THE FUTURE OF AMERICAN CAPITAL: STRENGTHENING PUBLIC AND PRIVATE MARKETS BY INCREASING INVESTOR ACCESS AND FACILITATING CAPITAL FORMATION

HEARING

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS

OF THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

FIRST SESSION

FEBRUARY 26, 2025

Serial No. 119–6

Printed for the use of the Committee on Financial Services

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www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

59–636PDF WASHINGTON : 2025

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WEDNESDAY, FEBRUARY 26, 2025

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THE FUTURE OF AMERICAN CAPITAL: STRENGTHENING PUBLIC AND PRIVATE MARKETS BY INCREASING INVESTOR ACCESS AND FACILITATING CAPITAL FORMATION

Wednesday, February 26, 2025

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CAPITAL MARKETS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2128, Rayburn House Office Building, Hon. Ann Wagner [chairwoman of the subcommittee] presiding.

Present: Representatives Wagner, Lucas, Sessions, Davidson, Steil, Stutzman, Garbarino, Lawler, Ogles, McClain, Salazar, Downing, Hill, Sherman, Scott, Vargas, Gonzalez, Casten, Lynch, Bynum, and Waters.

Chairwoman WAGNER. All right. Good morning. The Subcommittee on Capital Markets will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

This hearing is titled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation."

Without objection, all members will have 5 legislative days within which to submit extraneous materials to the chair for inclusion in the record.

OPENING STATEMENT OF HON. ANN WAGNER, CHAIRWOMAN OF THE SUBCOMMITTEE ON CAPITAL MARKETS, A U.S. REPRESENTATIVE FROM MISSOURI

Chairwoman WAGNER. Chairman—I now recognize myself, as chairman, for 4 minutes for an opening statement.

Good morning, and welcome to our very first Capital Markets Subcommittee hearing. I want to thank you all for joining us today. We are going to be discussing ways to strengthen both public and private markets by expanding investment opportunities and reducing regulatory barriers to capital formation.

Securing funding is essential for small businesses, yet many entrepreneurs face roadblocks. While the bipartisan JOBS (Jumpstart Our Business Startups) Act of 2012 was a landmark step in making capital more accessible, significant regulatory barriers remain.

If we fail to act, we risk stifling innovation and economic expansion.

One of the most pressing challenges is the restrictive definition of "accredited investor." Current regulations primarily allow only high-net-worth individuals to invest in private markets, shutting out many financially knowledgeable Americans who have the expertise but perhaps not the wealth to participate in these opportunities. Expanding investment opportunities beyond the limited few who qualify under this narrow definition will unlock new sources of capital, benefiting both businesses and investors.

Small businesses also face growing obstacles when seeking funding. Traditional bank loan approval rates have dropped significantly, leaving many entrepreneurs with limited options. No business should be forced to rely solely on financial institutions when alternative sources of capital are available.

Expanding investor access to private markets and streamlining regulatory requirements for raising private capital will create more opportunities for businesses to secure funding and for investors to participate in economic growth.

These challenges are not just theoretical. This is the reality faced by American entrepreneurs. My constituent Andrew Barnell, who is here today, and his sister, Erica, are perfect examples of why access to capital matters. Their entrepreneurial journey demonstrates the power of American innovation, but they, like too many founders, especially those in communities outside traditional financial hubs, have faced barriers that limit their ability to expand and create jobs.

Across the country, countless small businesses and entrepreneurs face similar roadblocks, preventing great ideas from becoming successful, job-creating enterprises. As Acting Security and Exchange Commission (SEC), Chair Uyeda recently said, and I quote, we should be encouraging, not restricting, the ability of companies to raise capital.

Regulations should protect investors, but they should not suffocate market access or drive companies overseas. We must ensure both public and private markets remain viable funding options, giving businesses the flexibility to grow in the way that best suits them.

The reforms that we discuss today build upon the foundation by the JOBS Act. By reducing regulatory barriers, increasing access to capital, and safely expanding investor access, we can ensure that innovation and economic growth continue to flourish.

To ensure that we get this right, after today's hearing, the committee will be requesting feedback from stakeholders on legislative proposals aimed at strengthening our capital markets, and we want to hear directly from investors and entrepreneurs, small businesses, and all market participants about how we can improve access to capital without sacrificing investor protection.

After this hearing, we will put out a press release that is going to be requesting feedback via this press release and a list of prompts on the Financial Services Committee website, so go to FinancialServices.house.gov.

Access to capital is not a partisan issue. It is about ensuring that businesses and investors and workers have the tools that they need to succeed.

I want to thank you all, and I look forward to today's discussion.

The chair now recognizes the ranking member of the subcommittee, the gentleman from California, Mr. Sherman, for 4 minutes for an opening statement.

OPENING STATEMENT OF HON. BRAD SHERMAN, RANKING MEMBER OF THE SUBCOMMITTEE ON CAPITAL MARKETS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. SHERMAN. The SEC oversees our capital markets, which are the nerve center of global capitalism. Virtually all of the most powerful companies in America and, really, the world function with one goal: increasing the value of their companies' securities in our capital markets. Our capital markets are the envy of the world, and the securities traded there are worth over $100 trillion.

I do not think it is a good idea to let "Big Balls" just take a whack at it. Whether it is crime in the streets or crime in the suites, we should not defund the police. The SEC more than pays for itself. It has a $2 billion budget; it secured over $8.2 billion in fines last year and returned $3.2 billion to investors.

One thing I am concerned about is insider trading. We saw this when, for 1 week—everybody knew when Trump got elected crypto would go up a bit. Bitcoin went up 22 percent in that first week and Dogecoin went up 135 percent. During that week, there were only a couple of people who knew that this commission would get this weird name designed to advertise one crypto coin. I do not know who knew that. I do know that Elon Musk is more powerful than any one Member of Congress—I am humble enough to say that—but Musk does not file any of the financial reports that we have to file.

We will see a couple of years from now whether we see $8.2 billion a year returned by the new SEC in fines and $3.2 billion to investors. If not, it will not be because there are no crooks on Wall Street. The wolves of Wall Street are not going to become lambs. It will be because the SEC was defanged and/or defunded.

Business needs capital, particularly small and medium-size business. Traditionally that was banks, but we have told all the banks they cannot even make any prime plus 3, prime plus0loans. We need to focus on bank regulation. We need to allow credit unions to make more business loans. We need to allow the Business Development Companies (BDCs) to play their role in developing businesses.

That is why I got the Access to Small Business Investor Capital Act, which I introduced in the 116th, 117th, and 118th Congress. I will be reintroducing it in the 119th Congress and looking for as many cosponsors as possible.

Finally, our banking system discriminates against business loans by saying that if the banks instead deploy their money into marketable securities, they do not have to mark—to market their losses, particularly those securities they list as being ones they plan to hold to maturity.

As to the "accredited" definition, "accredited investor" definition, it needs work—but not just expansion, but also contraction. The idea that somebody is high-income because they have $200,000—keep in mind, Members of Congress, if they get reimbursed for their living expenses here in Washington, are listed as having incomes of $200,000. Not a single one of my colleagues has said that the congressional pay package represents high-income and a million dollars does not make you wealthy in the current system.

When we passed these laws, it was back in the 1970s. Prices have gone up by a factor of 7.7, so we have seen an erosion of the definition of "accredited investor" when based on wealth to the tune of 7.7 times.

We need to change those numbers on the one hand and, as the chairwoman points out, also account for the fact that people who do not have high income, do not have high wealth, may have high knowledge and ought to be listed as accredited investors.

I yield back.

Chairwoman WAGNER. The gentleman yields back.

STATEMENT OF HON. FRENCH HILL, CHAIRMAN OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM ARKANSAS

The chair now recognizes the chairman of the full committee, the gentleman from Arkansas, Mr. Hill, for 1 minute.

Chairman HILL. I thank my friend and colleague, our chairwoman, Mrs. Wagner, for hosting today's hearing.

I look forward to working aside you, Chair Wagner, as we work to ensure America's capital markets remain the strongest and the most competitive in the world.

Capital formation is the bedrock of our economic growth. It fuels innovation, empowers small business, and creates opportunities for everyday Americans to build a nest egg and wealth.

Yet, in recent years, we have seen an alarming trend. Fewer companies are entering the public markets, and when they do, they face skyrocketing regulatory burdens, stifling growth and job creation.

At its peak, the Wilshire 5000 index, a benchmark for the entire stock market of the United States, had 7,500 companies. Today, that number has been cut in half. If we do not act now, America's public markets will continue to shrink.

Committee Republicans are committed to reversing this trend by building on our JOBS Act work, and I look forward to working with you, Madam Chair.

I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the ranking member of the full committee, the gentlelady from California, Ms. Waters, for 1 minute.

STATEMENT OF HON. MAXINE WATERS, RANKING MEMBER OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM CALIFORNIA

Ms. WATERS. Thank you very much, Chair Wagner.

Democrats have always championed small businesses. In the 117th Congress, we passed landmark laws—the Inflation Reduction

Act, the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act, and the American Rescue Plan—that bolster small business and economic growth.

We know that when markets are fair, disclosures are honest, financial intermediaries act in investors' best interests, and the Securities and Exchange Commission enforces the law, business confidence and investments flourish.

Trump and unelected Co-President Elon Musk are looking to defang, defund, and defame Wall Street's cop on the block, the Securities and Exchange Commission. Fiddling with requirements in our securities laws seems to miss the mark when the arbiter of those laws is on the chopping block.

I yield back.

Chairwoman WAGNER. The ranking member yields back.

Today, we would like to welcome the testimony of our five witnesses.

First, we have Mr. Andrew Barnell. Mr. Barnell is the CEO, and Co-Founder of Geneoscopy—"Geneoscopy" I guess that is how you pronounce it. Yes. He is also one of my constituents, with whom I have had the pleasure of meeting many times. From their office in St. Louis, Mr. Barnell's business has developed an innovative and lifesaving colorectal cancer screening technology.

Next, Mr. McKeever Conwell. Mr. Conwell is the Founder and Managing Partner of RareBreed Ventures, an emerging venture capital (VC) fund located in Baltimore, Maryland.

Next we have Ms. Rebecca Kacaba. Ms. Kacaba is the CEO and Co-Founder of DealMaker, a global leader in online capital raising.

Next on deck is Ms. Anna Pinedo. Ms. Pinedo is a Partner in Mayer Brown's New York office and Co-Leader of the Global Capital Markets practice.

Last but not least is Ms. Alexandra Thornton. Ms. Thornton is the Senior Director of financial regulation for Inclusive Economy at the Center for American Progress.

We thank each of you for taking the time to be here today.

Each of you will be recognized for 5 minutes to give an oral presentation of your testimony, and, without objection, your written statements will be made part of the record.

Mr. Barnell, I believe you also have your wife with you today.

We welcome you, Mrs. Barnell.

You are now recognized, sir, for 5 minutes for your oral remarks.

STATEMENT OF ANDREW BARNELL, CEO AND CO-FOUNDER, GENEOSCOPY

Mr. BARNELL. Chairwoman Wagner, Ranking Member Sherman, members of the subcommittee, thank you for inviting me to testify today.

As a native of St. Louis and the CEO of Geneoscopy, a life-sciences startup company headquartered in St. Louis, I am especially proud to be here today before our Member of Congress, Chairwoman Wagner.

At Geneoscopy, we are developing innovative diagnostic tests for gastrointestinal health. We are in the process of bringing our first product, ColoSense, to the U.S. market so more individuals can access lifesaving screening options for colorectal cancer.

I am here today to share my experience with respect to raising capital for our company, a journey that began in 2015 when my sister called to inform me, she developed a technology that could save countless lives and that we would be founding a company together to do just that.

At the time, I was an MBA student at the Wharton School, and my sister was an M.D./Ph.D. student at the Washington University School of Medicine in St. Louis. I jumped at the opportunity. It was a logical extension of my coursework in business and healthcare and my early professional career in the financial services industry.

Ten years ago, we started as two students with an idea. We have since cultivated our business into a company with over 50 employees; we have raised over $150 million of venture capital and are poised to bring a novel solution to market to address the second deadliest yet most preventable cancer in our country.

Today, I have three topics to highlight: the importance of startups to our economy, the challenges that exist for startups when raising capital, and how good policy can help facilitate access to capital.

Startups are critical economic-growth drivers in the United States. In 2023, over 5 million businesses were started in the United States alone. Small businesses, defined as having fewer than 500 employees, have accounted for 71 percent of total job creation in the current business cycle, and new startups alone account for 26 percent of total job creation.

Serving for centuries as the global epicenter of innovation has made America's economy the strongest in the world. Looking forward, as we move into new phases of disruptive change, it is critical for our country to continue to support startups through a strong workforce, support infrastructure, good government policy, and a culture of entrepreneurship and risk-taking.

Approximately 90 percent of startups fail. In one study of failed startups, the top reason cited for failure was running out of cash or failing to raise new capital. Startups need capital to cover the initial costs of launching and operating their business, supporting expenses such as product development, marketing, hiring, office space, inventory, and research.

Fundraising is a constant challenge for founders. It is estimated that venture capitalists fund fewer than 1 percent of the pitches that they receive. At Geneoscopy, we have navigated the full spectrum of capital raises—friends, family, angels, all the way through institutional venture capital—and we have seen all of these challenges firsthand. We also count ourselves as fortunate, having the background to overcome being young, first-time entrepreneurs raising capital outside of Silicon Valley.

Given the importance of startups to our economy and the challenges that exist for startups in raising capital, it is critical that government policy facilitates and does not stifle access to capital. Our experience highlights the importance of the legislation under consideration by this subcommittee.

Early stage investors like to deploy capital locally, and areas such as the Midwest see significantly less capital and venture capital investment per capita than other areas, such as the West Coast. Lessening the burden for angel investors, lowering the bar-

riers for venture fund formation, and making crowdfunding more pervasive would all help startups access vital growth capital.

Geneoscopy will require additional capital to grow and is preparing to access the public markets. However, disclosure requirements and the regulatory burden can be daunting. Alleviating these barriers for emerging-growth companies makes sense.

Lastly, included here, appended to my written testimony, is a copy of written testimony that I submitted to your colleagues on the Ways and Means Committee last October describing the "valley of death" that life-sciences startups often face after Food and Drug Administration (FDA) approval but before Medicare coverage and inclusion in quality metrics.

[The referred information can be found in the appendix:]

Beyond the topics of access to capital I have highlighted today, improved Federal policies that streamline Medicare coverage and payment and more nimble Federal agencies that embrace innovation are the key ingredients that life-sciences startups like Geneoscopy require to cross the valley of death and, in turn, boost the economy, increase job growth, and save lives.

I thank you all for your attention to these issues and for the important work you are doing on this subcommittee to ensure access to capital. Thank you again for the opportunity to provide testimony and for your consideration of my recommendations. I stand ready to serve as a resource for you and your colleagues and welcome any questions.

[The prepared statement of Mr. Barnell follows:]

Written Testimony Submitted by

Andrew Barnell
CEO, Geneoscopy

House Financial Services Subcommittee Hearing:

The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation

February 26, 2025

Chairwoman Wagner, Ranking Member Sherman, members of the Subcommittee, thank you for inviting me to testify today. As a native of St. Louis and the CEO of Geneoscopy, a life-sciences start-up headquartered in St. Louis, I am especially proud to be here today before our member of Congress, Chairwoman Wagner. At Geneoscopy, we are developing innovative diagnostic tests for gastrointestinal health. We are in the process of bringing our innovative product, ColoSense, to the U.S. market so more individuals can access live-saving screening options for colorectal cancer.

I am here today to share my experience with respect to raising capital for our company; a journey that began in 2015, when my sister, Erica, called to inform me she had developed a technology that could save countless lives and that we would be founding a company together to do just that. At the time, I was an MBA student at The Wharton School and my sister was an MD/PhD student at the Washington University School of Medicine in St. Louis. I jumped at the opportunity; as it was a logical extension of my coursework in business and healthcare and my early professional career in the financial services industry. 10 years ago, we started as two students with an idea, and since then we have cultivated that idea into a company with over 50 employees, raised over $150M of venture capital, and are poised to bring a novel solution to market to address the second deadliest – yet most preventable - cancer in our country.

Today, I have three topics to highlight; the importance of start-ups to our economy, the challenges that exist for start-ups when raising capital, and how good policy can help facilitate access to capital.

Start-ups are critical economic growth drivers in the United States. In 2023, over 5 million businesses were started in the U.S.[1] Small businesses, defined as having fewer than 500 employees, have accounted for 71% of total job creation in the current business cycle, with new start-ups alone

[1] Melhorn, Stephanie Ferguson, and Lindsay Cates. "New Business Applications Are Booming. Track Them by State." U.S. Chamber of Commerce. February 2, 2024. Accessed February 24, 2025. https://www.uschamber.com/small-business/new-business-applications-a-state-by-state-view

accounting for 26% of total job creation.[2] Serving for centuries as the global epicenter of innovation has made America's economy the strongest in the world. Looking forward, as we move into new phases of disruptive change, it is critical for our country to continue to support startups through a strong workforce, supportive infrastructure, good government policy, and a culture of entrepreneurship and risk-taking.

Approximately 90% of startups fail.[3] In one study of failed startups, the top reason cited for failure was running out of cash or failing to raise new capital.[4] Startups need capital to cover the initial costs of launching and operating their business, supporting expenses such as product development, marketing, hiring, office space, inventory, and research. Fundraising is a constant challenge for founders. It is estimated that venture capitalists fund fewer than 1% of the pitches they receive.[5,6] At Geneoscopy, we have navigated the full spectrum of capital raises; friends, family, angel, and institutional VC, and have seen the challenges first-hand. But we also count ourselves as fortunate – having the backgrounds to overcome being young, first-time founders, and starting a business outside of Silicon Valley.

Given the importance of start-ups to our economy and the challenges that exist for start-ups with fundraising, it is critical that governmental policy facilitates, and does not stifle, access to capital. Our experience highlights the importance of the legislation under consideration by this subcommittee. Early-stage investors like to deploy capital locally, and the Midwest sees significantly less venture capital investment per capita than other areas, such as the West Coast.[7] Lessening the burden for angel investors, lowering the barriers for venture fund formation, and making crowdfunding more pervasive would all help start-ups access vital growth capital. Geneoscopy will require additional capital to grow and is preparing to access the public markets. However, disclosure requirements and the regulatory burden can be daunting – alleviating these barriers for emerging growth companies makes sense.

Lastly, included here, appended to my written submission, is a copy of written testimony that I submitted to your colleagues on the Ways & Means Committee last October describing the "valley of death" that life-sciences start-ups often face after FDA approval because of the federal government's policies, bureaucracy, and inaction. Beyond the topic of access to capital I have highlighted today, improved federal policies that streamline Medicare coverage and payment, and

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[2] Van Nostrand, Eric. "Small Business and Entrepreneurship in the Post-COVID Expansion." U.S. Department of the Treasury. September 3, 2024. Accessed February 24, 2025. https://home.treasury.gov/news/featured-stories/small-business-and-entrepreneurship-in-the-post-covid-expansion
[3] Szathmári, E., Varga, Z., Molnár, A., Németh, G., Szabó, Z. P., & Kiss, O. E. "Why do startups fail? A core competency deficit model." Frontiers in Psychology, 15, 1299135. https://doi.org/10.3389/fpsyg.2024.1299135
[4] "The Top 12 Reasons Startups Fail". CB Insights. August 3, 2021. Accessed February 24, 2025. https://www.cbinsights.com/research/report/startup-failure-reasons-top
[5] Doncheva, Tzvete. "How to Cold Pitch a VC and Get a Response." Startups Magazine. Accessed February 24, 2025. https://startupsmagazine.co.uk/article-how-cold-pitch-vc-and-get-response
[6] Schlopsna, Niclas. "How to Raise Venture Capital Funds: Guide for Startups". spectup. November 2, 2023. Accessed February 24, 2025. https://www.spectup.com/resource-hub/how-to-raise-venture-capital
[7] Dowd, Kevin. "Examining the geographic divide of VC activity in 4 key industries". Carta. July 24, 2024. Accessed February 24, 2025. https://carta.com/data/vc-industry-geography-2024

more nimble federal agencies that embrace innovation are the key ingredients that life-sciences start-ups like Geneoscopy require to cross the valley of death and, in turn, boost the economy, increase job growth, and save lives. I thank you all for your attention to these issues and for the important work you are doing on this Subcommittee to ensure access to capital.

Thank you again for the opportunity to provide testimony and for your consideration of my recommendations. I stand ready to serve as a resource to you and your colleagues and welcome your questions.

Chairwoman WAGNER. Thank you, Mr. Barnell.

Now, Mr. Conwell, you are recognized for 5 minutes for your oral remarks.

