and directs the SEC to promulgate rules, as appropriate, for research on other funds under the Investment Company Act of 1940. These two common sense clarifications will facilitate greater access to research on products widely used by investors today and SIFMA urges the Committee to pass this legislation.

Retrospective Review of Existing Regulation

SIFMA has also been asked to discuss a proposal by Congressman Hurt that directs the SEC to review all its significant regulations to determine whether such regulations are necessary in the public interest or whether they should be amended or rescinded. As you may know, in 2011 the SEC invited interested parties to submit comments to assist the Commission in considering the development of a plan for a retrospective review of its regulations. The SEC has sought comment on its rule review process in response to Executive Order 13579, "Regulation and Independent Regulatory Agencies," which states that, to facilitate the review of existing significant regulations, such agencies "should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." SIFMA submitted comments at that time and provided suggestions on the process and scope of such reviews. As a threshold matter, SIFMA believes that the SEC should periodically review all of its significant rules and regulations (not just those rules finalized in the last ten years as is the current practice) as most executive branch agencies are required to do pursuant to Executive Order 13563, "Improving Regulation and Regulatory Review." Furthermore, SEC rules that impose a relatively high cost on market participants and investors should be prioritized and reviewed with a frequency that is directly based on the costs and impact of the rule or regulation. In addition to formal SEC rules and regulations, SIFMA believes that any other "standard setting" release, interpretation, "no-action" position or exemption issued by the SEC or its staff must be in scope for the retrospective review. SIFMA believes the SEC should issue a release at the conclusion of its review of each rule that responds to the comments filed and explains why it chose to maintain the existing rule as written, modify the rule, or delay a final decision, pending further analysis or review. We generally support efforts by Congress to ensure that substantive rule reviews by the SEC are conducted on a regular basis. We have yet to see meaningful progress on that review envisioned in the 2011 SEC request for comment. Importantly, we believe regulators increasingly need to review the interplay between the rules and the aggregate effects -rather than just each rule in isolation.

Venture Exchanges

The Discussion Draft put forward by Chairman Garrett would amend the Securities Exchange Act of 1934 to permit the formation of so-called "venture exchanges." SIFMA supports the SEC moving forward with a study of innovative ideas to improve liquidity in small-cap and mid-cap stocks. At the same time, however, robust competition in our equity markets has fueled innovation and it is critical that any changes to market structure for less liquid securities be considered carefully to avoid the unintended consequence of impeding competition in the name of possibly increasing liquidity. SIFMA and its member firms are committed to working with Chairman Garrett to ensure that the legislation establishes a regulatory regime for venture exchanges that is workable and efficient.

RAISE Act

SIFMA is generally supportive of Congressman McHenry's efforts in HR 1830 to codify the long standing uses of 4(a)(1 ½) that have become accepted market practice based on legal precedent and case law. The "Reforming Access for Investments in Startup Enterprises Act," or RAISE Act, is specifically focused on providing a transaction exemption under Section 4 of the Securities Act of 1933 for investor to investor re-sales of unregistered securities. However, 4(a)(1 ½) has additional uses not reflected in this proposal and we would suggest that the bill as constructed is too narrowly focused and fails to provide certainty to the full spectrum of existing 4(a)(1 ½) transactions. For example, the bill specifically does not extend the exemption to dealers. As a result, our members are concerned that the codification of only one aspect of 4(a)(1 ½) could imply that any others uses are unpermitted or could otherwise call them into question.

Again, SIFMA is committed to working with the sponsor of the legislation and with other members of this Committee to ensure that there is a workable solution.

Access to Capital for Emerging Growth Companies

HR 1659, which would modify existing regulation of Emerging Growth Companies (EGCs), is also laudable and SIFMA supports each of the four provisions. Section 1 amends the Securities Act of 1933 to reduce the quiet period requirements from 21 days to 15 days for public filing prior to public offerings by EGC's. Currently, an EGC must file its registration statement publicly and must refrain from marketing the securities through its underwriters or otherwise for 21 days. In theory, this requirement allows for the dissemination, access and review of such information across the broader marketplace before a broker-dealer begins to actively market and solicit orders. In our experience however, this 21-day period is excessively long given the ready online access the public now possesses to such filings. The volatility in our markets can narrow the window of opportunity for an IPO to launch and price successfully and a 21-day quiet period inordinately and unnecessarily restricts an EGC's ability to come to market in a timely manner. We support the reduction in the quiet period as contemplated in the bill.

