



**April 26, 2023**

The Honorable Patrick McHenry  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
4340 O'Neill House Office Building  
Washington, DC 20515

**Re: HFSC Capital Formation Markup**

Dear Chairman McHenry and Ranking Member Waters,

The Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> and its member firms would like to express our appreciation for your work to advance legislation that supports entrepreneurs, enhances capital access, and makes the public markets more attractive for small companies. The U.S. capital markets are the deepest, most liquid, and most efficient in the world, providing the funding for over 70% of all economic activity in the U.S. These markets are a critical source of financing, including for small and mid-sized businesses. Efforts by the Committee to consider proposals to enhance capital formation, reduce regulatory burdens, and support entrepreneurs while protecting retail investors will help maintain strong, sustainable economic growth.

SIFMA strongly supported the passage of the original JOBS Act in 2012, which has facilitated innovation and growth across our economy by increasing access to our capital markets and reducing unnecessary regulatory burdens. Over the decade since, in response to the ongoing evolution of markets and market participants, Congress has worked to advance legislation to further update our securities laws and improve access to the markets. We commend this Committee, under your leadership, for continuing these efforts, including through today's legislative markup.

We would like to thank you and Members of the Committee for the transparent process by which these bills have been developed and brought up for consideration. Specifically, we commend

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit <http://www.sifma.org>.



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Capital Markets Subcommittee Chairwoman Ann Wagner, Ranking Member Brad Sherman and you for holding four separate Subcommittee hearings on such legislation to allow for appropriate consideration and feedback from the public and interested stakeholders.

The Committee's adherence to deliberative and transparent legislative development will help ensure that our securities laws are appropriately tailored to enhance capital formation while protecting investors. Toward that end, SIFMA is pleased to provide comments on several proposals included in the markup. We greatly appreciate your consideration of our views and look forward to continuing to engage with you and your colleagues on these issues and other matters moving forward.

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### ***H.R. 1807 – Improving Disclosure for Investors Act***

This bill would reform SEC rules to allow registered investment companies, business development companies, advisers, broker-dealers, transfer agents, and others to use electronic delivery (e-delivery) as the default method of sending certain required documents to their customers, while ensuring that investors always have the choice to receive paper documents through the mail. In the 20th century, the SEC mandated such firms to disclose a range of information to their customers, and the only means of such communication available at the time was to deliver paper documents through the postal system. However, as internet access expanded, digital technology evolved, and investor preferences shifted, the SEC has taken several steps to update its disclosure rules by enabling e-delivery to be the default delivery method of certain documents.

This legislation is the natural next step in the decades-long process to ensure that our regulations governing investor protection and disclosure keep pace with technological advancement and changing investor preferences. The results of a recent survey show just how far investor preference has evolved regarding e-delivery. For example, 79 percent – including 75 percent of those 55 years and above – said they have already chosen e-delivery for at least one type of investor document.<sup>2</sup> While keeping up with investor preferences, this legislation would also preserve investor choice by providing a mechanism for investors, at any time, to opt out of e-delivery and receive paper versions of documents. This is a critical provision considering 85 percent of investors said they are comfortable with default e-delivery for investor documents going forward provided they can opt-in to paper delivery.

SIFMA commends you and your colleagues for putting forth this thoughtful legislation that takes the long-overdue step of continuing the SEC's incremental process of adapting its disclosure

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<sup>2</sup> SIFMA commissioned FGS Global to prepare and execute the survey that was conducted online by YouGov from May 16 to May 19, 2022. The Survey sample consisted of 1,300 retail investors that hold at least \$5,000 across retirement accounts, college-savings investments, stocks, bonds, mutual funds, or a brokerage account, excluding property and cryptocurrency investments. Full results are available at: <https://www.sifma.org/wp-content/uploads/2022/07/SIFMA-Survey-Results-for-SEC-July-2022.pdf>



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rules to changing technology and investor preferences. SIFMA supports this bill and appreciates its inclusion in the markup.

***H.R. 835 - Fair Investment Opportunities for Professional Experts Act***

This bill would allow Americans to qualify as accredited investors by virtue of their education and job experience. The current definition of accredited investor relies on net worth thresholds for individuals and households regardless of the sophistication of the would-be investors. By excluding individuals whose professional experience or financial knowledge qualifies them to purchase restricted securities, the current standard unfairly limits Americans' participation in capital markets and limits the ability of private business to access capital through accredited investors. Financial professionals are well positioned to analyze the risks of investments, and accredited investors are a critical source of capital for businesses unable to access the public markets. SIFMA supports this bill and appreciates its inclusion in the markup.

SIFMA broadly supports the expansion of Accredited Investor to enhance investor access to the private markets and applauds the Committee for its particular focus on this definition. We look forward to continuing to work with the Committee to ensure an expanded definition of accredited investor provides increased access to more sophisticated investors who are better able to understand the risk and merits of investments on their own.