STATEMENT OF MCKEEVER E. CONWELL II, FOUNDER AND MANAGING PARTNER, RAREBREED VENTURES

Mr. CONWELL. Chairwoman Wagner, Ranking Member Sherman, members of the subcommittee, thank you for the opportunity to testify today on the importance of creating better access to capital for both entrepreneurs and those who fund their amazing companies.

My name is McKeever Edward Conwell II, and I am the Founder and Managing Partner of RareBreed Ventures, which I am representing today. RareBreed is a venture capital firm that invests in and supports innovative startups at the earliest stages.

In 2020, I launched RareBreed Ventures in response to the lack of access to capital for founders of color and founders outside of major investment hubs like New York and California, as well as a response to lack of cultural competency from many VCs when it comes to investing in founders who do not look like them and do not come from similar backgrounds.

These two issues came to me in the form of one entrepreneur, a woman by the name of Shawna Stepp-Jones, a Black single mom from Baltimore who was creating a dryer for wigs. I immediately got what she was creating, but other investors did not.

After 3 years of watching her get nothing but noes from folks who did not look like her and did not understand what she was trying to do, she decided the only way for her to get access to capital was to become a surrogate mother, even knowing that Black woman are three times more likely to die from pregnancy-related causes. This is nothing to say about her three degrees and the fact that she was a former patent examiner.

This is why I started RareBreed, but I did not have a network of wealthy folks to raise from. That forced me to get creative and use two regulations to help. First was rule 506(c) of Regulation D, which allows for public solicitation for fund offerings but requires that every investor in that fund be an accredited investor. The second was an amendment to section 3(c)(1) of the Investment Company Act of 1940 which allowed for a fund of $10 million or less to raise from up to 250 investors instead of only 100.

The first regulation allowed me to use social media, Twitter mainly, to meet with many potential investors. Thanks to this, I was able to have 1,128 meetings in my first 90 days and more than 4,000 meetings in total.

The second regulation allowed me to offer investors to invest as little as $10,000, compared to the traditional $100,000 they would have had to put up before the amendment. This led to me having 194 investors in RareBreed. Of those investors, 83.5 percent invested $50,000 or less.

Many of these investors were people of color and first-time investors in funds because they had not had access to make such an investment and could not risk the high minimum thresholds for a fund. This means that, before, they were limited to investing in companies either directly, where there is a much higher risk of losing all of their money, or investing in stocks of publicly traded com-

panies, which the average venture fund has historically outperformed, according to Harvard Business Review.

Unfortunately, without something like the Improving Capital Allocation for Newcomers (ICAN) Act almost all of those small-dollar investors, who make up 83.5 percent of my investors, will not be able to invest in RareBreed Ventures Fund II—that is 162 out of 194 investors—since our new minimum will have to be $250,000-plus.

The current rules limit the amount of capital and sources of capital for smaller and newer investment funds, leading to less capital to help drive innovation, economic growth, and job creation, especially when talking about companies started by founders of color, because we know that, in particular, Black-led funds are four times more likely to invest in Black-led companies. Also keeping in mind that almost of the Black-led venture funds in America would fit under the new rules in the ICAN Act because most of our funds are under $150 million.

With the ICAN Act, such limiting factors would be greatly reduced, allowing more accredited investors to have the opportunity to participate in this asset class. With lower minimums, investors can potentially invest smaller amounts of money into more venture funds to spread out their risk and better diversify their investments.

Today, many funds have to turn away investors because of these current limits. This results in millions of dollars, if not billions, in potential funding for future innovation and job creation, while also excluding investors from being able to truly diversify their own investments and limiting the ability of wealth creation.

Even more so, those who do have enough wealth to continue to participate in the venture asset class are almost exclusively from a non-diverse population. This only serves to further widen the racial and gender wealth gap in America and put limits on the type of innovations we see in this country.

I am excited to see Congress working through issues that impact the access to capital that drives innovation. As someone who has spent my entire career in venture capital as an advocate for access to capital and reducing barriers, I look forward to being supportive and assisting this committee in any way possible.

Thank you for the opportunity to testify today. I look forward to any of your questions.

[The prepared statement of Mr. Conwell follows:]

Statement of McKeever E. Conwell, II
Managing Partner, RareBreed Ventures
before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Capital Markets
"The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation."

February 26, 2025

Chairman Hill and Ranking Member Madam Waters, thank you for the opportunity to testify today on the importance of creating better access to capital and removing barriers for entrepreneurs and those who fund their amazing companies. My name is McKeever E. Conwell, II, and I am the Founder and Managing Partner at RareBreed Ventures (RareBreed) which I am representing today. RareBreed is a venture capital (VC) firm that invests in, and supports, innovative product and technology startups in the earliest stages of their business that are in locations typically overlooked by the majority of other VCs.

I am the American Dream

I'm the son of an Air Force veteran who became a postal worker and a bank teller. I went to college at Morgan State University, a Historically Black College and University, where I studied Computer Science and got an internship at the National Security Agency. I later dropped out of college to pursue a career as a government contractor supporting the Department of Defence to do my part for our amazing nation. In 2010 I would go on to start my entrepreneurial journey by founding two startups, the first of which exited by the sale of its intellectual property to a Fortune 100 company. In 2016 I began working for the Maryland Technology Development Corporation (TEDCO). TEDCO is a Maryland economic development corporation that is also the largest funder of early-stage startups in Maryland by volume. It was at TEDCO that I learned to be an investor and led the creation of, what was at the time, the first state-backed pre-seed fund specifically for founders typically underrepresented in the world of venture-funded startups, today known as the Builder Fund.

Lack of Access to Capital Is Holding Back Founders of Color and Our Country

I launched RareBreed Ventures in late 2020 as a response to the lack of access to capital for founders of color, and founders outside of the major investment hubs of Silicon Valley, New York, and Boston which account for 75% of all VC funding. As well as a response to the lack of cultural competency from many VCs when it came to investing in founders who didn't look like them or didn't come from a similar background. These were two of the biggest issues I encountered while working with the founders I had supported from my time investing in only Marlyand-based companies.

A Real-World Example of How Lack of Access Manifest

These two issues came to the forefront for me in the form of an amazing entrepreneur who is the inspiration behind me creating RareBreed Ventures. A few years ago I met an amazing founder named Shawna Stepp-Jones, a single mom from my hometown of Baltimore. She told me she wanted to create a tumble dryer that could dry a wig or hair extension in 15 minutes with no heat. As someone who grew up around women with wigs and hair extensions, I knew just how big of a problem this was. Even today most women still wash their wigs and hang them up to dry overnight at home or professionally[1] at salons. I immediately got what she was trying to create and the impact of such an innovation but other investors didn't. Keeping in mind Shawna has an engineering degree from Morgan State University and a Master's from Johns Hopkins University and at the time was a patent examiner. Even still I watched for 3 years as she got nothing but no's from many folks who didn't look like her until she decided that the only way for her to get access to capital was to become a surrogate mother. Even knowing that Black women are three times more likely to die from a pregnancy-related cause[1]. She was willing to take that risk in order to build a product that served her community and to chase her dream.

How Being Creative with Current Regulations Got Us Here

Shawna and founders like her are the reason I founded RareBreed Ventures but there was a problem. When I decided to start RareBreed, even though I knew how to invest from my time working for the state of Maryland, I didn't have a network of wealthy folks to raise the fund from. That caused me to get creative with how I source the people who would invest in my fund

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[1] CDC – Office of Minority Health & Health Equity (OMHHE) –. https://www.cdc.gov/healthequity/features/maternal-mortality/index.html April 6, 2022.

and how I would go about building the fund. To do this I used 2 regulations. First, was Rule 506(c) of Regulation D which allows for the public solicitation of a funds offering but requires that every investor in that fund be an accredited investor. The second was the amendment to section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)) which allows for a fund of $10,000,000 or less to have up to 250 investors.

With the first regulations, I was able to use social media, Twitter mainly, to meet with many potential investors. Thanks to my growing profile as someone who helps startups and shares a lot of knowledge on venture capital I was able to have 1,128 meetings in my first 90 days of fundraising. Eventually, I would have more than 4,000 meetings over 18 months to fully raise RareBreed Fund I. The second regulation allowed me to start off fundraising by allowing investors to invest as little as $10,000 compared to the $100,000 minimum investments most funds would have to ask for before the amendment. This led me to have 194 investors in RareBreed Ventures fund I. Of those investors, 65% invested $25,000 or less, and 83.5% of which invested $50,000 or less. Many of these investors are people of color and or first-time investors in a fund because they had never had access to make such an investment or couldn't risk the high minimum threshold for a fund. Keeping in mind all of these investors are accredited and with means but still need to be prudent with their investments and capital. This means that before I offered them this opportunity in RareBreed they were limited to investing in companies either directly where there is a much higher risk of losing all of their money or, investing in stocks of publicly traded companies which the average VC funds have historically outperformed.

> "As of June 2020 the VC funds raised from 2007 to 2016 in the Burgiss Manager Universe had outperformed the Russell 2000 (a small-cap index) by 7% a year, on average, and the S&P 500 by nearly 5% a year. Almost 75% of those funds had beaten the Russell 2000, and roughly 60% had beaten the S&P 500." [2]

It has been incredible to see so many investors getting the opportunity to invest in this asset class. Now they are taking part in the engine that is generating wealth which they were

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[2] Paul Gompers, Will Gornall, Steven N. Kaplan, and Ilya A. Strebulaev.,"How Venture Capitalists Make Decisions" (2021). Available at: https://hbr.org/2021/03/how-venture-capitalists-make-decisions

once excluded from, and in many cases thanks to the work at RareBreed, helping drive innovation in the communities they care about.

What Got Us Here Isn't Enough and Excludes Many

This is such a great start but more is needed and that is why the Improving Capital Allocation for Newcomers (ICAN) Act is so important. Without the ICAN Act, almost all of those small dollar investors who make up 83.5% of the investors in RareBreed Ventures Fund I will not be able to invest in RareBreed Ventures fund II. That's 162 out of 194 investors. This is because RareBreed Ventures fund II has a goal of raising much more money, limiting us to 100 investors and forcing us to raise our minimum investment into the fund to $100,000 - $500,000 which is a far cry from the $10,000 - $50,000 from our first fund. Investors who are happy with the work RareBreed is doing and who would want to continue to invest in our fund will not be able to no matter how much they want to. Reducing the amount of money we could potentially raise for RareBreed's next fund.

The current rules price out many accredited investors from being able to participate in such an investment fund. Limiting the amount of capital and sources of capital for smaller and newer investment funds. Leading to less capital to help drive innovation, economic growth, and job creation. This is especially true when talking about companies started by founders of color because we know that in particular, Black-led funds are four times more likely to invest in a Black-led company[3]. As an example, RareBreed Ventures does not have any diversity mandates for how we invest but of the 47 companies we have invested in to date 70% of our companies have an underrepresented founder, 51% of our companies have a founder of color, 38% of our companies have a Black founder, and 36% of our companies have a female founder. These numbers are a far cry from the industry standards of less than 5% for each of those categories. Also keeping in mind that almost all of the Black-led venture funds in America would fit under the new rules in the ICAN Act because most of our funds are less than $150,000,000.

This Is Why We Need the ICAN Act

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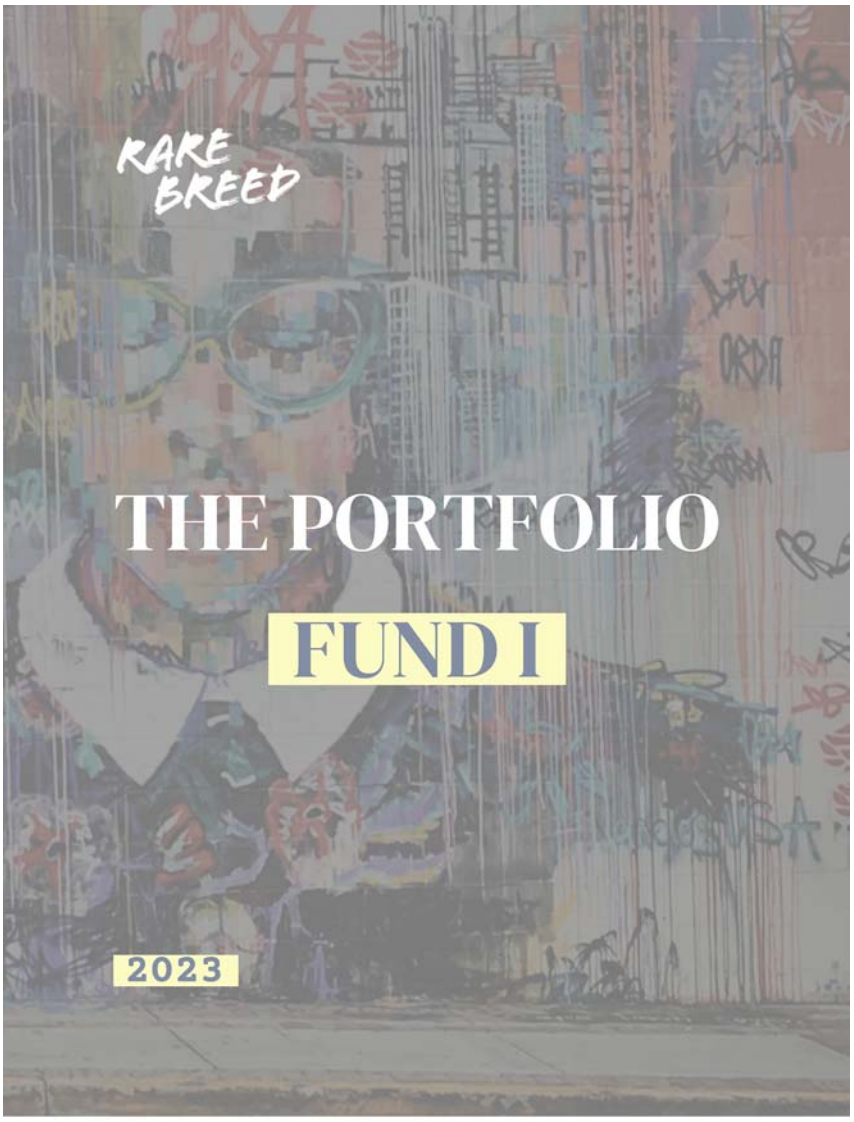
[3] Barrios, John Manuel and Hochberg, Yael V.,"Taxing Carried Interest as Ordinary Income and the Potential Impact on New Venture Fund Formation" Nov. 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939267.
Source: State of Black Venture Survey

With the ICAN Act, such limiting factors would be greatly reduced. First, this would allow accredited investors to not only have more opportunities to participate in the asset class of venture capital but also allow them to reduce their risk. With lower minimums for these smaller funds, investors can now invest smaller amounts of money in more VC funds to spread out their risk and better diversify their investments. Secondly, this would allow investors to raise more capital in their early funds. Today many funds have to turn away investors who are willing to invest even more than $100,000 because of the limit on the number of investors in a fund. This results in millions of dollars in potential funding for future innovation and job creation. While also, excluding these investors from being able to truly diversify their own investments and limiting their ability in wealth creation. While raising our first fund, we got enough interest to actually raise over $30,000,000 but had to turn away most of it due to the limits of the current regulations. The idea that in a capitalist country where individuals who meet the accredited investor status are told they aren't able to make certain investments because they aren't wealthy enough seems wrong. Even more so, those who do have enough wealth to continue to participate in the venture asset class are almost exclusively from a non-diverse population. This only serves to further widen the racial and gender wealth gap in America and puts limits on the types of innovation we see in our country.

Conclusion

I am excited to see Congress working through issues that impact the access to capital that drive innovation. I appreciate that policymakers have to balance protecting the public from scammers and bad actors while reducing barriers to economic growth, job creation, and innovation to continue to make our country the best in the world. As someone who has spent my entire career in venture capital as an advocate for access to capital and reducing barriers, I look forward to being supportive and assisting this committee in any way possible. Thank you for this opportunity to testify today, I look forward to your questions.


RARE
BREED
THE PORTFOLIO
FUND I
2023

ABOUT US

RareBreed Ventures is a pre-seed fund that invests in exceptional founders primarily outside of large tech ecosystems, earlier than everyone else.

We write checks of up to $250K as the first or one of the first investors in exceptional startups.

McKeever "Mac" Conwell, II
Founder and Managing Partner

RARE BREED

THE RAREBREED MANIFESTO

i.

You can find amazing startups anywhere in the world. There are amazing entrepreneurs everywhere with great ideas, building dope companies. Not just in Silicon Valley, New York, and Boston.

ii.

Some of these entrepreneurs are building products and serving communities that many traditional VCs do not understand or are not willing to understand. This leads to many missed opportunities to fund great companies.

iii.

Many VCs focus so much on getting deal flow from traditional sources that they don't take the time to look beyond those circles. This also leads to missed opportunities to fund great companies.

RARE BREED

THE RAREBREED MANIFESTO

(CONT.)

iv.

Investing in pre-seed stage companies is a skill and requires a lot of conviction. You cannot use the traditional metrics to evaluate a company or, more importantly, the founders themselves.

v.

Sometimes founders at the pre-seed stage aren't as polished, don't know all the VC lingo, don't have an amazing network, or don't know how to construct a pitch. Still, they are just as amazing as founders who have raised tons of money and have deep networks.

vi.

$50,000 is enough to get great founders started but not enough for them to fully execute to get to the next level. They still need to pitch to angel investors, go to pitch competitions, join accelerators, and do anything and everything else they can do to get additional funding along the way

RARE BREED

THE RAREBREED MANIFESTO

(CONT.)

vii.

Amazing entrepreneurs with truly original and unique products, serving industries that haven't had innovation in YEARS, do exist

viii.

There are two types of founders that get us excited: those who have thought a lot about and executed on customer acquisition, and, those building products in markets that are often overlooked. These founders are out-of-the-box thinkers, which is critical to success.

ix.

Making pre-seed investments, you write fairly small checks relative to all of venture capital. But even small checks are life changing for some entrepreneurs, which can lead to amazing returns.

ABOUT THE FUND

RareBreed Ventures Fund I has 46 portfolio companies spanning several sectors such as health, gaming, alternative assets, sustainability, gig economy, agtech, apparel, fintech, esports, future of work, dating, beauty, jewelry, CPG, NFTs/crypto, food & bev, medical device, proptech, B2B SaaS,advanced manufacturing AI/ML, and streaming.

Portfolio diversity metrics:

Although RareBreed doesn't have a diversity mandate, we still care about being the change in the venture ecosystem we want to see.

- 70% of companies have an underrepresented founder
- 78% are outside of major tech hubs
- 52% have a BIPOC founder
- 35% have a female founder

RareBreed's Look Book:

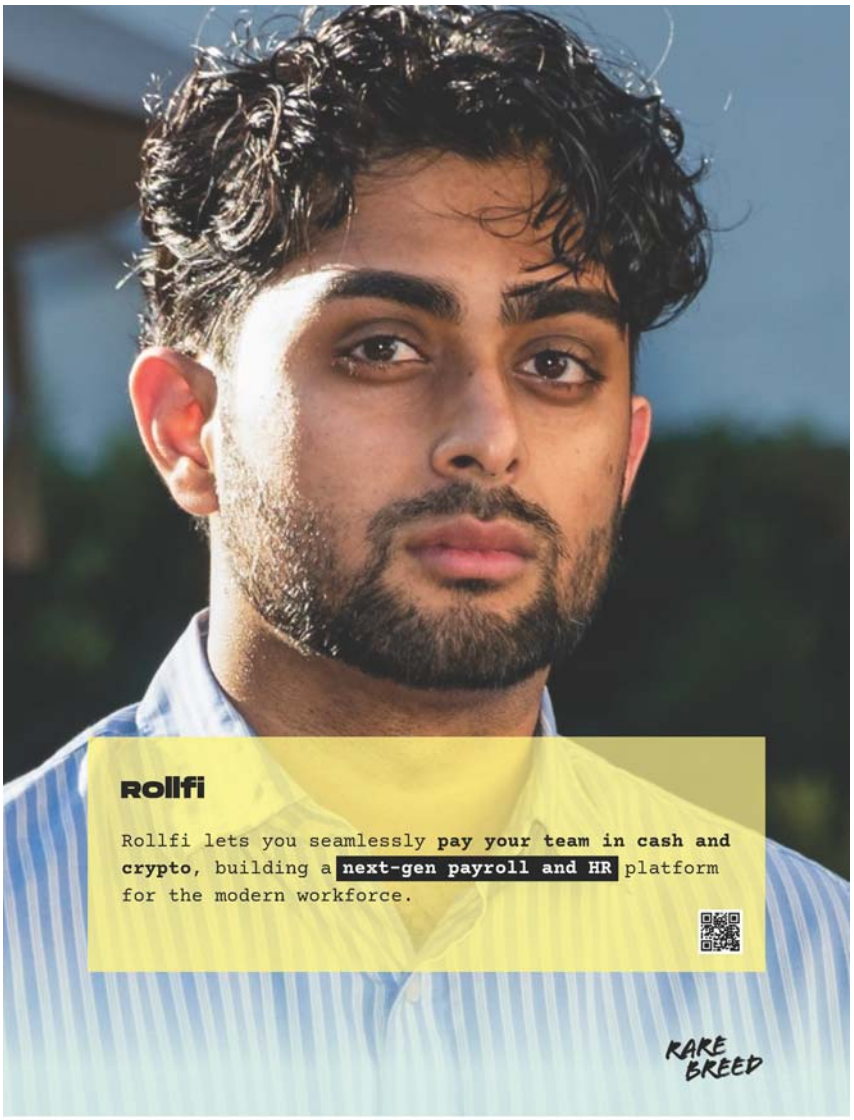
This is an opportunity for RareBreed to share the faces behind our portcos!