Sections 2 and 3 of the legislation add clarity and efficiency to two areas of securities regulation without impairing investor protection. Section 2 provides a grace period for a change in status of an EGC by allowing an issuer that qualifies as an EGC at the time of the filing of its confidential registration statement for review to continue to be treated as an EGC through the date on which it consummates its initial public offering. The limitation of the current regulatory construction, which would require the issuer to qualify as an EGC both at the time of confidential submission of the registration statement and at the time the registration statement is publicly filed, risks disincentivizing fast growing companies that could grow out of EGC status in the months required to essentially complete SEC review and make public the registration statement – despite having started the process with the SEC as an EGC.

Section 3 is designed to simplify the financial statement disclosure requirements for EGC's. Currently an EGC must include the previous two years of audited financials when it files its registration statement for review. The time required for SEC review could however cause the EGC to roll into a new fiscal year before it launches its IPO, and as such the relevant two-year period may change. For example, an EGC may file its registration statement in the third or fourth quarter of 2013, and accordingly include in that filing full audited financial statements (and related Management Discussion and Analysis) for 2011 and 2012. If, however, the IPO does not launch until 2014, the 2011 audited financial statements generally would no longer be required for the offering. The cost and effort to create audited financial statements (and related narrative disclosures) for IPO issuers are significant, and is an entirely unnecessary burden for them where those financial statements will not be required to be included in a preliminary prospectus or final prospectus distributed to investors. It is our understanding that other securities regulators (for example, the UK FSA) currently permit the suggested approach.

The last provision in the bill extends the ability for EGC's to file a confidential registration statement not only for their initial public offering but also for a follow-on offering. The JOBS Act provided this confidential filing with a recognition that EGC's do not want to make proprietary information public too early or otherwise prematurely disclose their intention to make an offering—and thereby impair their competitive standing if there is risk that market dynamics or the time required for SEC review may force them to delay (or abandon) an offering. The new provision extends that same reasoning to follow-on offerings so that EGC's are able to derive a similar benefit for those offerings and thus encourage them to engage in further capital raising or sales on behalf of their founding investors.

Merger and Acquisition Broker Bill

Despite our strong support for efforts to enhance capital formation and reduce regulatory burdens, SIFMA has significant concerns about H.R. 686 "the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015," which provides an exemption from registration for brokers performing services in connection with the transfer of ownership of privately held and, given the parameters of the bill, large companies, either through a merger with or acquisition by another entity. SIFMA and its member firms are concerned that the legislation could expose small business owners and investors to unnecessary risks without any meaningful benefit from the envisioned increase in competition or reduced regulatory compliance burden.

Many of our member firms operating as registered broker-dealers have helped small businesses successfully navigate change of ownership transactions through their mergers and acquisition ("M&A") practice. These transactions are typically the most significant event in the life of that small, often family-owned business – representing the life's work of the owners and the largest portion of many of the employees' net worth. These changes of ownership transactions can be complex and small businesses tend to rely heavily on their M&A advisor to guide them through this process. Registered broker-dealers are subject to a variety of regulatory requirements that non broker-dealer M&A advisors are not, including, without limitation, regarding (1) anti-money laundering, (2) privacy of customer information, (3) supervisory, reporting and record-keeping requirements, (4) inspections by the SEC and SROs (such as FINRA), (5) supervision and regulation of employees' trading and outside business activities, (6) insider trading, and (7) regulations governing interactions between a broker-dealer's investment banking and research departments. H.R. 686 risks promoting lower standards and less rigor and regulatory oversight in the provisioning of this important advice.

SIFMA is aware that the SEC issued a related No-Action letter in January 2014, shortly after this Committee took action on Congressman Huizenga's legislation. That No-Action letter stemmed from more than a decade of SEC discussion and consideration. Given the long history of SEC evaluation and the thoughtful conditions included in the very recent no-action relief, it seems premature to write a separate form of relief into statute without the benefit of some time for the SEC to observe the consequences of its no-action letter.

Conclusion

The members of this Committee are to be commended for working together in a bipartisan manner to identify problems and develop solutions to improve capital formation and job creation in America. Our robust capital markets distinguish our economy from every other on earth but without consistent attention and improvement, will not be as efficient as possible. SIFMA and its member firms will remain willing partners with this Committee and your colleagues in Congress as you work to get these bills to the President for his signature.

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