***H.R. 2793 - Encouraging Public Offerings Act of 2023***

This bill would allow all issuers of public securities to take advantage of the testing the waters and confidential draft registration submission provisions of the JOBS Act of 2012. The testing the waters and confidential draft registration submission allowances made by the JOBS Act for emerging growth companies have proven incredibly popular with issuers due to the flexibility it grants them to access public capital markets on more favorable terms. More importantly, these changes to the initial public offering process have conferred these benefits and encouraged more companies to go public without sacrificing investor protection. Extending these provisions to all issuers should improve the vibrancy of our public capital markets. SIFMA supports this bill and appreciates its inclusion in the markup.

***H.R. 2593 – Senior Security Act***

This bill would create a “Senior Investor Taskforce” within the Securities and Exchange Commission charged with identifying problems senior investors encounter, including financial exploitation and cognitive decline, as well as identifying regulatory changes that could help senior investors. According to the National Council on Aging, financial abuse of elderly people costs victims as much as \$36 billion annually. Congress and the SEC should take necessary steps to protect senior investors from bad actors and look for areas where securities law can conform to the challenges facing America’s seniors. SIFMA strongly supports any efforts that focus on the most immediate and most damaging dangers faced by senior investors. SIFMA supports this bill and appreciates its inclusion in the markup.

***Division A Title 4 of the Expanding Access to Capital Act – Expand the Protection for Research Reports to Cover All Securities of All Issuers***



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This legislation would expand a provision in the JOBS Act of 2012 that establishes that a broker-dealer's distribution or publicization of a research report about an emerging growth company (EGC) does not constitute an "offer." The JOBS Act allows such research reports to be published and distributed without triggering requirements to file a registration statement and deliver a prospectus. This legislation today would expand the application of the JOBS Act beyond EGCs to cover research reports about any issuer that undertakes a proposed public offering of securities. Research reports help investors make informed decisions and provide critical analysis of the financial and operational well-being of a company or industry. Furthermore, research reports remain highly regulated, subject to myriad SEC and FINRA regulations and oversight designed to protect investors. Smaller and mid-sized issuers can particularly benefit from research reports through enhanced investor recognition and increased liquidity in their securities. SIFMA supports this provision and appreciates its inclusion in the markup.

#### ***H.R. 2812 - Middle Market IPO Underwriting Cost Act***

This bill would direct the SEC to carry out a study of direct and indirect underwriting fees, including gross spreads, incurred in initial public offerings (IPOs) of small- and medium-sized companies. The U.S. has the largest equity markets, and our IPO market is consistently larger in volume and market capitalization than other similar economies such as the United Kingdom and Europe. After years of decline, the U.S. has experienced an uptick in IPOs post the JOBS Act.

SIFMA appreciates the desire to consider costs associated with IPOs, however, any study should not just focus on the gross underwriter's spread but also consider the services underwriters provide to these types of companies when they are contemplating going public, including preparation for a public offering, and receiving support afterwards from the underwriter(s). These services can include months and even years of work to help companies prepare to go public, and significant aftermarket support such as research and trading in the company's shares. Further, any study should account that for every company that does go public, there are others that choose not to even after preparation, notwithstanding the underwriter's initial investment. Any study should also consider both the competitive landscape among underwriters, the spread variation among deal size, and various public offering options to IPOs (e.g., direct listings and Dutch Auctions). Importantly, the SEC conducted a survey of public company CEOs in 2011 to consider the challenges and concerns about going public.<sup>3</sup> Survey respondents raised multiple issues including regulatory pre and post-IPO regulatory costs, research coverage, and small cap investor universe, but not underwriting fees. Any study should consider the regulatory costs associated with preparing and executing an IPO, and the regulatory costs associated with becoming a public company. Should the Committee decide to proceed with such a study we strongly recommend that it expand the scope to include the aforementioned issues including regulatory costs.

#### ***Division B Title 1 of the Expanding Access to Capital Act – Unlocking Capital for Small Business Act***

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<sup>3</sup> Rebuilding the IPO On-Ramp, SEC IPO Task Force, October 20, 2011  
[https://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on-ramp.pdf](https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf)



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This provision would direct the SEC to finalize its 2020 proposed rule exempting from broker-dealer registration any entity that acts as a “finder” by helping issuers raise capital in private markets from accredited investors. SIFMA has concerns that this provision may lead to an unlevel playing field by requiring registered broker-dealers to remain subject to a variety of regulatory requirements while exempting non-broker dealer finders. Many of our member firms, particularly small and regional registered broker-dealers, have helped small businesses successfully raise capital and navigate change of ownership transactions through their banking practices. By excluding finders from broker dealer registration, this legislation would place investors at risk by allowing these unregistered finders that are not subject to the various investor protections requirements under FINRA rules to offer private placement securities to investors. SIFMA respectfully opposes this legislation.

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Again, SIFMA commends you on your commitment to advancing legislation that supports entrepreneurs, enhances capital access, and makes the public markets more attractive for small companies. Capital formation is the bedrock of economic growth and job and wealth creation.

We welcome the opportunity to comment on these provisions that are of particular importance to our membership and look forward to continuing to work with you on these and other important legislative solutions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen". The signature is fluid and cursive, with a long, sweeping underline.

Kenneth E. Bentsen, Jr.  
President and CEO  
Securities Industry and Financial Markets Association