Note:
Use the QR code on each page to check out their websites.

RARE BREED


The Renatural
The Renatural is revolutionizing the monopolized wig industry by inventing a proprietary and vertically integrated supply chain system that produces novel products to ensure scalability, repeatable quality and true customer satisfaction.
RARE BREED


remodelmate
Effortless Bathroom Renovations. Design your dream bathroom in minutes - no material sourcing, no hidden fees, just seamless renovations.
RARE BREED


Rollfi
Rollfi lets you seamlessly pay your team in cash and crypto, building a next-gen payroll and HR platform for the modern workforce.
RARE BREED

semantiks.ai

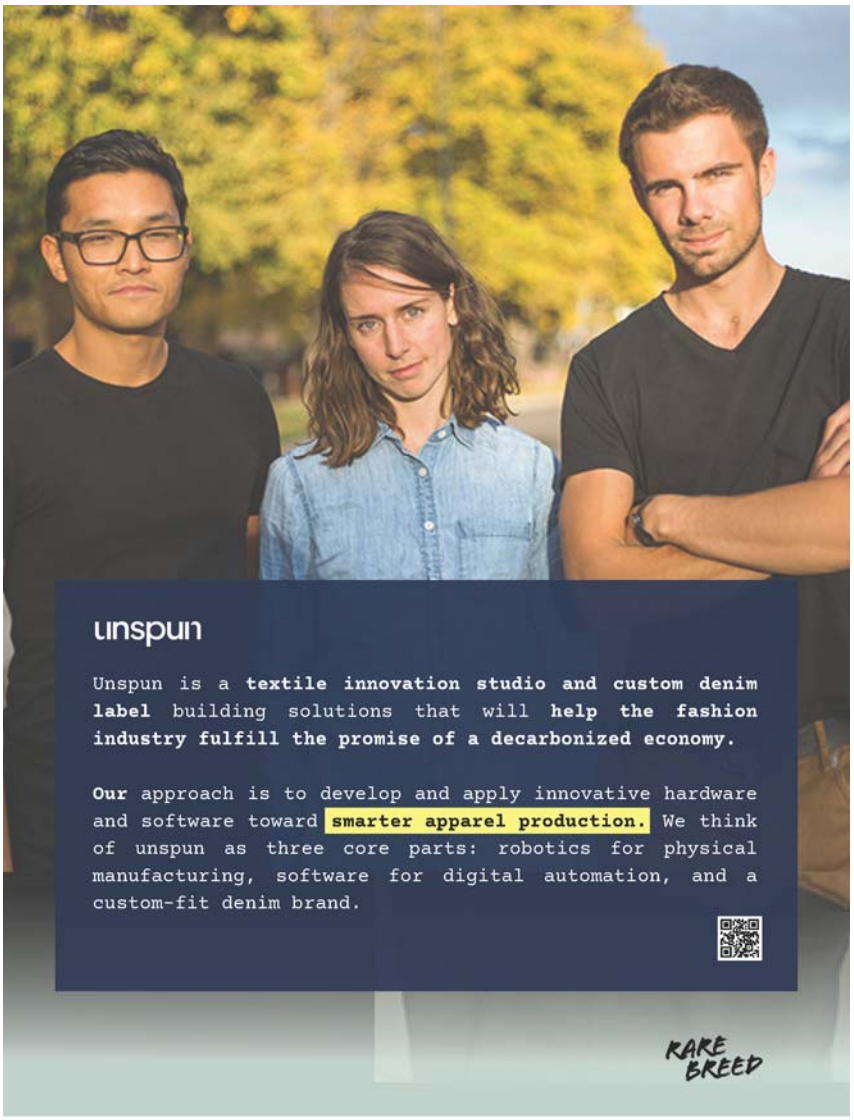
Semantiks.ai is building the first conversational **super-app for Latin America**, powered by generative AI, which will allow any user to complete any online task or transaction in a matter of seconds.

Leveraging a network of pre-trained autonomous agents behind the scenes, **Semantiks allows users to chat with its conversational AI assistant to accomplish virtually any digital task or transaction** — those typically carried out online or through disparate web services or mobile apps — in a matter of seconds. At scale, Semantiks can become the default interface to the digital world for nearly 1B people in the region.

RARE BREED

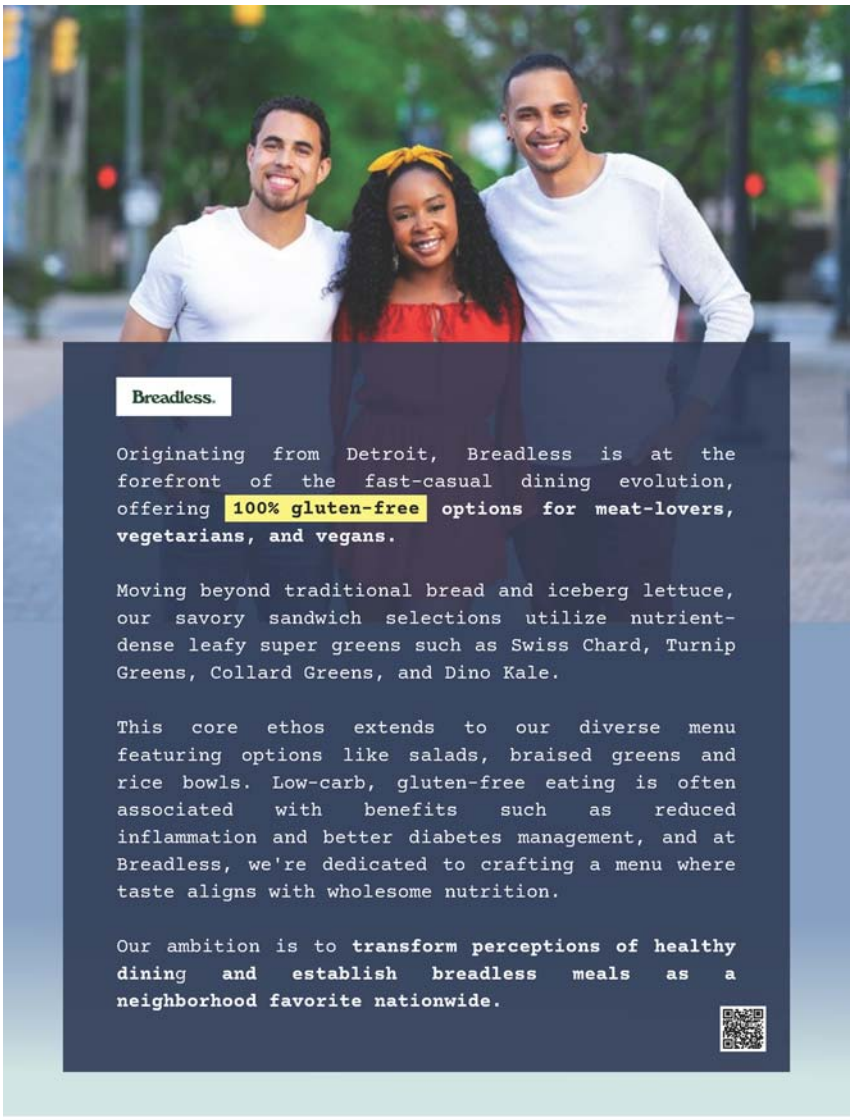

Buffalo
MARKET
Buffalo Market stocks, distributes and merchandises some of the fastest-growing, mission-driven brands to both independent and major retailers. We develop and deploy cutting edge technology to enable the most efficient distribution system on the market. We specialize in working with the fastest moving products and the largest retail chains across the United States.


MainStreet
MainStreet is dedicated to the success of small businesses through innovative solutions. With a focus on R&D tax credits, MainStreet removes the complexity from tax processes, channeling undiscovered savings directly to small businesses.
RARE BREED

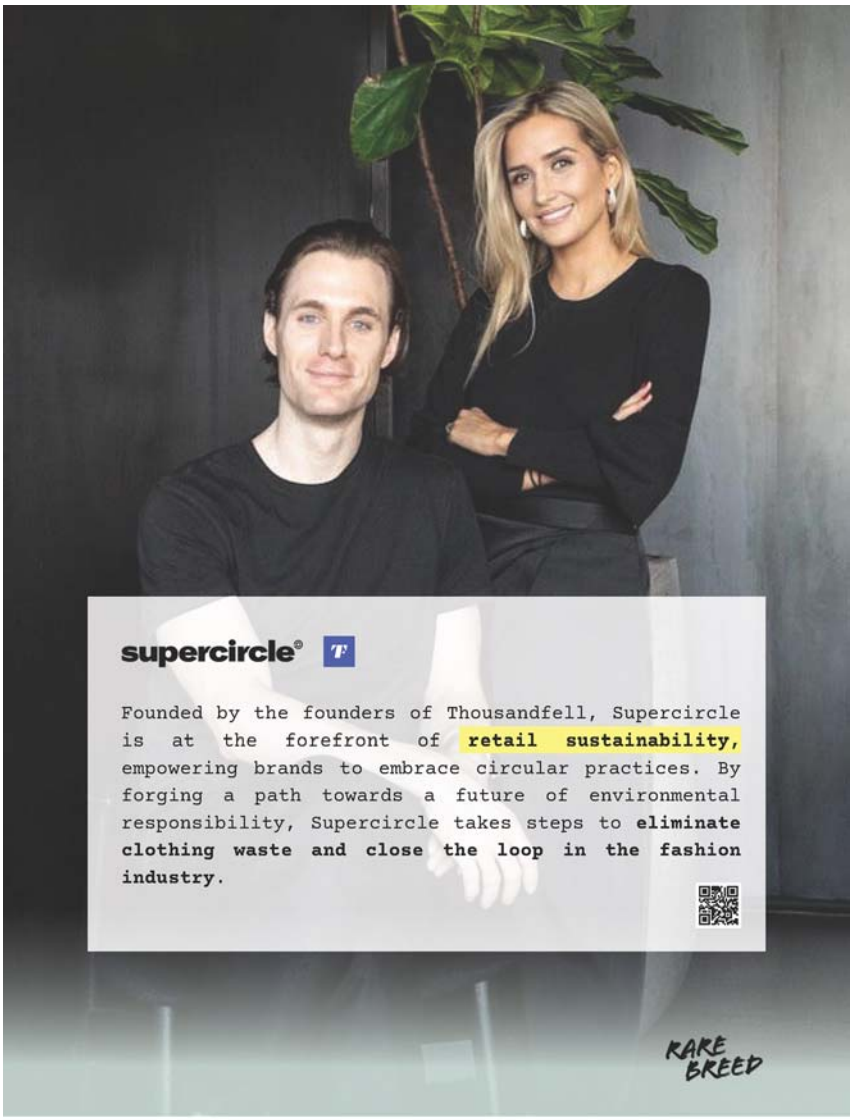

unspun
Unspun is a **textile innovation studio and custom denim label** building solutions that will **help the fashion industry fulfill the promise of a decarbonized economy.**
Our approach is to develop and apply innovative hardware and software toward **smarter apparel production.** We think of unspun as three core parts: robotics for physical manufacturing, software for digital automation, and a custom-fit denim brand.
RARE BREED

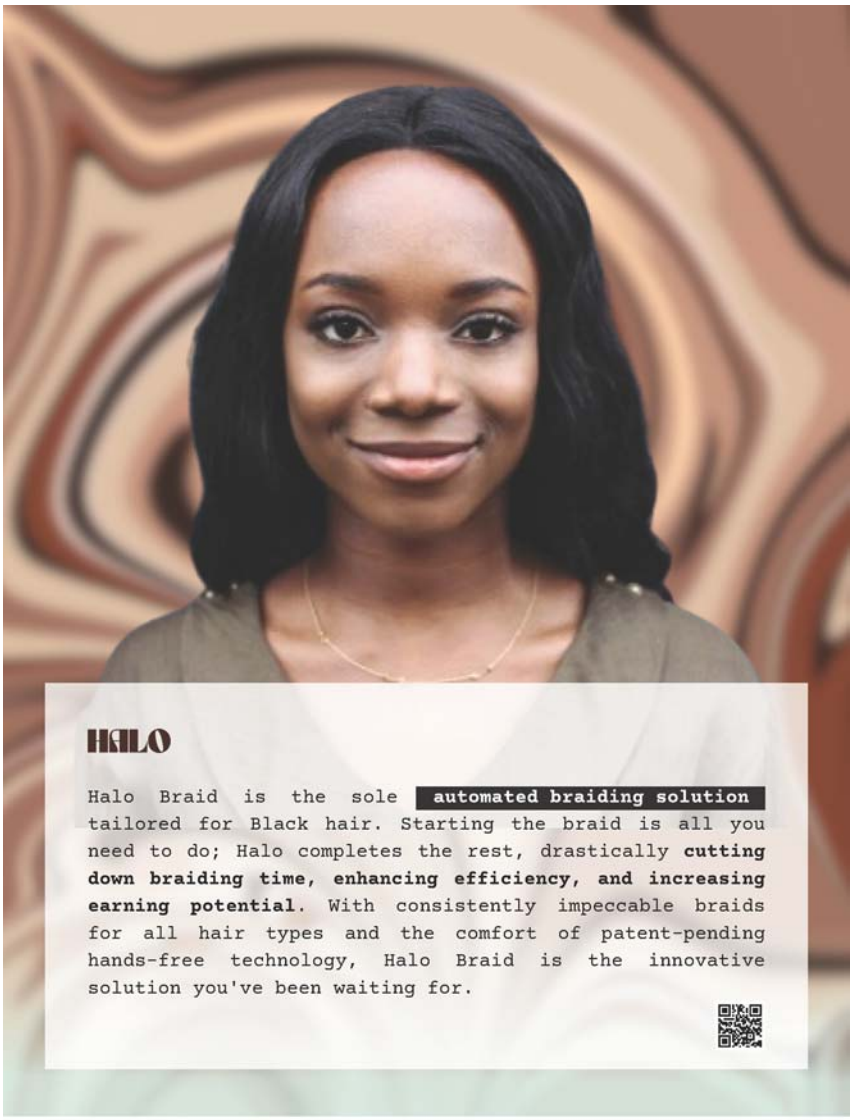

jefa
Jefa is a digital bank for women that offers access to savings accounts, loans, insurance, easy payments, debit and credit cards.
RARE BREED


Juno
Juno is the modern doctor's office: Primary Care, Women's Health, Paediatrics, Same-Day Care & more. Convenient, affordable care designed for the way you live – Juno is changing how healthcare works.
We've created a one-stop solution for you and your family's day-to-day care needs that features exceptional hospitality, modern technology, and transparent prices that won't break the bank.
RARE BREED

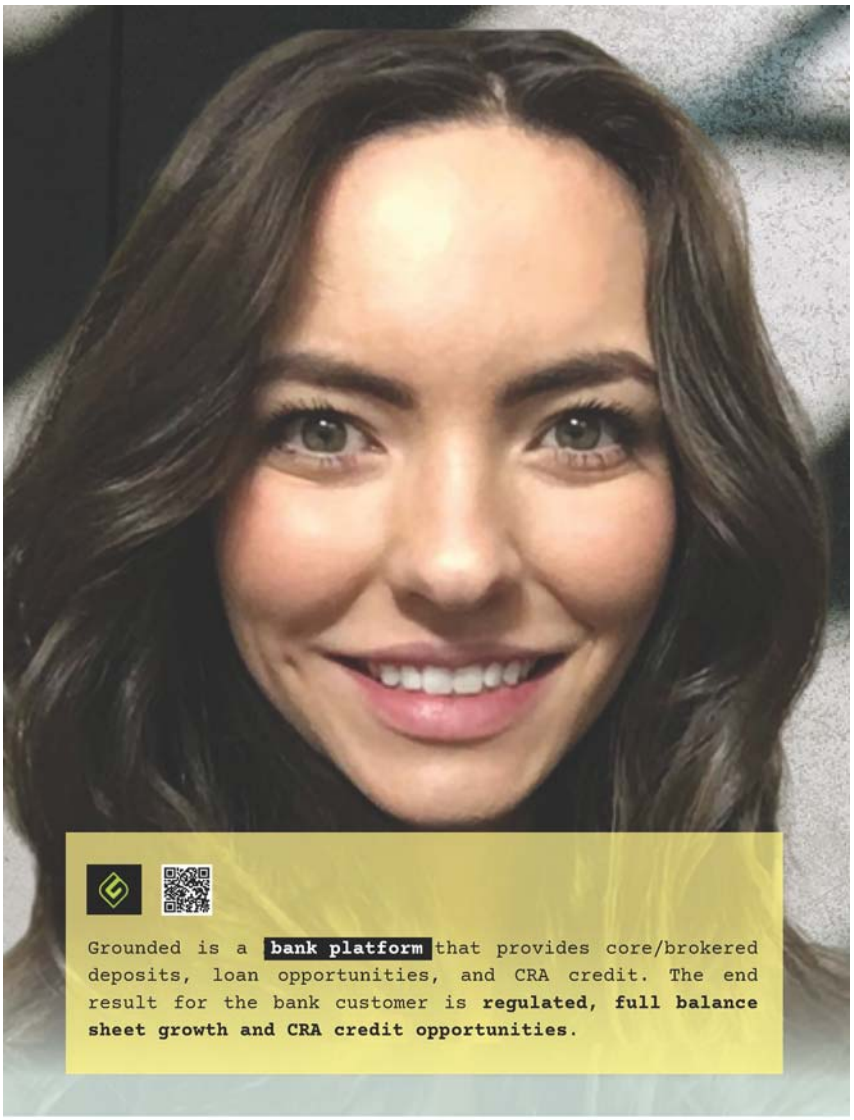

Breadless.
Originating from Detroit, Breadless is at the forefront of the fast-casual dining evolution, offering 100% gluten-free options for meat-lovers, vegetarians, and vegans.
Moving beyond traditional bread and iceberg lettuce, our savory sandwich selections utilize nutrient-dense leafy super greens such as Swiss Chard, Turnip Greens, Collard Greens, and Dino Kale.
This core ethos extends to our diverse menu featuring options like salads, braised greens and rice bowls. Low-carb, gluten-free eating is often associated with benefits such as reduced inflammation and better diabetes management, and at Breadless, we're dedicated to crafting a menu where taste aligns with wholesome nutrition.
Our ambition is to transform perceptions of healthy dining and establish breadless meals as a neighborhood favorite nationwide.


bonus
Bonus is a game-changer in the real estate landscape. This innovative company **empowers homeowners to sell their current equity while retaining a share of ownership**, ensuring they don't miss out on **future appreciation.**
Bonus manages every detail, from mortgage to maintenance, allowing homeowners to move forward worry-free and watch their wealth flourish over time.
RARE BREED

