



Statement of the U.S. Chamber of Commerce

**ON: Legislative Proposals to Enhance Capital Formation
and Reduce Regulatory Burdens, Part II**

TO: House Committee on Financial Services

**BY: Tom Quadman, Vice President of the Center for
Capital Markets Competitiveness**

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The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

May 13, 2015

Chairman Garrett, Ranking Member Maloney, and Members of the Capital Markets and Government Sponsored Enterprises Subcommittee. My name is Tom Quaadman, and I am Vice President of the Center for Capital Markets Competitiveness (“CCMC”) at the U.S. Chamber of Commerce (“Chamber”). The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions. I appreciate the opportunity to testify before the Subcommittee today on behalf of the business that the Chamber represents.

Business creation, development, and expansion rely on capital markets that are efficient, well regulated, and have an even playing field for participants. Such well-functioning markets create conditions conducive to growth and sound investor decision making processes. It is an important priority of the Chamber that public policy facilitates effective capital formation to ensure that the United States has the long-term economic growth needed to create jobs. We commend the continued bipartisan leadership of this subcommittee to achieving these goals.

Policies impacting efficient capital markets take many forms and public company creation is an integral component of a vibrant free enterprise economy. The Jumpstart Our Business Startups Act (“JOBS Act”) was an important milestone in updating regulations that were outmoded because of time and changes in market conditions. The United States is starting to see some of the benefits of the JOBS Act and others, such as the European Union, are looking to emulate some of those changes. But more needs to be done. Recent hearings of this subcommittee and the Senate Securities, Insurance and Investment Subcommittee have focused on bills that can further improve on the foundation of the JOBS Act.

These draft bills, which are the subject of today’s hearing, would continue that building process and also put in place permanent measures to allow America’s regulatory structure to evolve with the dynamics of the marketplace. The Chamber supports these legislative proposals and I will offer some constructive changes as I discuss these proposals in greater detail.

I. Legislative Proposals

- a. **To direct the Securities and Exchange Commission to review all of its significant regulations to determine whether such regulations are necessary in the public interest or whether such regulations should be amended or rescinded.**

In 2009, the Chamber released the report *Examining the Efficiency and Effectiveness of the U.S. Securities and Exchange Commission*. This was followed in 2011, with the release of a second report: *U.S. Securities and Exchange Commission: A Roadmap for Transformational Reform*. These reports made 51 recommendations to fundamentally reform the SEC with the goal of restoring it as the world's premier financial services regulator.¹ The Chamber will issue a third reform report shortly on SEC enforcement policies.

The 2011 SEC reform report made a recommendation on a look back of regulations after adoption to address unforeseen consequences:

The Commission should adopt a regulatory look-back requirement whenever it adopts a “Major Rule” as defined in the Small Business Regulatory Enforcement Fairness Act (“SBREFA”).

On January 18, 2011, President Barack Obama issued Executive Order 13563 (“Improving Regulation and Regulatory Review”) which reaffirmed, for executive agencies, regulatory principles and rulemaking processes that include an enhanced process for examining the costs and benefits of proposed rules and their alternatives, as well as the necessity of a rule to achieve regulatory goals. In addition, Executive Order 13563 ordered executive agencies to conduct a retrospective review of existing regulations to determine how such regulations can be improved.

On February 1, 2011, Chamber President and CEO Tom Donohue wrote a letter to all independent agencies and then SEC Chair Mary Schapiro requesting that the SEC voluntarily conduct a review of its existing regulations consistent with Executive Order 13563. Following that letter, on July 11, 2011, the President issued Executive Order 13579 (“Regulation and Independent Regulatory Agencies”), which states that independent regulatory agencies, no less than executive agencies, should abide by the heightened regulatory standards of Executive Order 13563. While Executive Order 13579 does not explicitly require the SEC to conduct a retrospective

¹ These two SEC reform reports can be found at: <http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/ExaminingtheSECRcdcfinal.pdf> and http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/16967_SECRReport_FullReport_final.pdf

review, the SEC stated that it would voluntarily adopt this process to improve upon the way that reviews of existing regulations are conducted.

Unfortunately, such a retrospective review has not been meaningful, rigorous or conducted in a positive manner.

The major issues in the JOBS Act and many that have been raised in the context of a JOBS Act 2.0 were within the competence of the SEC to update independently. In other words, had a regulatory review process, such as envisioned by the draft bill or the President's executive order, been in place, Congress and the Administration would not have had to step in. Unfortunately, legislation is needed to build out a meaningful retrospective review process that can identify obsolete regulations that may in fact be harmful to an efficient capital market. Through this legislative proposal, regulations that fail to meet the public interest can be amended, modernized or if need be taken off the books.

Unfortunately, without legislation, the 2011 retrospective review went nowhere, while the current efforts on Disclosure Effectiveness—updating corporate disclosures to provide investors with meaningful decision useful information—is threatened by bureaucratic inertia.

The periodic structure of the draft bill and reports to Congress are critical to keeping the SEC's feet to the fire. However, we believe that four changes to the bill can make it even more effective.

First, mandate that the retrospective review first prioritize those rules that are economically significant under the Small Business Regulatory Enforcement Fairness Act. This would allow the SEC to focus on regulations that cost the economy more than \$100 million.