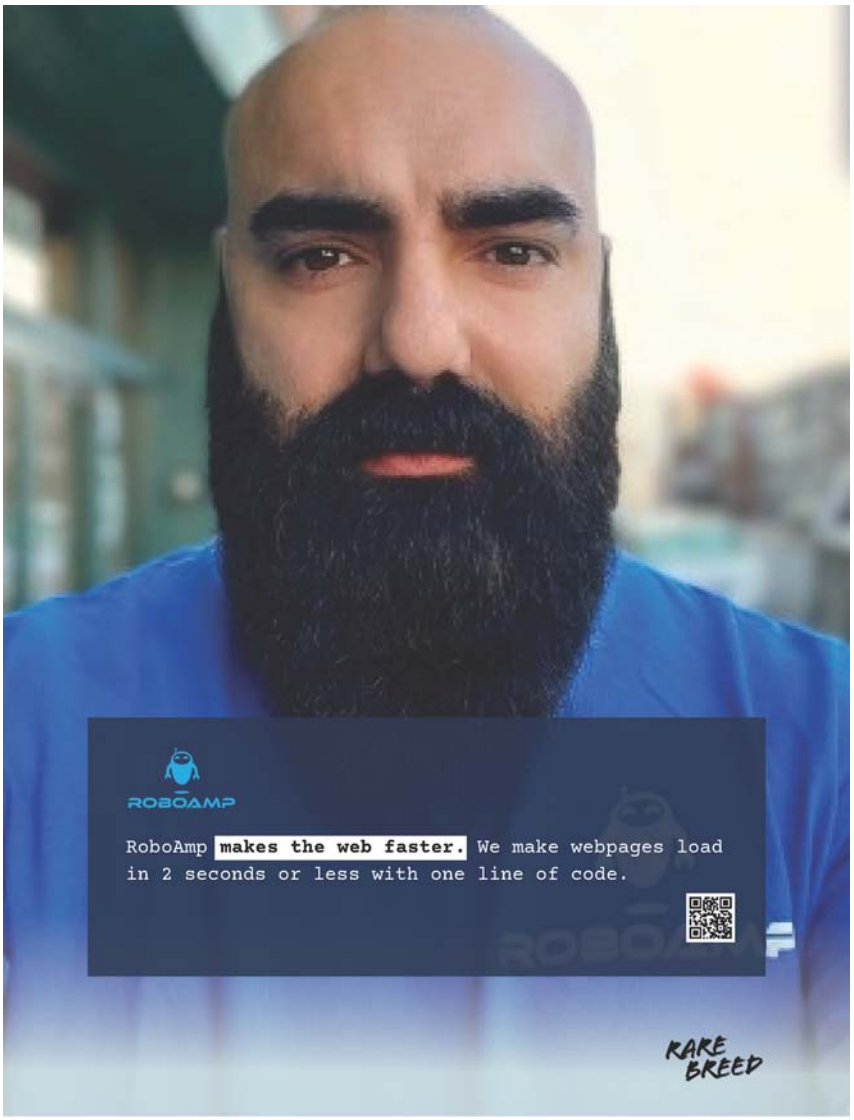

supercircle©
Founded by the founders of Thousandfell, Supercircle is at the forefront of retail sustainability, empowering brands to embrace circular practices. By forging a path towards a future of environmental responsibility, Supercircle takes steps to eliminate clothing waste and close the loop in the fashion industry.
RARE BREED

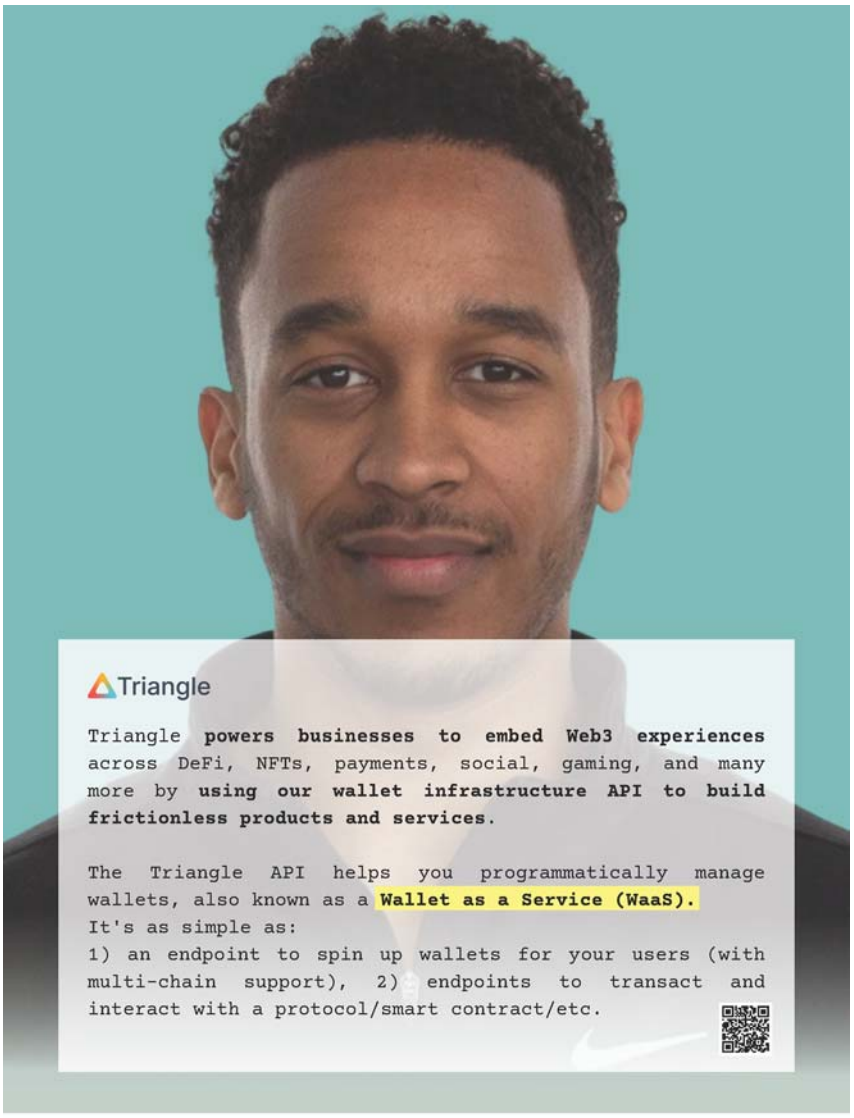

HALO
Halo Braid is the sole automated braiding solution tailored for Black hair. Starting the braid is all you need to do; Halo completes the rest, drastically cutting down braiding time, enhancing efficiency, and increasing earning potential. With consistently impeccable braids for all hair types and the comfort of patent-pending hands-free technology, Halo Braid is the innovative solution you've been waiting for.

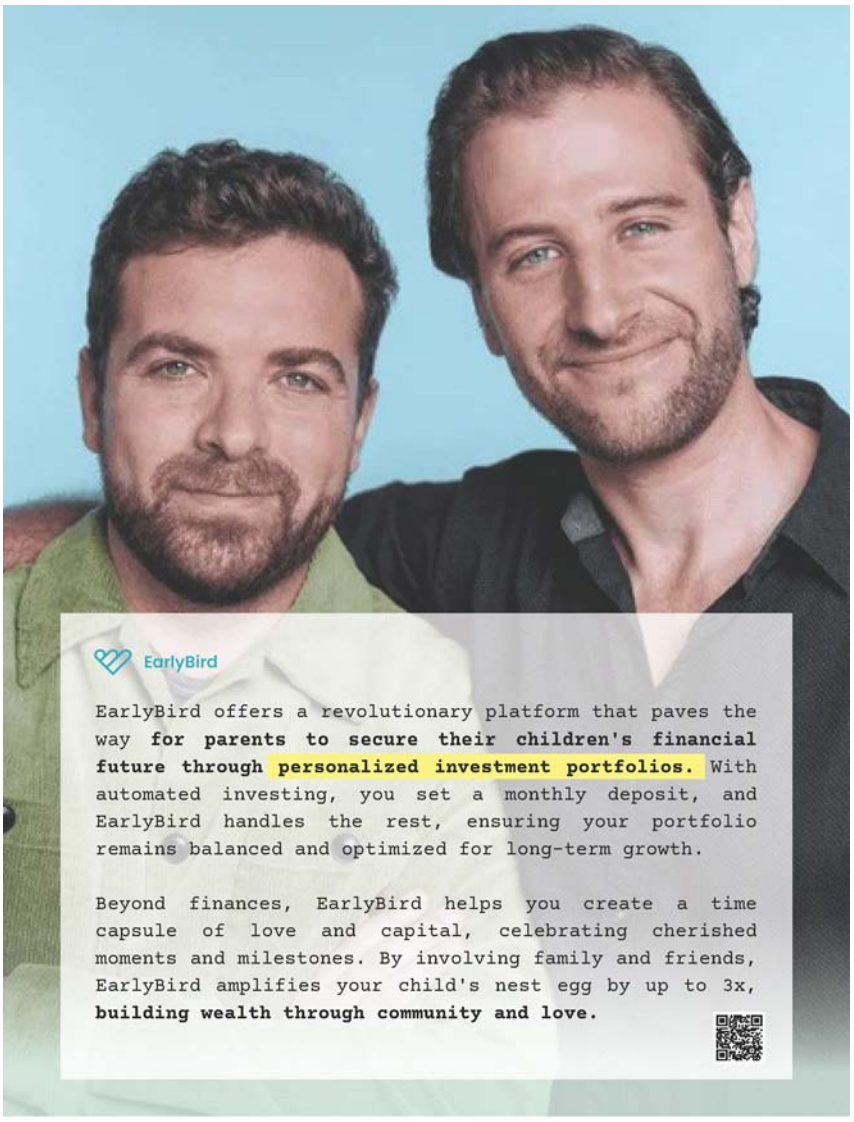

Spundle
Spundle is a groundbreaking blow dryer designed to efficiently dry wigs and hair extensions in just 15 minutes. It tackles the issue of heat damage that conventional dryers may cause, utilizing patent-pending technology for gentle, damage-free drying.
By addressing a significant concern in the wig and hair extension market, Spundle offers a swift and innovative solution for quicker, healthier hair drying.
RARE BREED


Grounded is a bank platform that provides core/brokered deposits, loan opportunities, and CRA credit. The end result for the bank customer is regulated, full balance sheet growth and CRA credit opportunities.

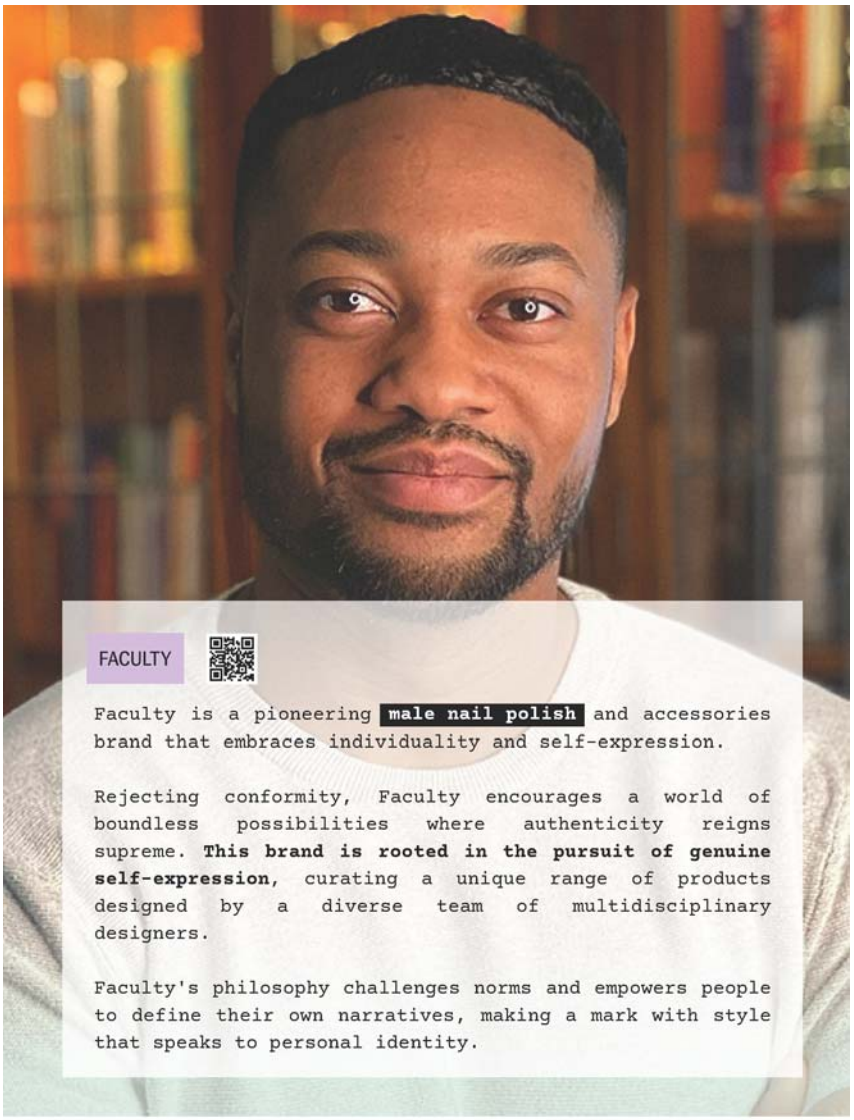

youme
At Youme, we recognize that no child's needs are quite the same. So **we reimagined the typical care model** to make it more personal, more accessible, and more inclusive. Our healthcare practice focuses on **child, teen and family behavioral and mental health,** including cognitive talk therapy and medication management/ psychiatry.

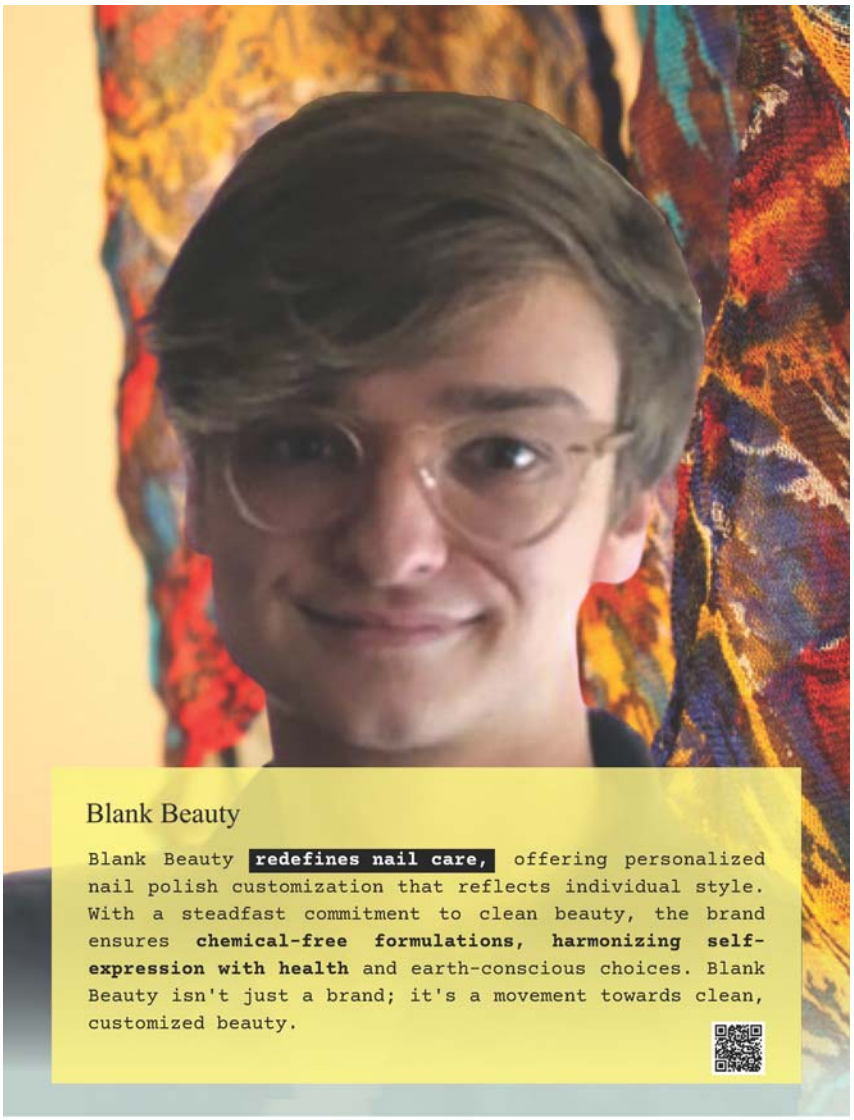

ROBOAMP
RoboAmp makes the web faster. We make webpages load in 2 seconds or less with one line of code.
RARE BREED


Triangle
Triangle powers businesses to embed Web3 experiences across DeFi, NFTs, payments, social, gaming, and many more by using our wallet infrastructure API to build frictionless products and services.
The Triangle API helps you programmatically manage wallets, also known as a Wallet as a Service (WaaS).
It's as simple as:
1) an endpoint to spin up wallets for your users (with multi-chain support), 2) endpoints to transact and interact with a protocol/smart contract/etc.


EarlyBird
EarlyBird offers a revolutionary platform that paves the way for parents to secure their children's financial future through personalized investment portfolios. With automated investing, you set a monthly deposit, and EarlyBird handles the rest, ensuring your portfolio remains balanced and optimized for long-term growth.
Beyond finances, EarlyBird helps you create a time capsule of love and capital, celebrating cherished moments and milestones. By involving family and friends, EarlyBird amplifies your child's nest egg by up to 3x, building wealth through community and love.

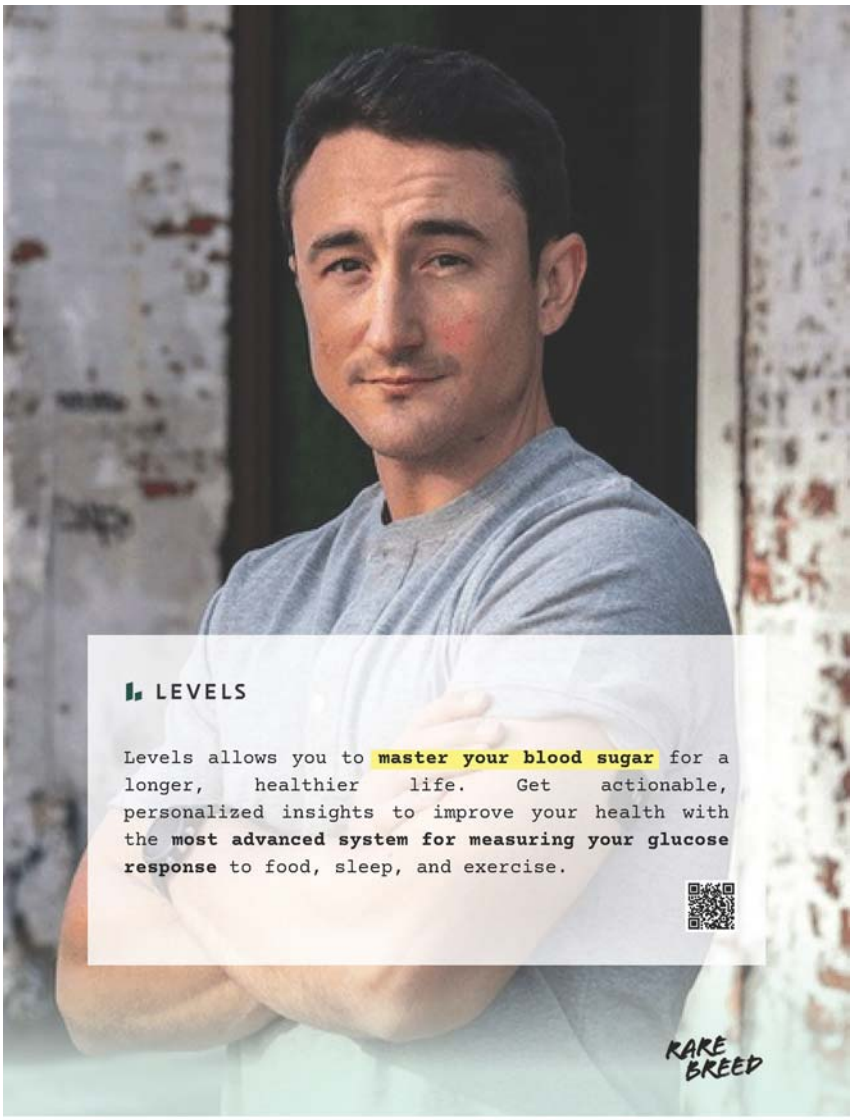

WOVE
Wovemade allows you to design any ring you can dream of made as a replica first to ensure you love it. Ensure this lifelong purchase is perfect by trying it first. Make any adjustments free.


FACULTY
Faculty is a pioneering male nail polish and accessories brand that embraces individuality and self-expression.
Rejecting conformity, Faculty encourages a world of boundless possibilities where authenticity reigns supreme. This brand is rooted in the pursuit of genuine self-expression, curating a unique range of products designed by a diverse team of multidisciplinary designers.
Faculty's philosophy challenges norms and empowers people to define their own narratives, making a mark with style that speaks to personal identity.

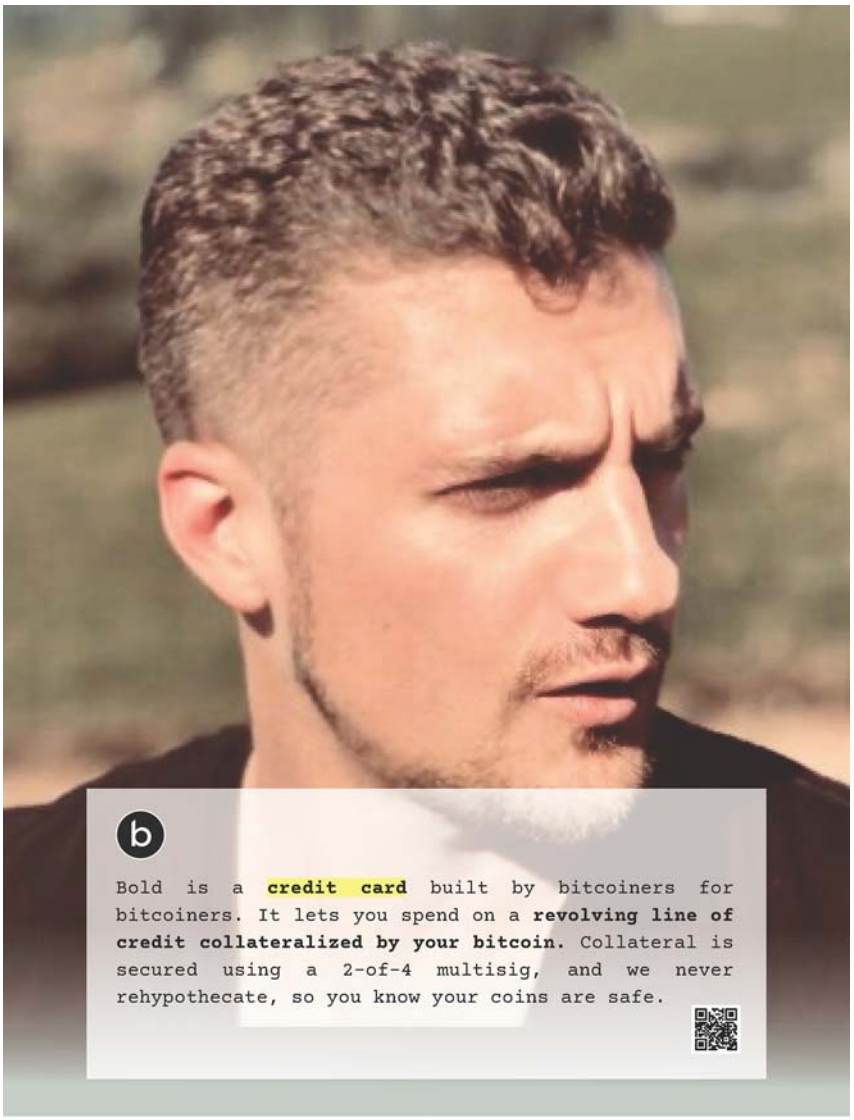


Blank Beauty

Blank Beauty **redefines nail care,** offering personalized nail polish customization that reflects individual style. With a steadfast commitment to clean beauty, the brand ensures **chemical-free formulations, harmonizing self-expression with health** and earth-conscious choices. Blank Beauty isn't just a brand; it's a movement towards clean, customized beauty.


LEVELS
Levels allows you to master your blood sugar for a longer, healthier life. Get actionable, personalized insights to improve your health with the most advanced system for measuring your glucose response to food, sleep, and exercise.
RARE BREED


Allocate
Allocate is an investment platform that makes investing in private markets easier by pairing curated venture capital opportunities with portfolio management software tools.
Our mission is to provide investors of all types the ability to optimize their investing efforts in the private markets.
RARE BREED


Bold is a credit card built by bitcoiners for bitcoiners. It lets you spend on a revolving line of credit collateralized by your bitcoin. Collateral is secured using a 2-of-4 multisig, and we never rehypothecate, so you know your coins are safe.

EISENGARD AI

Eisengard AI is the **easiest way for business to harness the power of AI.** Before founding Eisengard, we had researched, taught, consulted, and built AI and data science solutions for decades.

In our experience, businesses ran into three main problems with AI and data analysis - a talent gap (not knowing what to do), complexity (too many tools), and execution challenges (customizing to unique needs).

So we built Eisengard, an **AI advisor for business** - it uses proven business frameworks to guide users through the full data stack - ETL, analysis, and visualization, and helps them to flexibly solve unique business problems. **We are changing the way businesses do business.**

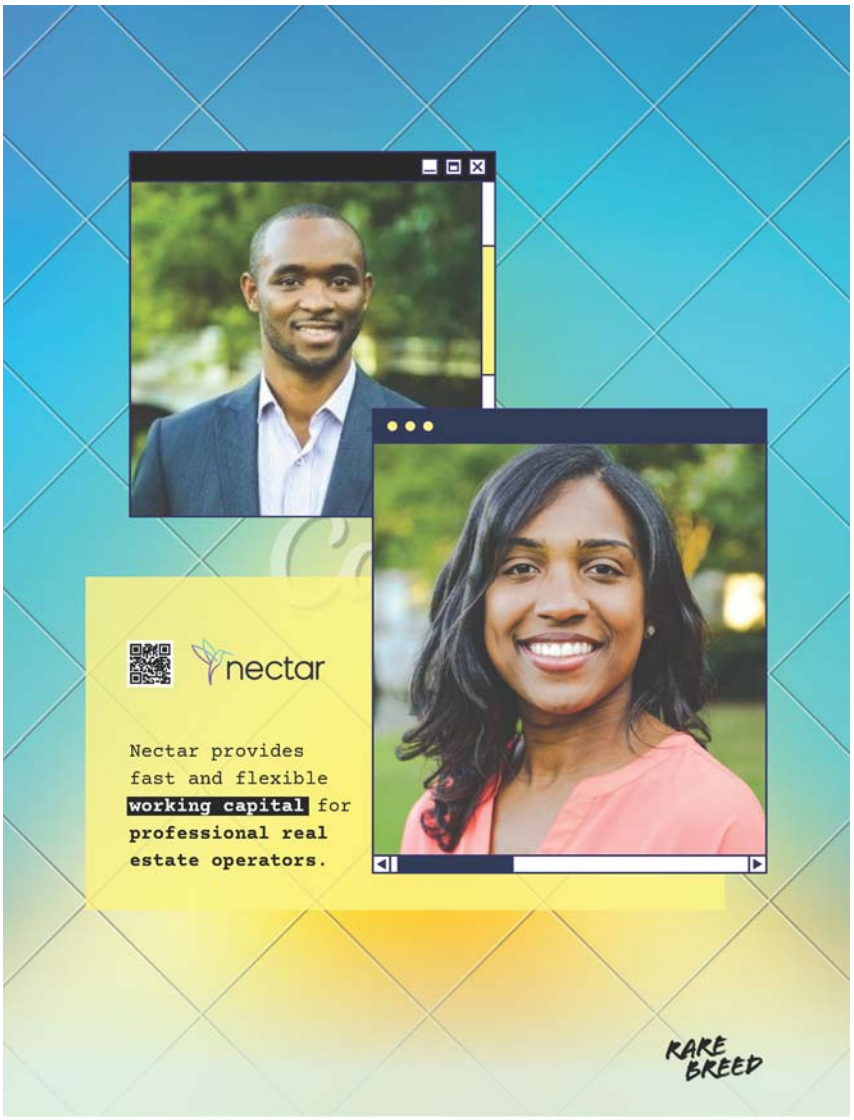
RARE BREED


DNABLOCK
DNABLOCK is the creator of REPLIKANT', an AI-assisted 3D animation platform that enables creators of all skill levels to create studio quality content instantly.
REPLIKANT's advanced tools are designed to be user-friendly, enabling creatives, brands and their communities to produce high-fidelity, next-gen 3D characters, digital humans, animated content and immersive experiences with ease.
KARE BREED

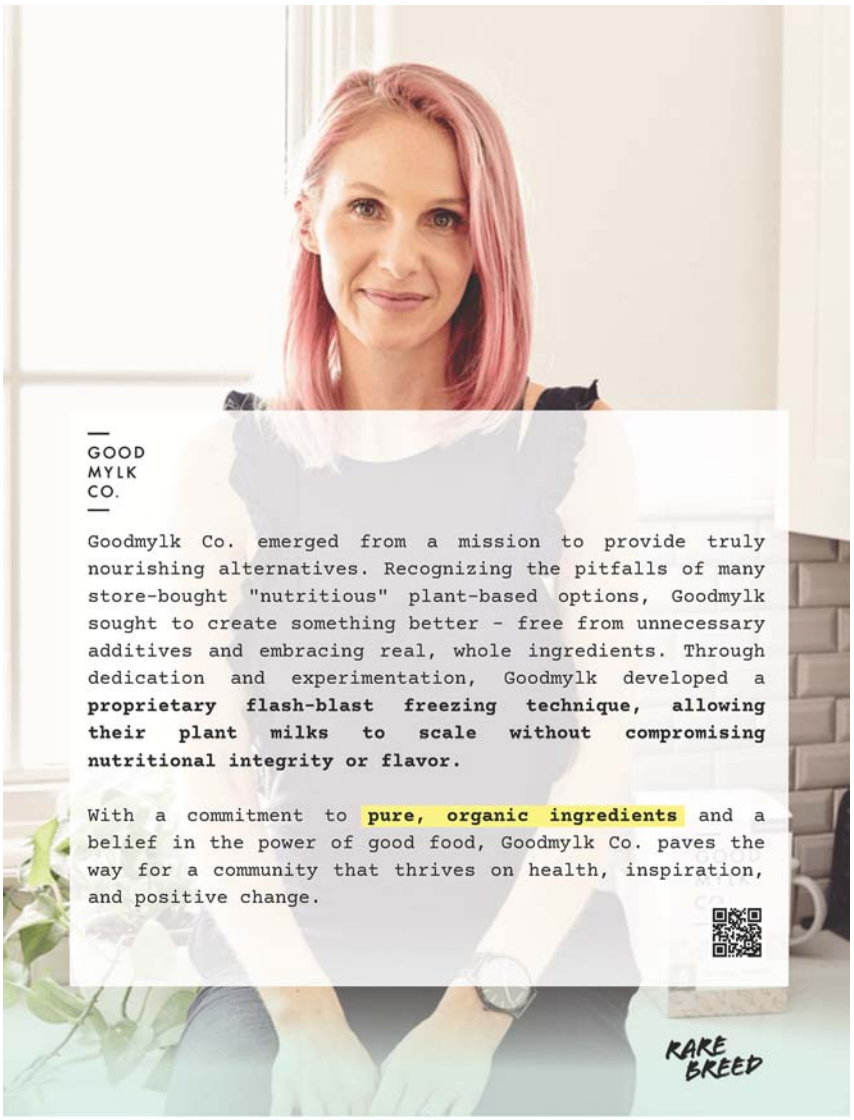

At Path (formerly ScholarMe) we're reinventing how gen-z interacts with money by putting a money manager in every gen-z's pocket who gets them money for college, builds their credit, opens their first bank account and sets them on the right "path" financially.
RARE BREED


Pugo Health
Pugo Health makes it simple and easy to cover medical expenses. Healthcare comes with out of pocket expenses for patients, but that shouldn't stop you from getting the care you need.
Pugo offers a way for patients to split the amount owed to medical providers into manageable payments - with no interest, no credit check and no fees. Through a fast, simple and secure way to enroll at time of service or when the bill arrives - you'll have an option that works for your budget.
RARE BREED


phood
Phood is an API software designed to bridge the gap between campus and public dining. Our software lets college students use meal plan dollars to order food from third-party delivery applications, enabling them to gain financial transparency and place food orders with ease.
RARE BREED


nectar
Nectar provides fast and flexible working capital for professional real estate operators.
RARE BREED

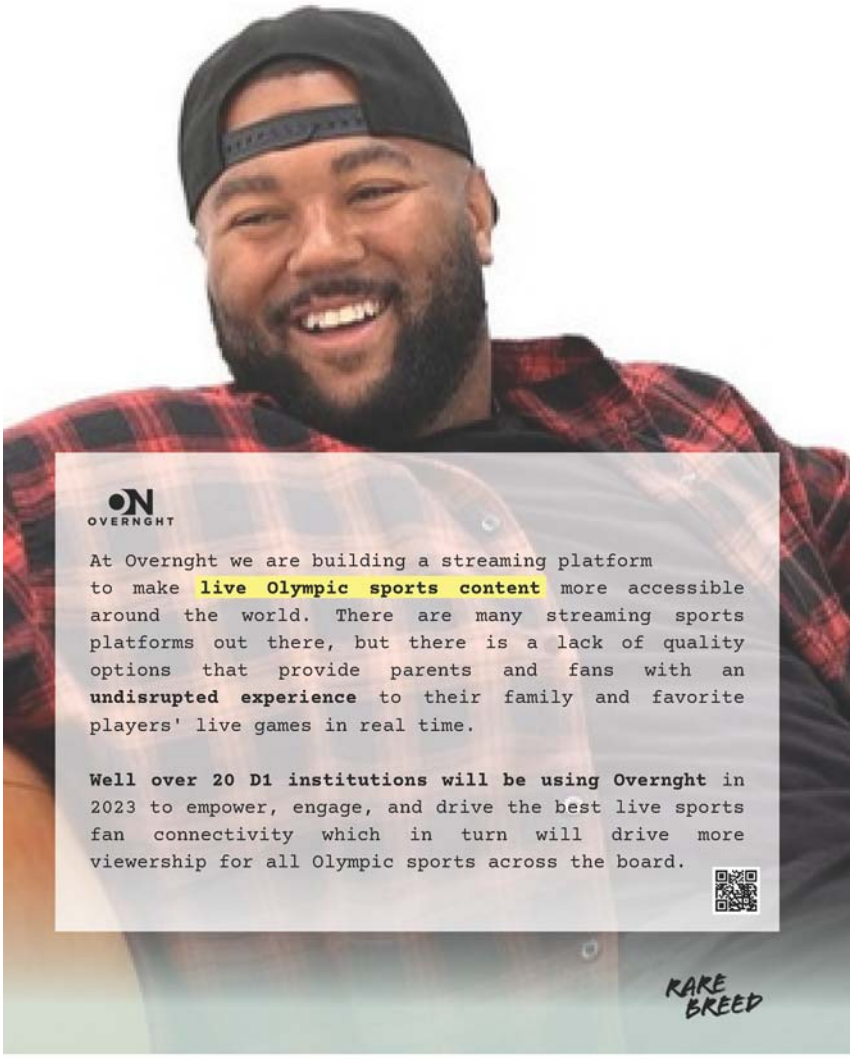

verdi
verdi
verdi
verdi
Verdi is building the climate adaptation platform for agriculture. We've developed the world's first scalable technology to personalize healthcare for plants, using intelligent control systems to bring the precision of indoor farming to outdoor agriculture.
Our customers include the world's largest food brands such as Driscoll's, E&J Gallo, and Wonderful, and last year we saved them over 7M liters of water.
RARE BREED

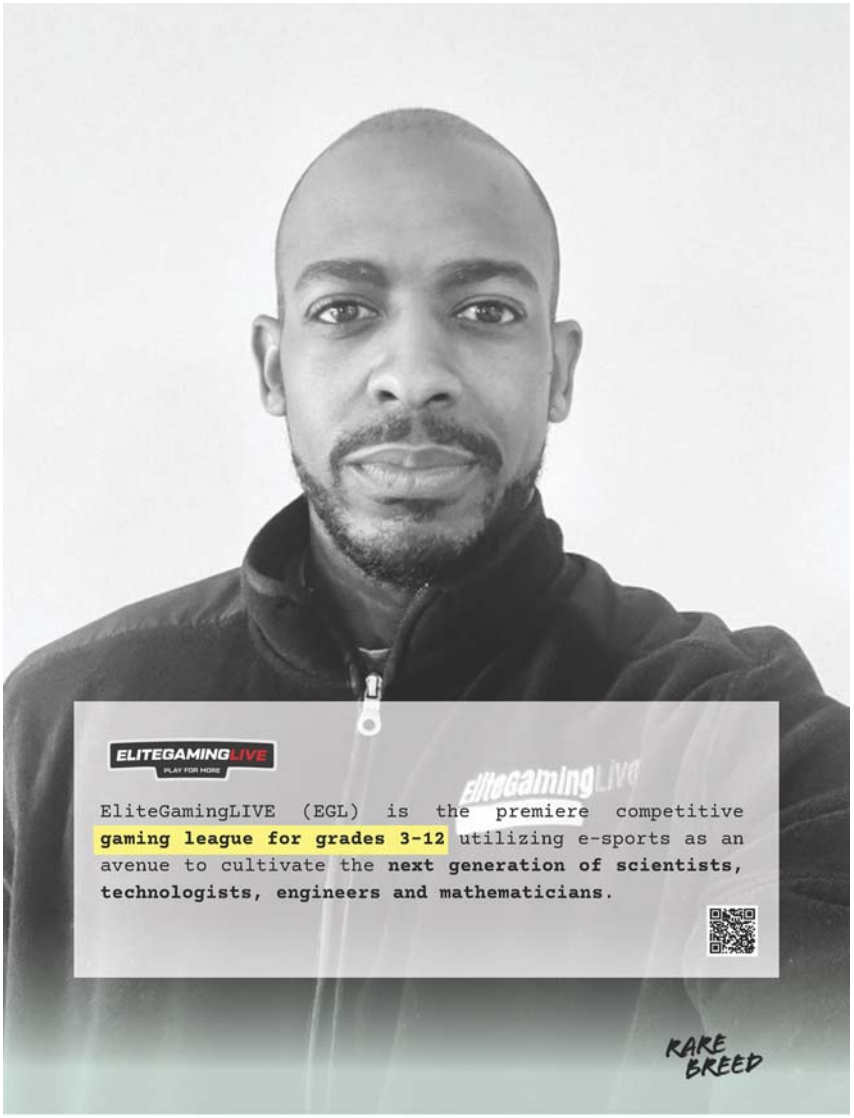

GOOD
MYLK
CO.
Goodmylk Co. emerged from a mission to provide truly nourishing alternatives. Recognizing the pitfalls of many store-bought "nutritious" plant-based options, Goodmylk sought to create something better - free from unnecessary additives and embracing real, whole ingredients. Through dedication and experimentation, Goodmylk developed a proprietary flash-blast freezing technique, allowing their plant milks to scale without compromising nutritional integrity or flavor.
With a commitment to pure, organic ingredients and a belief in the power of good food, Goodmylk Co. paves the way for a community that thrives on health, inspiration, and positive change.
RARE BREED

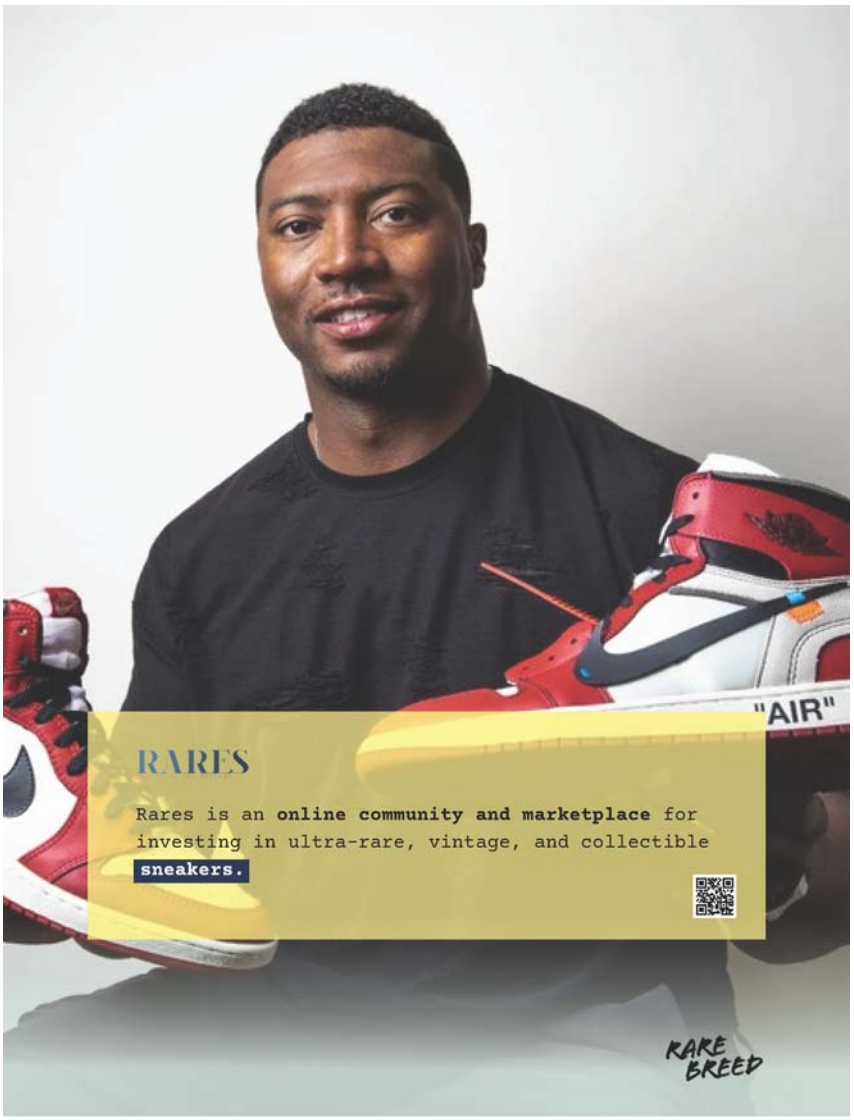

KaFresh
KaFresh helps farmers, retailers and exporters increase the marketable shelf life of fresh produce without refrigeration, using an organic plant-based edible spray coating.
RARE BREED


spâren
Sparen reimagines the real estate transaction, combining all of its parts — financing, search, walkthrough and inspection, and closing — into one seamless, digital platform.
RARE BREED


para
At Para we're building a personal dispatch system for each gig worker. There are many options beyond just Uber & Lyft now - but the friction to know about, access, and juggle between these opportunities is high. Over 100k workers use Para to earn more, and over 30 partners use Para to recruit & get their gigs fulfilled by top workers.
KARE BREED