Second, mandate that the retrospective review next prioritize those rules that have numerical thresholds that have not been adjusted in over 20 years. This would allow the SEC to focus on issues, such as the Rule 701 thresholds, where limits need to be changed to reflect inflation and fluctuations in the markets. Or if adjustments are not needed, explain why they should not be made.

Third, mandate that the retrospective review allow for public and notice comment as required under the Administrative Procedures Act. This would allow for all stakeholders to provide the SEC with meaningful comment that can help achieve the goals of the draft bill.

Fourth, the retrospective review should also be expanded to include those organizations delegated by the SEC to adopt rules that have a significant impact on the marketplace.

The Chamber believes that this draft bill and these suggested changes would ensure that the SEC adopt to ever changing dynamic markets and that its regulatory structure is periodically updated to meet its goals of investor protection and promotion of competition and capital formation.

b. The Main Street Growth Act

The draft Main Street Growth Act would provide a process to establish venture exchanges. The establishment of a venture exchange could be a welcome development to provide businesses in the formative stages of the public company process with liquidity opportunities that may not otherwise exist. Similarly, this innovation could also provide competition with existing systems, such as the Over the Counter (“OTC”) markets and Alternative Trading Systems (“ATS”), that again may lead to increased liquidity for these growing companies.

However, even if successful, these markets, by operation, would be more thinly traded than the more robust existing equity markets. Accordingly, we believe that the legislation should be less prescriptive and allow both the SEC and exchanges the flexibility to create venture exchanges that can best compete and achieve its goals.

Several challenges exist in this regard. This bill would require trading to be in increments of a nickel and not be required to use decimal pricing. This runs counter to the tick size pilot program that the SEC recently approved. Effectively, this bill is making a choice before the results are in. Additionally, because of the thin margins, the appetite for market data may be scarce making it harder and more costly to provide information. Exchanges should be given the flexibility to develop systems that fit their ability to bring investors and businesses together on a transparent basis, starting with the need for venture market legislation to allow an exchange to use a separate license to serve this market or elect to use a special listings tier within their existing exchange license as their venture offering.

Finally, we also believe that a requirement should be put in place for retrospective and prospective studies. First, the SEC should examine similar efforts that have been tried in the United States and abroad with varying levels of success. The SEC should study and evaluate these past efforts, and determine what worked or did not work, thereby generating data that may be useful to making venture exchanges successful. Secondly, a prospective review could evaluate venture exchanges, OTC

and ATS systems, by a date certain to determine if liquidity is being provided to formative companies.

Both of these studies would allow for an ongoing evaluative process to study the holistic nature of these markets and if venture exchanges and ATS are successful in providing businesses with resources and investors with appropriate information, protections and returns. Such a process would allow the SEC and Congress to know if venture exchanges and other markets are successful, or if changes to the larger system are needed.

At its core, this bill has the potential to create more competition that if done right will benefit businesses and investors alike.

c. The Fair Access to Investment Research Act of 2015

Financial markets are ever evolving providing new opportunities for investors to achieve a potential return and businesses to raise capital. Exchange traded funds (“ETFs”) are index based securities. While ETFs are not directly connected to business capital formation, they have important secondary impacts that provide for business capital formation. In other words, ETFs are important to a well function and liquid efficient capital market.

However, existing impediments prevent investors from obtaining decision useful information regarding ETFs or for these investment vehicles to achieve their potential. Under the Exchange Acts, broker-dealers currently have safe harbors to public research on equity offerings. However, ETFs and open-ended funds do not have similar specific safe harbors, thereby causing enough legal vagueness to restrict information and research that may be helpful to investors. Despite receiving comments supporting an extension of the safe harbor rules to ETFs and open ended funds, the SEC has not adopted a final rule.

This common-sense bill would extend this safe harbor to ETFs and open-ended funds providing investors with more information and improving the efficiency of the overall capital markets.

d. The Accelerating Access to Capital Act of 2015

This draft bill would revise form S-3 and liberalize the offering of securities to accelerate the ability of a business to become a public company. The Chamber has supported this concept before, namely H.R. 4568, the Small Business Freedom to Grow Act of 2014, in the last Congress. This bill would also modernize the use of

Form S-3 and allow smaller issuers to take advantage of the simplified registration statement.

This has been included in the past recommendations of the SEC's own Government-Business Forum on Small Business Capital Formation, held annually at SEC headquarters. Like many other recommendations produced every year at the forum, the SEC has failed to act to modernize registration statements, so Congress has an important role to play to modernize rules, help business gain access to public capital markets and accelerate public company formation.

II. Conclusion

The Chamber views these draft bills, along with our proposed improvements, as critical steps to try new and innovative ideas and give our regulatory system the ability to adopt and fulfill its mission in changing times. Therefore, the items under consideration not only address specific issues that can be corrected, it also allows for experimentation and sustained efforts to modernize regulations.

Taken together these draft bills and the other legislative proposals from the April 29, 2015 hearing would provide a basis to allow entrepreneurs to create new businesses, give investors more information and new ways to invest, and regulators the means to have better oversight of the capital markets. This is a public policy trifecta needed to give businesses the ability to grow and stay competitive while creating new jobs.

I am happy to take any questions that you may have at this time.