ON
OVERNGHT
At Overnght we are building a streaming platform to make live Olympic sports content more accessible around the world. There are many streaming sports platforms out there, but there is a lack of quality options that provide parents and fans with an undisrupted experience to their family and favorite players' live games in real time.
Well over 20 D1 institutions will be using Overnght in 2023 to empower, engage, and drive the best live sports fan connectivity which in turn will drive more viewership for all Olympic sports across the board.
RARE BREED


ELITEGAMINGLIVE
PLAY FOR MORE
EliteGamingLIVE (EGL) is the premiere competitive gaming league for grades 3-12 utilizing e-sports as an avenue to cultivate the next generation of scientists, technologists, engineers and mathematicians.
RARE BREED

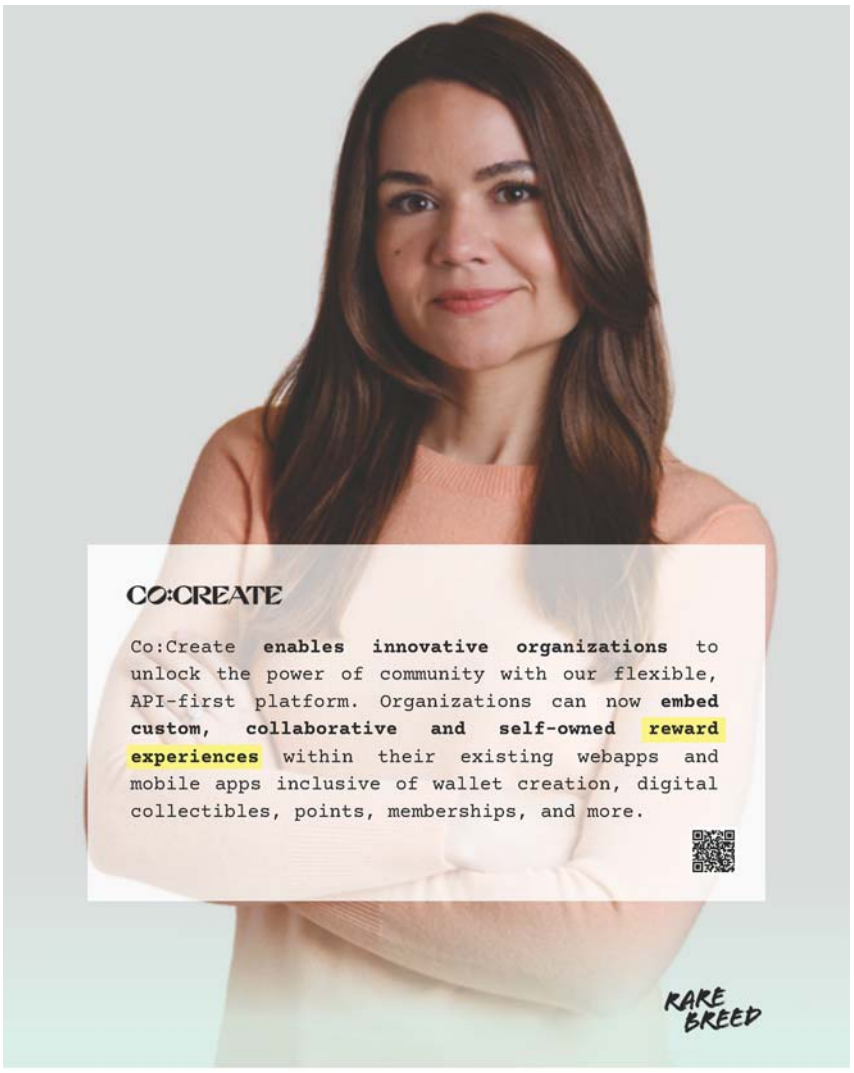

"AIR"
RARES
Rares is an online community and marketplace for investing in ultra-rare, vintage, and collectible sneakers.
RARE BREED


Matrix
Matrix increases user engagement through customizable quests & user rewards while simultaneously unlocking new monetization opportunities for streamers and gamers.
RARE BREED

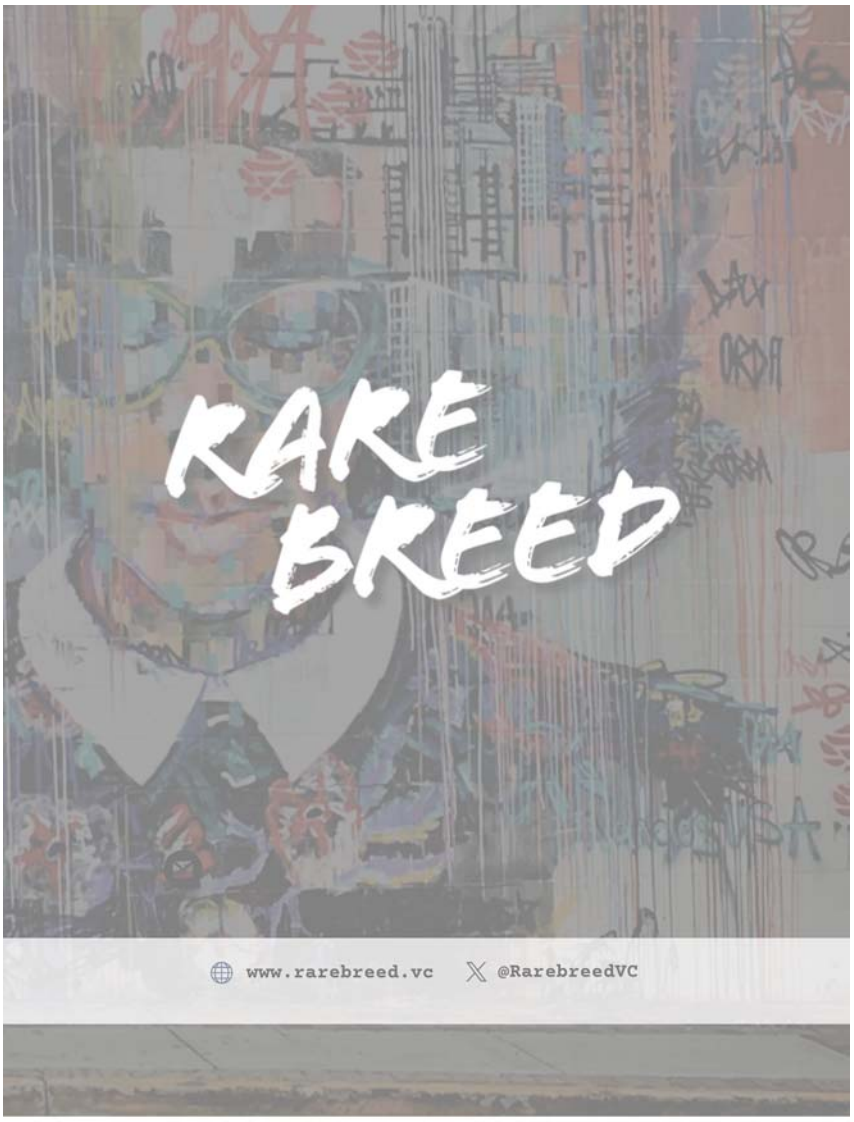

Monet Dating was a doodle-based dating platform that made over 350K matches and 800K drawings from October 2020 to Dec 2022.
RARE BREED


Americana
Americana is an NFT marketplace that allows you to vault, transport, authenticate and digitize physical products. Elevate your collecting game with Americana, a pioneering NFT marketplace that transforms physical treasures into secure, transportable digital tokens. Vault your beloved items, authenticate their heritage through blockchain, and dive into the future of collecting.
RARE BREED


GLOW UP
Glow Up Games builds and publishes games and playful technology which centers black and brown joy.
We know that underrepresented audiences are hungry to see themselves and their stories in games, and, there is a huge opportunity to address this by inventing brand new forms of play across both existing and emergent platforms. We've partnered with diverse IP holders to build authentic game experiences in a way that few other studios can, such as our flagship game, Insecure: The Come Up Game, in partnership with HBO.
We're now building our own original IP worlds in video games ranging from mobile to XR and beyond, steeped in our own cultural influences, and driven by our technical expertise in games and AI.
RARE BREED


CO:CREATE
Co:Create enables innovative organizations to unlock the power of community with our flexible, API-first platform. Organizations can now embed custom, collaborative and self-owned reward experiences within their existing webapps and mobile apps inclusive of wallet creation, digital collectibles, points, memberships, and more.
RARE BREED


REBUNDLE
Rebundle is the first U.S.-made plant-based hair extensions brand offering a sustainable alternative to plastic synthetic braiding hair. We're rooted in a desire to reduce the health and environmental disparities within the beauty industry.
RARE BREED


RARE
BREED
www.rarebreed.vc
@RarebreedVC

Chairwoman WAGNER. We thank you, Mr. Conwell.

Next we will hear from Ms. Kacaba.

You are recognized for 5 minutes for your oral remarks.

STATEMENT OF REBECCA KACABA, CEO AND CO-FOUNDER, DEALMAKER

Ms. KACABA. Chairwoman Wagner, Ranking Member Sherman, and members of the subcommittee, thank you for the opportunity to testify before you today.

My name is Rebecca Kacaba. I am CEO and Co-Founder of DealMaker, the leading platform in online capital formation. To date, DealMaker has facilitated over $2 billion in capital raised for over 900 American companies, creating up to 40,000 new jobs.

I come from a family of entrepreneurs and am a former practicing attorney, having spent over a decade in private practice in the capital markets.

The team at DealMaker have the distinct honor of working with founders building businesses they love. We see firsthand the difficulties of the entrepreneurs' journey and how much they and their families sacrifice to grow a business and create jobs in America. We know the founder who slept on the storeroom floor for a year until he could get his business funded. We know the founders who stake their personal relationships and reputations, raising money from friends, family, and colleagues, in order to get the idea, they believe in off the ground.

The very hope, vision, and purpose of our founders is why we do what we do. This is the essence of the American Dream and what drives job creation.

Every day, our team is privileged to serve these founders in the most fundamental way possible, and we take this responsibility seriously. We do this by implementing Congress's pioneering vision of the JOBS Act itself. In the spirit of this vision, we submit three proposals designed to ignite economic growth and create new American jobs.

The first proposal is to remove the offering caps that inhibit growth and interfere with job creation.

Reg A is capped at $75 million. At DealMaker, we regularly see companies who could raise more than $75 million. We ask Congress to remove the offering cap altogether. In the modern internet era, a cap on Reg A officially constrains growth. Because of the cap, companies are using alternative structures, like donations, tokens, or institutional funding.

Removing the Reg A maximum creates a pathway to bringing unregulated capital-formation activities into a regulated space. To grow this space, we need to change the perception that only small companies can use the exemption.

Reg CF (Regulation Crowdfunding) is currently capped at $5 million, which should be increased to $10 million. The 2020 increase in the Reg CF cap from $1.25 million to $5 million stimulated market activity by 250 percent.

The Reg CF ecosystem is maturing, with a growing prevalence of broker-dealer participation as opposed to just funding portals. Companies are regularly reaching the $5 million cap on Reg CF offerings. When companies hit this maximum, they face two sub-

optimal choices: either return to traditional funding sources or prematurely transition to a more costly Reg A.

Our second proposal is to harmonize the Reg CF and Reg A regimes.

Today, Reg CF and Reg A exemptions are being used for similar purposes. Investors are investing in both types of offerings interchangeably. Accordingly, the rules between the two should be harmonized. The best elements of each regime can be combined and shared. This would be easier for businesses, investors, and market participants to understand and lead to better compliance.

Three places where harmonization would remove significant friction are Rule 12(g), Rule 5110, and the marketing rules. We have cited a number of the bills tabled where these harmonizations can be addressed.

Finally, the third proposal is to expand the availability of Reg CF and Reg A to more participants to grow the space and create more jobs.

Currently, Reg CF restricts the amount of money companies under common control can raise. This restriction differentiates Reg CF from traditional capital-raising mechanisms and Reg A, which do not have such limitations.

If the common-control prohibitions are removed; it would allow more VC-backed companies to enter the space. This would capitalize more mature funded businesses and could also increase the survival rate of venture-backed businesses.

In conclusion, let us reflect on how far we have come. Since Congress enacted the JOBS Act in 2012, Reg A and Reg CF have raised $3.7 billion. Reg CF has outpaced venture capital growth by 4.4 times as compared to 1.3 times.

The capital markets have been diversified, as Congress intended, to weather economic down-market conditions. During the worst year of the recent down-market cycle, in 2023, the online capital markets stayed over 40 percent stronger than the VC markets. Companies we supported survived and thrived when no one thought it would be possible.

By increasing the offering limits, harmonizing the rules, and allowing for more capital markets participation in the space, Congress will unlock even more growth in online capital markets, leading to further job creation.

The work that Congress is doing is critical and core to the job-creation ethos of America. As a result of your work, we have the privilege of seeing firsthand our customers' factories in new communities that are overlooked by Silicon Valley and Wall Street and the pride that it brings them.

We are grateful for the opportunity to be a part of this hearing.

[The prepared statement of Ms. Kacaba follows:]

Growing the Future of American Capital and Creating More Jobs

Testimony of Rebecca Kacaba, CEO and Co-Founder of DealMaker

House Financial Services Committee
Sub-Committee: Capital Markets

Date: February 26, 2025

Hearing on "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"

Introduction

Chairman Wagner, Ranking Member Sherman, and Members of the Committee, thank you for the opportunity to testify before you today regarding the critical issue of the future of American capital markets, the growth of American businesses, and job creation.

My name is Rebecca Kacaba, CEO and co-founder of DealMaker, a privately held financial technology company. The DealMaker platform empowers companies to raise capital efficiently and compliantly, from startup to public company, with a focus on democratizing access to both capital and investment opportunities for everyday Americans. I commend the Committee for holding this important hearing.

DealMaker provides a full suite of tools required by founders to streamline the fundraising process, encompassing investor outreach, marketing, regulatory compliance, and transaction management. DealMaker leverages technology to reduce company costs, increase efficiency and speed, and enhance transparency in capital markets. To date, DealMaker has facilitated over $2 billion in capital raises for over 900 American companies[1] across a wide range of industries, creating a significant number of new jobs (estimated between 20,000 and 40,000).[2] Simultaneously during this period, hundreds of thousands of individuals and families have become investors in private companies through our platform - democratizing the wealth created by the JOBS Act and the regulations related thereto.

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[1] See DealMaker 2024 Year In Review, available at https://www.dealmaker.tech/content/dealmakers-2024-year-in-review?utm_campaign=%5BFY24-25%5D%20Company%20Social%20Page%20Content&utm_content=320722480&utm_medium=social&utm_source=linkedin&hss_channel=lcp-29021525. See also DealMaker website, https://www.dealmaker.tech/

[2] For example, studies show that capital investment of $1,000,000 can produce a range of new job creation from 10 to 20, depending on the industry. See, Peri Report 2020, "Job Creation Estimates Through Proposed Economic Stimulus Measures", at p.6, Table 1, available at https://peri.umass.edu/images/Pollin--Sierra_Club_Job_Creation-----9-9-20--FINAL.pdf; See also Peri Report 2023, "Employment Impacts Of New U.S. Clean Energy, Manufacturing, and Infrastructure Laws", at p. 13-19, available at https://peri.umass.edu/images/publication/BIL_IRA_CHIPS_9-18-23-1.pdf

DealMaker is committed to innovating and developing solutions that empower businesses, expand access to capital for American businesses, and generating more jobs and supporting Congress in these important goals.

The Success of the JOBS Act

Since Congress enacted the Jumpstart Our Business Startups (JOBS) Act in 2012, it has served as a tremendous example of bipartisan success for the American economy, balancing improvements to capital formation and job creation for small businesses with investor protection. With the anti-fraud provisions of the federal securities laws remaining in effect, an overwhelming majority of Congress welcomed the JOBS Act. These anti-fraud provisions continue to protect American investors today, who now have access to private markets with an ease unprecedented in the history of American private markets.

At DealMaker, we have observed how the JOBS Act opened previously unavailable avenues to raise capital, helping entrepreneurs succeed, often in rural communities and from minority groups. The Act introduced Regulation Crowdfunding, enabling small businesses - who were previously excluded from venture capital and private equity funding - to raise capital from their strongest supporters: their communities. At the same time, it implemented scaled caps on investment amounts to protect investors.

The resounding adoption of the JOBS Act by American businesses was partly attributable to the legislation's design: Congress's enactment was largely self-executing, allowing businesses to immediately capitalize on many of the newly available capital formation pathways. Continued additions and evolutions to the act, including those requiring agency action, have since been added.

This design has cultivated a growing ecosystem that has proven its efficacy over the past twelve years. Since 2016, Regulation A, Regulation Crowdfunding ("CF") and Reg D have grown the available capital in the American ecosystem substantially: Since 2021, Regulation A has raised 1.368 Billion. Last year alone, 94 offerings[3] raised a total of $244M, a 7.5% increase in deal value from the year before, with an average company valuation of $345M. The average successful campaign raised $7.7M, with the five largest raises closing between $20M and $75M.[4]

Since 2016, Regulation CF has supported over 6,500 startups and raised nearly $2.4 billion in capital through 8,400 investment rounds for early-stage companies.[5] More than half of that has been raised since 2021 (total of $1.68B). In each year between 2021 and 2024, between 343 million and 496 million was raised through all Regulation CF offerings. Last year alone, 1,403 new Regulation CF offerings launched, with each investment average of 26% more (average check

[3] 34 new Regulation A+ offerings launched and 61 offerings closed.

[4] See Kingscrowd Report "2024 Investment Crowdfunding: Trends, Stats and Platform Rankings" available at https://kingscrowd.com/2024-investment-crowdfunding-trends-stats-and-platform-rankings/#section-state-private-markets

[5] Statistics are available through July 2024.

size of $1,500) than the year before, and an average deal value of $368,000 raised in a successful campaign.

Moreover, Congress intended to diversify the capital markets to weather different economic conditions. During the worst year of the recent downmarket (2023), Regulation A and Regulation CF were better able to withstand the economic down cycle, compared to venture capital:

- In 2023, Regulation A, while impacted, fared better than venture capital which dipped 49%.[6]
- Regulation CF proved the most resilient, with deal value falling only 15% in 2023.
- In 2024, Regulation CF fared similarly well with investment levels reaching 69% of their 2021 peak, compared to venture capital deal activity at 50% of its 2021 peak.[7]
- This mirrors a parallel trend of Regulation CF outpacing venture capital growth: capital raised through crowdfunding has outpaced venture capital in year-over-year growth relative to 2018 volume: as of year-end 2024 estimates, Regulation CF is expected to finish at 4.4x its 2018 investment dollar volume, while venture capital is projected to reach only 1.3x its 2018 value.[8]

The capital raised by these small businesses directly creates a significant number of jobs. According to the SEC, since 2011, small businesses have created 80% of net new jobs (11.2M jobs) in the US economy.[9] Many of these jobs transition to large businesses, either through a small business naturally growing, or by a large business acquiring a small one. Studies show that these newly created jobs are key to an innovative and competitive economy.[10]

Over the 12 years since the JOBS Act's enactment, the US innovation sector has continued to evolve, providing entrepreneurs with unprecedented capital-raising opportunities. The following recommendations aim to empower American entrepreneurs to capitalize on these advancements, with the intent of expanding the JOBS Act's application. These proposals also seek to reduce unnecessary barriers to capital formation, while maintaining the consistent application of anti-fraud provisions. The implementation of these changes build upon the JOBS Act's improvements, creating a clear pathway to grow American businesses and create additional American jobs.

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[6] See Kingscrowd, *supra* note 4.

[7] Id.

[8] See Kingscrowd Report, "Reg CF Outpaces Venture Capital Growth Since 2018: 2024 Projections" available at https://kingscrowd.com/how-has-online-startup-investing-growth-compared-to-venture-capital/

[9] See SEC Office Of The Advocate For Small Business Capital Formation, Annual Report, Fiscal year 2024, available at https://www.sec.gov/files/2024-oasb-annual-report-print.pdf; See also Robert Press, "All Grown Up: How Small Business Jobs Transition through the Economy," U.S. Small Business Administration Office of Advocacy, (June 11, 2024) at 1, available at https://advocacy.sba.gov/wp-content/uploads/2024/11/Research-Spotlight-How-Small-Business-Jobs-Transition-508.pdf

[10] See Robert Press, *supra*, note 9.

The DealMaker Story

DealMaker's founders are former practicing attorneys with over a decade of private legal practice experience. As such, they witnessed firsthand the challenges faced by businesses, including loss of control by founders and a focus on liquidity over employee welfare.
These observations led to DealMaker, which itself was conceived through the collective investment of numerous individuals who believed in enhancing the efficiency of exempt markets. DealMaker's foundation rests upon the principles of the JOBS Act, empowering individuals to contribute small sums to build something great, as a community.

We have the distinct honor in working with founders building businesses they love. We see firsthand the difficulties of the entrepreneur's journey and how much they and their family sacrifice to grow a business and create jobs in America. We know the founder who slept on the storeroom floor for a year until they could get their business funded. We know the founders who staked their personal relationships and reputation, raising money from friends, family, and colleagues in order to get the idea they believe in off the ground. The very hope, vision, and purpose of our founders is why we do what we do. This is the essence of the American dream, and what drives job creation. Every day our team is privileged to serve these founders in the most fundamental way, and we take this responsibility seriously.

According to DealMaker's research, 75% of American startups are not funded by venture capital.[11] In fact:

- Fewer venture capital dollars are available for startups and those that are, are offered on unfavorable terms granting investors participating preferred stock and substantial ownership, shifting control over the growth of these businesses and the jobs they create away from the founders.
- In 2023, 93% of small businesses struggled to access sufficient American capital to cover operating expenses.[12]

As a result, equity crowdfunding is a more critical source of capital to leverage:

- The ability of every day Americans to invest in private businesses is becoming essential for those looking to access real long-term growth potential.
- Private market investments are no longer isolated to institutions and wealthy Americans. Retail investors are poised to unlock a whole new realm of opportunity: private investments grew from $4 trillion to $14 trillion over the last decade, and individual AUM in alternatives are projected to triple in the next 10 years.[13]

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[11] Of the 72,640 startups incorporated in the USA, only 23% (16,464) received venture capital backing in 2023. *See* Statista, Number of venture capital investment capital deals in the United States from 2066 to 2023, available at https://www.statista.com/statistics/277505/venture-capital-number-of-deals-in-the-united-states-since-1995/#:~:text=Countries%20with%20the%20Most%20Startups,home%20to%20around%2072%2C560%20startups

[12] See SEC Annual Report, *supra,* note 9 at page 5.

[13] See Kristin Olson, Global head of alternatives for wealth at Goldman Sachs, entitled "Goldman Sachs: Why individual investors need to look at private investments to further grow wealth" (November 8, 2024), available at

- Crowdfunding levels the playing field for businesses, allowing them to tap into a broad base of investors, including their own customers and communities.

Private companies are the heartbeat of the US economy. At DealMaker, we provide the essential infrastructure that empowers everyday investors to support these businesses—a modern realization of the JOBS Act's pioneering vision. In the spirit of this vision, and from a compliance-first perspective, we submit following proposals designed to ignite economic growth and create new American jobs:

1. Remove the Offering Caps that Inhibit Growth and Interfere with Job Creation

(a) Remove the Offering Caps on Regulation A Offerings[14]

At its time of enactment, the JOBS Act contained certain regulatory guardrails due to the unproven nature of online capital formation. However, in the modern internet era, it is no longer necessary to artificially constrain the capital formation demands of the market. In today's world, the caps on Regulation A offerings are unduly burdensome, and artificially constrain the growth of online capital formation. These caps are particularly insufficient for large, rapidly scaling businesses, including established brands that would represent highly attractive investment opportunities for non-accredited investors. Consequently, the current structure perpetuates inequality by preventing premier investment opportunities from accessing retail investors through Regulation A, and forcing them to remain limited to accredited investors.

To grow the space, we need to change the perception that only small companies can use the exemption. The current caps restrict further growth of online capital formation because the space cannot attract larger, more established companies. This also impacts the overall perception of online capital: both with younger companies and service providers who innovate new services to support the space (such as law firms, VCs and broker dealers). Removing the Regulation A cap will enable its maturation.

Furthermore, the $75 million cap renders Regulation A impractical for many larger private companies seeking to raise capital, particularly in emerging sectors such as biotech, where capital expenses can often dramatically exceed $75M for companies executing cutting edge innovation or sports investing, where stadium development costs can reach billions. This limitation effectively excludes these opportunities from participation in the Regulation A framework.

The activity is occurring in any event: companies choose to use alternative structures like donations or tokens because they need to access capital that far exceeds the current $75M cap. With the re-emergence of tokenized offerings, the cap on Regulation A will also cause many businesses to seek other, unregistered mechanisms to raise capital, including tokenized offerings which are not subject to the same regulatory purview and investor protection requirements.

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https://www.cnbc.com/2024/11/08/goldman-sachs-why-individual-investors-need-to-look-at-private-investments-to-further-grow-wealth.html

[14] See *Regulation A+ Improvement Act* (Stutzman), H.R. 2651, 118th Cong. (2023) available at https://www.congress.gov/bill/118th-congress/house-bill/2651/text

Ultimately, raising the Regulation A maximum creates a pathway to bring unregulated capital formation activities into a regulated space, within the structures Congress created to ensure proper business formation, transparent business planning, company disclosures, and job creation, as well as competition by American businesses on a global scale. This will allow these companies to meet their capital needs using Regulation A and build their investment communities. It also protects investors, giving investors more control and insight into the investments they purchase.

(b) Increase the Offering Limit for Regulation Crowdfunding From $5M to $10M in a 12 Month Period[15]

The 2020 increase in the Regulation CF cap from $1.25 million to $5 million demonstrably stimulated market activity:when the CF cap rose to $5M, market activity jumped by approximately 250% between 2020 and 2021 with only $209.4 M invested through Regulation CF in 2020 as compared to $496.1M invested through Regulation CF 2021.[16]

The Regulation CF ecosystem has matured, with a growing prevalence of broker-dealer participation (as opposed to only funding portals). Companies are regularly reaching the $5M cap on Regulation CF offerings indicating both the efficacy of the offering mechanism and strong investor interest.

When companies hit this maximum, they face two suboptimal choices: either (a) discontinue retail investment and return to traditional funding sources (which undermines the objective of democratizing capital formation); or (b) prematurely transition to a Regulation A offering, incurring substantial fixed expenses that outweigh the benefits of incrementally raised capital. This generates a high volume of refunds, which are costly to companies, unnecessarily confusing to retail investors, and complicated for market intermediaries to manage.

The disclosure provided to Regulation CF investors when audited financial statements are included is comprehensive. As Regulation CF has matured, we have observed that the same companies often use multiple exemptions in online capital raising. A higher Regulation CF cap would enable companies to raise a greater amount of capital annually, reducing the burden on companies to transition to a full Regulation A offering too early.

Industry data indicates that 80% of Regulation A offerings raise $10M or less.[17] With a higher Regulation CF cap, this volume of activity could be accommodated through the Regulation CF framework, which is well-structured, thereby reducing the regulatory burden on businesses.

Ultimately, increasing the Regulation CF cap will foster the growth of the online capital formation space, enabling the funding of a greater number of businesses and creating more jobs.

2. Harmonize the Regulation CF and Regulation A Regimes

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[15] See *Improving Crowdfunding Opportunities Act* (McHenry), H.R. 2607, 118th Cong. (2023) available at https://www.congress.gov/bill/118th-congress/house-bill/2607/text

[16] See, Kingscrowd, *supra* note 4.

[17] Id.

Today, Regulation CF and Regulation A exemptions are being used for a similar purpose. Investors are investing in each type of offering interchangeably, considering the underlying investment more than the specific mechanism in which they are participating. Accordingly, the rules between these types of offerings should be harmonized. The best elements of each regime can be combined and shared.

This would be easier for businesses, investors and market participants to understand, and lead to better compliance.

Here are a few examples of ways the rules can be harmonized:

(a) Harmonize Rule 12(g) for Companies who Raise from Retail Investors, Growing the Space and Creating More Jobs[18]

Section 12(g) of the 1934 Securities Exchange Act establishes the thresholds at which a company must register a class of securities with the SEC and become a reporting issuer, including the number of unaccredited investors (500) that triggers registration.

Different exceptions from this count were created for Regulation A and Regulation CF shareholders. Notably, the Regulation CF exception states that once an issuer holds more than $25M in assets, its Regulation CF shareholders are no longer exempted and may count towards registration requirements. This threshold is too low and places a burden on issuing companies.

Consider a practical example:

- A seed-stage company wishes to raise capital through Regulation CF preferring their community to directly own shares and be reflected on the capitalization table.
- The company raises $600,000 from 600 individual investors.
- Two years later, the company raises $26 million in a Series B funding round.

At this point, the company now exceeds $25 million in assets and has more than 500 unaccredited investors, triggering a requirement to become a reporting company within two years - well before it is reasonably necessary. This is not to the benefit of the company nor its investors.

To avoid premature registration, companies often resort to using cumbersome and expensive structures, such as Special Purpose Vehicles (SPVs) or custodians, to circumvent 12(g). This workaround creates complexities and unintended consequences. When companies do pursue an IPO, investors may face challenges in transferring their shares from custody, as few custodians are willing to provide this service due to the high risk of needing to provide immediate liquidity upon a public offering. This creates a barrier to streamlining the IPO process. Furthermore, SPVs are less appealing to investors as they create an additional layer of separation from ownership and are not visible on the company's capitalization table. Investors find themselves owning an interest in an intermediary entity, which can be confusing.

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[18] 15 U.S.C. § 78l(g).

Shareholders in Regulation A and Regulation CF offerings should be treated **uniformly** with respect to the 12(g) exception, and the criteria should align with the current Regulation A standard which is reasonable and fair.

The proposed *Bill to Exclude Qualified Institutional Buyers (QIBs) and Institutional Accredited Investors (IAIs) from the record holder count for Mandatory Registration*[19] could be expanded to address these necessary updates to 12(g) with respect to online capital.

(b) Remove the Requirement for FINRA Participating Members to Comply with Corporate Financing Rule 5110 in Regulation A Offerings

Broker-dealer compensation in Regulation A offerings is currently governed by FINRA Rule 5110.[20] The compensation guidelines, based on analyses from 1990, are no longer applicable to contemporary online offerings utilizing private placement technology systems. Originally designed for traditional roadshows, Rule 5110 does not adequately account for modern technology fees, payment processing fees, marketing fees, or the blended fee models prevalent in today's market. These blended models enhance industry scalability and efficiency by consolidating necessary services for online Regulation A offerings and reducing costs compared to traditional, siloed services. They also have a high cost in technology development, which ultimately increases compliance and decreases costs to companies.

Compliance with Rule 5110 imposes an undue administrative burden on broker-dealers supporting Regulation A offerings, which are generally smaller in scale than traditional public offerings. Furthermore, Rule 5110 enforces compensation limits, which can create a disadvantage for registered firms subject to rigorous compliance standards. While these firms face fee restrictions, unregistered marketing agencies and promoters are not similarly constrained. This disparity incentivizes experienced brokers to leave the space, potentially leading to an influx of less experienced, unregistered entities. Investor protection is best served by specialized, regulated firms.

Brokers participating in Regulation A offerings should either obtain approval for a specialized Regulation A business line within their membership (similar to intermediaries in Regulation CF) or participate in a streamlined FINRA process as an alternative to Rule 5110. Broker-dealer conduct is overseen and reviewed by regulators through many existing processes including regular cycle exams; these existing mechanisms and frameworks should be sufficient for reviewing the compensation earned by brokers in Regulation A offerings.

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[19] H.R. 2605 118th Cong. (2023), available at https://www.congress.gov/bill/118th-congress/house-bill/2605/text

[20] The Notice To Members NASD 92-53 (available at https://www.finra.org/rules-guidance/notices/92-53), published by FINRA's predecessor, is still being used by FINRA today to determine limits on broker dealer offering fees for all public offerings, regardless of the size. NASD 92-53 determines whether fees are fair and reasonable as required by Rule 5110(1)(a) (available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/5110). NASD 92-53 fee limits are based on a survey of 874 offerings filed in 1991, and the expenses incurred by companies in 1991. It caps fees for these blended services (many of which did not exist in 1991), if offered in a combined package with broker dealer services. This approach ignores 30 years of innovative changes to capital formation strategies.

The existing framework of the *Unlocking Capital for Small Businesses Act*[21] can be leveraged to modernize Rule 5110, providing an exemption for broker dealers from compliance with the Corporate Financing Rule 5110 in Regulation A offerings.

These recommendations are especially pertinent given the pending Financial Innovation and Technology for the 21st Century Act (FIT21) bill. The current fee review process under Rule 5110 would pose significant challenges for an anticipated increase in crypto market participants, potentially delaying crypto offerings—an outcome FIT21 seeks to avoid. Aligning the fee review process with the proposed exemptive relief for Regulation A broker-dealers would foster a more consistent and efficient regulatory environment.

3. Expand the Availability of Regulation CF and Regulation A to More Participants

The expansion of the online capital market is contingent upon regulatory amendments that broaden participation. Barriers to entry inadvertently drive market activity into unregulated spheres, including areas such as cryptocurrency, non-fungible tokens (NFTs), and online gambling. Increasing the accessibility of regulated markets, with appropriate investment limitations, will redirect these funds toward American businesses, thereby fostering job creation. Furthermore, enabling broader market participation will enhance the overall quality of offerings, potentially leading to improved investment returns and a greater allocation of capital to legitimate, job-creating opportunities.

(a) Remove the "Common Control" Element of Regulation CF Companies Eligibility, Allowing Entities Under Common Control to Raise the Maximum Amount Under Regulation CF with the Addition of Disclosure about Shared Officers/Directors/Owners so that VC Backed Companies can use the Exemptions

Regulation Crowdfunding imposes a unique limitation on entities under common control, specifically restricting the amount of capital they are permitted to raise. This restriction differentiates Regulation CF from traditional capital-raising mechanisms and Regulation A, which do not have such limitations. As a consequence, numerous companies backed by strategic or venture capital investors, who often hold substantial ownership stakes or board positions, encounter limitations in utilizing crowdfunding. This, in turn, reduces the maturity of investment opportunities accessible to retail investors through online investment platforms.

Permitting entities under common control to be treated independently when calculating maximum offering amounts, provided that appropriate statutory disclosures are made, would significantly enhance the opportunity for traditional venture-backed companies to provide ownership opportunities to their users, which could also increase the survival rate of venture-backed companies that may not be able to pursue venture funding in different economic climate or who

[21] See H.R. 2590, 118th Cong. (2023) available at https://www.congress.gov/bill/118th-congress/house-bill/2590/text

don't meet rigorous venture follow-on capitalization requirements e.g. 50%+ growth rate, but are strong businesses.

(b) Pass the Unlocking Capital for Small Businesses Act and Expand the Finders Rules to Regulation A and Regulation CF

We express our support for the *Unlocking Capital for Small Businesses Act*[22], which provides an exemption from broker registration requirements for finders. This exemption should extend to not just accredited, but also non-accredited investors and provide a framework for people associated with capital raises who are unregistered to be compensated. Independent capital markets advisors serve a critical function in assisting companies to understand and comply with these regulations. The process of navigating service providers, understanding and adhering to digital marketing rules, creating necessary disclosures, and locating legal counsel specialized in exempt markets are all areas where capital markets advisors can provide valuable assistance, thereby contributing to the overall growth of the space. There are many intermediaries in the space now that are performing acts relating to digital offerings so a clear framework for those operating in the space would be helpful.

4. Modernize Marketing and Advertising Rules to Grow the Space and Create More Jobs [23]

The current regulatory framework surrounding companies communications in media such as TV, podcasts, and radio is ambiguous, hindering business growth and innovation.[24] To enhance the likelihood of success for companies, it is crucial to enable widespread promotion and discussion of their offerings, including verbal promotion as addressed by the *Helping Angels Lead Our Startups (HALOS) Act*. Increased awareness of compelling offerings will stimulate the market and encourage mainstream companies to utilize Regulations A and CF, thereby fostering job creation.

We envision a world where QR codes are on TVs and in sports stadiums, linking fans to broker-dealer-monitored landing pages with full disclosures, allowing people to invest small amounts in the brands they consume and love everyday around them, where investment opportunities are part of everyday life. Simplified and clear guidelines can help make this a reality.

Broader wording can be properly regulated by allowing discussion around future actions when an act subject to diligence has occurred. For example, allow a company to market that there will be a share price increase when a board of directors has passed a resolution to increase share price at a set future date. Prohibiting truthful communications about the terms of an offering or a

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[22] Id.

[23] The *Helping Angels Lead our Startups (HALOS) Act* could be expanded to include these concepts. See H.R. 1553 118th Cong (2023) available at https://www.congress.gov/bill/118th-congress/house-bill/1553/titles

[24] See Avlok Kohli, Written Testimony, U.S. House of Representatives Committee on Financial Services (December 4, 2024), available at https://docs.house.gov/meetings/BA/BA00/20241204/117742/HHRG-118-BA00-Wstate-KohliA-20241204.pdf

company's intent does not protect investors. Rather, simplifying the Regulation CF marketing rules to allow truthful communications about an offering, enhances investor protection and improves confidence in the markets by allowing companies to transparently inform their potential investors about the offering.

(a) Regulation CF [25]

Companies using Regulation CF express widespread frustration regarding the costs of navigating these complex rules and the resulting delays in offering launches.[26] This undermines the intention of the JOBS Act, which was to create a less expensive regime for small businesses to raise capital, while maintaining balanced protection for unaccredited investors.

The changes that Regulation CF advertising rules have around the point in time of the offering process are extremely confusing and very challenging to comply with. Ideally the rules are as similar as possible for both Regulation CF and Regulation A; and do not change at any time during the course of an offering.

Additionally, currently, Regulation CF restricts the mixing of "terms" and "non-terms" communication to the Intermediary's offering page. Regulation A does not have these limitations because shares are sold through an SEC-qualified offering circular. In practice, companies use general solicitation advertisements to identify prospective investors. When a broker-dealer acts as an intermediary, there should be a mechanism to allow mixed Terms/Non-terms communication outside the offering platform, subject to broker-dealer oversight and inclusion of statutory disclaimers. We support simplifying these rules to allow certain communications outside the landing page to include mixed term and non-term communications if reviewed by a registered intermediary.

(b) Regulation A

Regulation A offerings generally require a single fixed price[27], with fairly cumbersome methods to change this price during the course of an offering. As a result, companies are limited in how they can discuss potential price changes, creating vagueness and uncertainty for investors. Companies are further restricted in their ability to leverage investment incentives, or (in certain cases) to use Regulation A to mimic traditional *At The Market* offerings. Improving and streamlining the mechanism by which companies raising via Regulation A can update their share price and accordingly inform investors of those updates would unlock efficiency and access.

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[25] See 17 CFR §227.201.

[26] See 17 CFR §227.204. The rule divides communications based on when the communication is made: either before or after a Form C is filed with the SEC: Before a Form C is filed with the SEC, the issuing company can publicize its intention to conduct a Regulation CF offering under the Testing the Waters provisions of the rules. After a Form C is filed and is publicly available, the rules create two categories of communications - non-terms and terms, which are limited to a short list of key facts about the offering. In most cases companies use non-terms of communications, which means they are prohibited from mentioning facts about the key aspects of their offering.

[27] See 17 CFR §230.251(d)(3)(ii).

There has been significant advancement in online capital formation since the original marketing rules were passed, and updates would provide greater clarity needed to leverage traditional media like TV and radio and grow the space to create more jobs.

5. Increase Investor Participation to Grow Early Stage Investment Activity and Create Jobs via Tax Incentives

Another policy Congress may consider is a tax incentive for investors in Regulation crowdfunding and Regulation A offerings. This type of incentive has proven to stimulate economic growth and create jobs in other jurisdictions such as the U.K.

This incentivizing policy should be established in the U.S. to stimulate similar growth in the American ecosystem, remove barriers to investment and make it easier for everyday Americans to support entrepreneurs and contribute to job creation.

The UK's Seed Enterprise Investment Scheme (SEIS) and Enterprise Investment Scheme (EIS) offer tax breaks to investors who support early-stage and other businesses. See Schedule A for a more detailed summary.

Under SEIS

- Investors receive a 50% tax break on up to £200,000 invested in a qualifying business each tax year.
- 50% of capital gains are exempt from CGT if they're re-invested in a SEIS/EIS-eligible business.
- Companies are eligible for SEIS if they are incorporated in the UK, have been trading for less than three years, are not trading on a public stock exchange, have fewer than 25 full-time employees, and have less than £350,000 in gross assets.
- Most recently released data for the 2022-2023 tax year shows 1,815 companies raised £157 million (approx. USD $200M)) from SEIS investments.
- Since SEIS was introduced in 2012, equity-based crowdfunding in the UK grew from under £30 million in 2013 to almost £550 million in 2020, representing an 18 fold increase.[28]

Under EIS

- Investors receive a 30% tax break on up to £1 million invested in a qualifying business each tax year.
- Investors can claim EIS from four months after the business starts trading until five years after January 31 in the tax year after the investment.

[28] See Economics Observatory, "What is crowdfunding and how is it helping small businesses in the UK?", available at https://www.economicsobservatory.com/what-is-crowdfunding-and-how-is-it-helping-small-businesses-in-the-uk

- Companies are eligible for EIS if they are incorporated in the UK, have fewer than 250 full-time employees, and have gross assets of less than £15 million.
- Most recently released data for the 2022-2023 tax year shows 4,205 companies raised £1.957 billion (approx. USD $2.5B) from EIS investments

The exemptions under *Qualified Small Business Stock (QSBS) Exemption - Section 1202*[29] and *Investment Loss Deduction - Section 1244*[30] could be easily extended to the online investing space for early stage offerings under Regulation CF and Regulation A.

Incentivizing direct investment via Regulation CF benefits smaller retail investors and small business owners and entrepreneurs who frequently use Regulation CF to generate interest in their business and build brand communities. The proposed tax incentive is an implicit government endorsement which legitimizes crowdfunding i.e. the government wants me to do this. The incentive will encourage growth in the regulated investment crowdfunding community which will result in significant job formation.[31]

6. Harmonize the Space with Future Legislation

Finally, it is necessary to give advanced consideration to the integration of Artificial Intelligence (AI) into retail investment products. This strategic approach will ensure the sector remains at the forefront of technological development, meeting the evolving expectations of consumers who demand seamless online experiences, akin to those in unregulated sectors, as well as reducing cost of capital for companies. AI possesses the capacity to significantly benefit investors by enhancing communications pertaining to offering terms and regulatory compliance. AI can also bolster fraud detection, ensure adherence to marketing regulations, and facilitate the globalization of international rules for companies, thereby enabling international investors to support American businesses. If rules are created around these areas, growth will ensue.

In the immediate term, it is advisable to harmonize Regulations CF and A. Looking ahead, it is paramount to ensure complete harmonization of digital asset regulations with the existing regime so that investors are directed to deploy funds in ways that result in maximum job creation, and rules are clear and consistent for all market participants.

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[29] 26 U.S.C. § 1202.

[30] 26 U.S.C. § 1244.

[31] The Crowdfunding Professionals Association (CfPA) estimates even a small incentive (capped at $1,000 for a $2,000 investment) would sustain over 1 million new jobs, 120 billion in economic growth and support nearly 30,000 American businesses each year. See Press Release, Crowdfunding Professional Association (January 28, 2025) available at https://www.prweb.com/releases/coalition-for-crowdfunding-american-jobs-and-prosperity-launches-in-support-of-the-trump-jobs-act-302360632.html

Closing

In conclusion, the foundational legislation driving this discussion is the JOBS Act. The ultimate objective of our collective efforts is the creation of American jobs. It is profoundly rewarding to witness our customers expressing pride in the employment opportunities they have generated and the facilities they have constructed with the capital we have helped them raise.

We express our gratitude for the opportunity to present DealMaker's experience in capital raising and to highlight the experiences of our customers, American entrepreneurs and builders. Technological innovation driving American capital formation is central to our mission and operations. It is why we do what we do and we operate at the pace that we do; to keep up with the innovators of America, and their expectations.

The foregoing proposed regulatory amendments will expand the regulated sphere, thereby directing American investment capital towards the establishment and growth of American businesses and the creation of employment opportunities, as opposed to high-risk speculative trading that may result in financial losses without concomitant job growth.

We commend the important work of Congress and the diligent attention the Committee dedicates to this area. We are eager to continue collaborating with and supporting your groundbreaking endeavors. We welcome the opportunity to address your questions during the hearing and offer our continued assistance to the Committee in its vital capital formation efforts.

Appendix:
Schedule A: UK tax incentives

Appendix A
UK Early Stage Tax Incentive Strategies

The UK's Seed Enterprise Investment Scheme (SEIS) and Enterprise Investment Scheme (EIS) offer tax breaks to investors who support early-stage and other businesses.[32]

Funds raised can only be used on expenses to help the company grow or R&D. Companies using SEIS or EIS must get pre-approved by the government. Finally, companies must carry out a "qualifying trade." Nearly all trades qualify, with the exception that certain denominated trades cannot account for more than 20% of the business raising capital.[33]

SEIS

What Do Investors Get? Investors receive a 50% tax break on up to £200,000 invested in a qualifying business each tax year. Investors can claim SEIS from four months after the business starts trading until five years after January 31 in the tax year after the investment. 50% of capital gains are exempt from capital gains tax (CGT) if they are re-invested in a SEIS/EIS-eligible business

Which Companies Can Use It? SEIS is intended for very early-stage businesses that are raising capital for the first time. Companies are eligible for SEIS if the company:

- Is Incorporated in the UK.
- Has been trading for less than three years.
- Is not trading on a public stock exchange.
- has fewer than 25 full-time employees.
- has less than £350,000 in gross assets.
- hasn't already taken any EIS investments.
- Has never received investment from a venture capital trust.
- is not in control of another company that isn't a qualifying subsidiary.
- Is not and has never been under the control of another company.

Maximum Amount Raised: companies can receive a maximum of £250,000 in funding through SEIS.

EIS

What Do Investors Get? Investors receive a 30% tax break on up to £1 million invested in a qualifying company each tax year. Investors can also invest up to £2 million in a "knowledge

[32] See Vest "What Is SEIS" available at https://www.vestd.com/seis-and-eis-explained#:~:text=As%20of%20April%202023%2C%20investors,a%20much%20more%20attractive%20prospect

[33] Denominated trades: Coal or steel production,Farming or market gardening, Leasing activities, Legal or financial services, Property development, Running a hotel, Running a nursing home , Generation of energy, such as electricity and heat, Production of gas or other fuel, Exporting electricity, Banking, insurance, debt or financing services

intensive business" (KIC). 50% of capital gains are exempt from CGT if they're re-invested in a SEIS/EIS-eligible business.

Which Companies Can Use It? EIS is available to a wider range of small and medium-sized enterprises (SMEs). Eligible companies:

- permanently established in the UK.
- trading for less than seven years (although in some situations you can still apply).
- fewer than 250 full-time employees.
- less than £15 million in gross assets.
- not trading on a public stock exchange.
- Do not control another company (other than qualifying subsidiaries).
- not under the control of another company, nor does another company own more than 50% of its shares.
- don't plan on closing after completing a project (or series of projects).

Maximum Amount Raised: £12 million*capped at £5 million per year, up to £20 million for a knowledge-intensive company (KIC). This £12 million total includes money raised through SEIS, other venture capital schemes, social investment tax relief, and certain types of state aid.

Eligible SEIS Investors:

- hold the shares for at least 3 years.
- have a UK tax liability.
- not an employee or associate of one (though they can be a director).
- have no related investments.
- have no linked loans.
- Investment is not for the purposes of tax avoidance.
- don't own 30% or more of the shares or voting control in the company from the time of incorporation until at least three years after the share issue.

Eligible EIS Investors:

- hold the shares for at least 3 years.
- have a UK tax liability.
- not an employee or associate of one (though they can be a director).
- have no related investments.
- have no linked loans.
- Investment is not for the purposes of tax avoidance.

The following persons cannot invest in a startup through SEIS or EIS:

- Company's Employees
- Founder's Spouse or civil partner
- Founder' s Parents
- Founder's Grandparents
- Founder's Children
- Founder's grandchildren
- Anyone with 30% or more shares in the issuer's company or voting control.

Chairwoman WAGNER. Thank you, Ms. Kacaba.

Next on deck is Ms. Pinedo.

You are recognized for 5 minutes for your oral remarks.

OPENING STATEMENT OF ANNA T. PINEDO, PARTNER, MAYER BROWN

Ms. PINEDO. Chairwoman Wagner, Ranking Member Sherman, and subcommittee members, thank you for inviting me. I appreciate this opportunity.

I have been a Securities Lawyer for over 30 years, and I am a partner at Mayer Brown. My comments today reflect my own views.

I began practicing in the early 1990s, when initial public offerings (IPOs), including IPOs by smaller companies, were quite plentiful. That gave me the opportunity to work on many IPOs for companies of all sizes. It was a time when the financing trajectory for companies was quite well-understood and predictable. Within 5 to 7 years of inception, a company generally sought a liquidity event, and usually that liquidity event was an IPO.

Historically, an IPO allowed a company to raise a significant amount of capital—more capital than it could raise through any other means. An IPO was also regarded as an achievement for founders and for the company's investors. During that period of time, there was also an infrastructure that supported these companies.

Over time, the market has evolved, as we have discussed. Exempt offerings have become more significant, with increased use of shelf registration statements, promulgation of various safe harbors, and shortening of the Rule 144 holding period. At the same time, there has been a proliferation of additional investors in the private markets—hedge funds, private credit funds, private equity funds, and other investors.

The shift away from IPOs and the public markets has occurred as a result of market structure changes and increased regulation, with Sarbanes-Oxley and the Dodd-Frank Act, and the costs associated with being a public company. In recent years, more prescriptive disclosure requirements have arisen that add to this list. Recently adopted disclosure requirements have moved away from the bedrock principles of our securities framework, that of materiality.

What is the upshot of all of this? We have fewer public companies now than in the 1990s. The overall number of IPOs has declined, based on historic levels. Smaller public companies are disproportionately impacted by the costs of being public.

Once they are public, they benefit less from their publicness. What do I mean by this? I mean that once a company becomes public, historically it was always the case that it should be easier for these companies to raise money in the secondary market, that they would have liquid stock, that there would be research analyst coverage for them, but the historic promise of being public is not being realized for our smaller and medium-size companies. They are bearing the costs of being public, but they are not reaping the benefits. We should fix this.

Reliance on funding in the private markets has outpaced reliance on registered offerings. Regulators and legislators have expressed

concerns regarding the growth of the private markets and their opaque character.

As I noted when I previously appeared before this subcommittee, it would be a really grave mistake to look at the private markets as being suspect and in need of regulation and the public markets, by contrast, as being transparent and as being the best and the only solution for most companies.

Regulating the private markets out of existence is not going to magically bring back institutional investors who are going to support micro-cap and small cap stocks, nor is it going to magically bring back equity research coverage for small and micro-cap stocks that would be forced to become SEC reporting companies before they are ready to do that.

It is important to recognize that the markets have changed in really significant and irreversible ways and not to respond with reactionary responses.

Most private investments are limited to accredited investors. Only 19 percent of U.S. households qualify as accredited investors. However, in practice, I can tell you that most investments are limited to institutions and not to accredited investors. Most of the bills under consideration today would fix this.

In addition, they would strike the right balance and reach a new equilibrium between private and public and address other changes, including providing access to a broader group of individuals through potentially registered funds and providing greater access to capital formation for BDCs and other registered funds that address capital formation.

In my testimony, I suggest a number of other recommendations for consideration.

I thank you for your attention.

[The prepared statement of Ms. Pinedo follows:]

Testimony of Anna T. Pinedo

Partner, Mayer Brown LLP

Before the U.S. House Committee on Financial Services

Subcommittee on Capital Markets

Hearing on "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"
February 26, 2025

Chairman Wagner, Ranking Member Sherman and Members of the Subcommittee, thank you for inviting me to appear before you today. I appreciate the opportunity to discuss how our securities laws may be improved in order to increase investor access and to promote capital formation, thereby fostering economic growth and job creation.

As context for my observations today, I have been a securities lawyer for over thirty years now and am a partner at Mayer Brown in New York.[1]

I began practicing in the early 1990s, when initial public offerings (IPOs), including IPOs by smaller companies, were plentiful. This gave me the opportunity to work on many IPOs for companies of all sizes. It also was a time at which the financing trajectory for companies was well understood and predictable. A successful emerging private company generally sought venture capital financing after having received initial funding from friends, family and angel investors. Within five to seven years of its inception, a growth company sought a liquidity event and that liquidity event was, more often than not, a traditional IPO. Historically, an IPO allowed a company to raise a significant amount of capital—more capital than it could then raise through any other means. An IPO and listing a class of equity securities on a U.S. securities exchange was regarded as an achievement for founders and for the company's venture and institutional investors. During this period, there also was an infrastructure that supported smaller public companies. There were equity research analysts whose role resembled that of "gatekeepers," without whose support IPOs could not take place, and who provided post-IPO coverage on the securities of these companies, and there were market makers that provided liquidity in these securities. There also were institutional investors that invested in the securities of small and midcap companies.

Over time, however, the market has evolved. Exempt offerings and hybrid offerings have become more significant with the increased use of shelf registration statements, the promulgation by the Securities and Exchange Commission (SEC) of various safe harbors, and the shortening of the Rule 144 holding period.[2] I played a role in this evolution by introducing hybrid securities

[1] My comments today and the views I express are my own, and not those of Mayer Brown, nor attributable to any client or to any association of which I am a member.
[2] I have written about many of these changes in my books, including, among others, *Corporate Finance and the Securities Laws*, published by Wolters Kluwer (seventh ed. 2023, updated 2024), co-authored with Joseph

offering formats like the private investment in public equity, or PIPE, transaction, the registered direct offering, the at-the-market offering, and, eventually, during the financial crisis, the confidentially marketed public offering—all of which have, in certain important respects, blurred the lines between private (or exempt) offerings and public offerings.

At the same time, the private markets have become much larger due, in part, to the growth of hedge funds, private credit funds, private equity funds, sovereign wealth funds, and family offices.[3] Venture capital investors are no longer the only available or the best available source of capital for private companies seeking to fund their growth.

This shift away from IPOs and from the public markets occurred due to the confluence of these market structure changes and increased regulation, including the Sarbanes-Oxley Act and the Dodd-Frank Act, which increased the costs associated with being a public company. In recent years, more prescriptive and burdensome disclosure requirements should be added to the list of factors to blame. Often, the more recently adopted disclosure requirements have not taken into account the bedrock principle of our disclosure-based securities framework—materiality. Instead, many recently proposed or newly adopted disclosure requirements have been premised on seeking information that likely would not meet the materiality standard—that there be a substantial likelihood that a reasonable shareholder would consider it important in deciding whether to purchase a security, or that the omission of such information would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available. Furthermore, as these newer disclosure requirements have been adopted, fewer allowances have been made for foreign private issuers (FPIs), which traditionally were granted disclosure accommodations, and for smaller reporting companies, which have long benefitted from scaled disclosure requirements.

What's the upshot of all of this? There are fewer U.S. public companies now than there were in the 1990s. Based on statistics from the SEC's Office of the Advocate for Small Business Capital Formation, there were 3,636 U.S. public companies in 2024 compared to 7,414 in 1997. Institutional investors have fewer public companies in which to invest, and a significant percentage of our public companies are tech-focused.

The overall number of IPOs has declined based on historic levels. In 2022, there were 89 IPOs, which raised over $7.8 billion in aggregate proceeds; in 2023, there were 119 IPOs, which raised over $19.3 billion in aggregate proceeds; and in 2024, there were 160 IPOs, which raised over $29 billion in aggregate proceeds.[4] By contrast, the average number of IPOs per annum in the period from 1990 to 1999 was 529. This number fell to 205 during the period from 2000 to 2009. It is important to understand that the nature of the companies seeking to undertake IPOs

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McLaughlin; and *Exempt and Hybrid Securities Offerings*, published by Practising Law Institute (2009, second ed. 2011, updated 2014, third ed. 2017, fourth ed. 2022).

[3] Assets in global private markets totaled $14.7 trillion in the second quarter of 2024, over five times as much as in 2007, according to Preqin, a financial data provider. See, for example, "The Boom in Private Markets Has Transformed Finance. Here's How," Bloomberg, June 14, 2022, Dawn Lim and David Brooke. See as well Private Markets – A Growing, Alternative Asset Class ("As of 2023, private markets, excluding venture capital and hedge funds, assets under management (AUM) totaled more than $12.4 trillion globally as of 2023, up from $10.7 trillion at the end of 2022."), available at https://www.spglobal.com/en/research-insights/market-insights/private-markets.

[4] Statistics from Wolters Kluwer IPO Vital Signs, excluding SPAC IPOs.

and the IPO market has changed radically from that of the 1990s. Companies are waiting longer to undertake IPOs. The median age of companies when they have undertaken IPOs in recent years is ten years,[5] the median market capitalization for IPO issuers has been approximately $519.8 million, and the average market capitalization has been approximately $1.9 billion.[6] The companies that choose to go public wait much longer to do so, are much larger when they approach the public markets, and, based on my experience, generally, do not seek to go public because they need to raise capital. They have different motivations for doing so, including providing liquidity for their shareholders.

The SEC's Office of the Advocate for Small Business Capital Formation's Annual Report for Fiscal Year 2024 (the "Report" or "SEC Small Business Report") highlights another important and alarming trend—the decline in the number of smaller public companies. The Report notes that since 2022, IPOs by small companies have accounted for 40% of the number of IPOs, but only 4% of the deal value. The Report further notes that small exchange-listed companies account for the majority of the decline in the number of U.S. public companies. There is also a great and growing disparity between large exchange-listed companies and smaller public companies. The aggregate market value of large exchange-listed companies has grown—now to over $52.5 trillion—while the aggregate market cap of small exchange-listed companies has continued its decline to $104 billion.[7] In part, some of these developments are attributable to market structure changes. Yet, as the Report and as other academic research substantiates, smaller and medium-sized public companies are disproportionately impacted by the costs of being public. Also, once public, they benefit less from their "publicness"—by which I mean that once a company completes its IPO, the historic assumption always was that it would be easier to raise capital in the secondary market, there would be liquidity in its stock, there would be research analysts covering the company (thus, contributing to a more liquid market for its stock), and its stock would be valuable, both to employees who receive stock-based compensation awards and to acquisition targets. The historic promise of being public is not being realized for smaller and medium-sized companies. They are bearing the costs without reaping the benefits. This can be addressed as discussed below.

The other glaring change is that, as the public markets have declined in significance, the private markets have grown. For several years now, reliance on funding in the private (or otherwise exempt) markets has outpaced reliance on SEC-registered offerings. Based on data from the SEC's Division of Economic Risk and Analysis (DERA), from July 1, 2023 to June 30, 2024, companies, excluding pooled funds, raised $28 billion in IPOs and $1.2 trillion in other SEC-registered offerings, $170 billion in Rule 506(b) private placements, and $963 billion in other exempt offerings. During the same time period, pooled funds raised $4 billion in IPOs, $4 billion in other registered offerings, $1.7 trillion in Rule 506(b) offerings, $125 billion in Rule 506(c) offerings, and $99 billion in other exempt offerings.

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[5] Initial Public Offerings: Median Age of IPOs Through 2024, Jay Ritter (Jan 5, 2025), available at https://site.warrington.ufl.edu/ritter/files/IPOs-Age.pdf.
[6] Statistics from RBsource filings; IPOVitalSigns.
[7] Office of the Advocate for Small Business Capital Formation, Annual Report Fiscal Year 2024 (Dec. 2024) (referred to as the "SEC Small Business Report"), available at https://www.sec.gov/files/2024-oasb-annual-report.pdf.

There has been a fair bit of concern expressed by certain regulators regarding the growth of the private markets and the opaque character of these markets. Also concerns have been expressed about unicorns (private companies having a valuation of $1 billion or more) and their ubiquity. There are 1,258 unicorns globally, with a total aggregate valuation of $4.3 trillion. In the United States, there are 693 unicorns, or 55.1% of all unicorns.[8] In fact, the prior SEC rulemaking agenda contemplated potential amendments to the Securities Exchange Act of 1934, as amended, (the "Securities Exchange Act") Section 12(g) threshold, as well as to both Regulation D and Form D. These initiatives, and others like them, would appear to have at their root some inherent suspicion regarding the private markets and exempt offerings. As I noted when I previously appeared before this Subcommittee, it would be a grave mistake to look at the private markets as suspect and in need of regulation, and at the public markets by contrast, as more transparent and as the best or the better solution for most or for all companies. This is a false dichotomy. Put simply, regulating the private markets out of existence would not cause institutional investors to expand their support for microcap and small cap stocks. Nor would equity research coverage spring into existence for small cap and midcap companies that would be forced to become SEC-reporting companies before they are ready to do so.

The markets have changed in significant, and in some respects, irreversible, ways. It is important to acknowledge this and not to purport to address these changes with reactionary responses. Over time, as noted earlier, private or "restricted" securities have become more liquid. Additional investors have entered the private markets. Private equity has grown and private equity returns have fairly consistently outperformed the S&P 500. Public companies and public markets have become less attractive by comparison. Similarly, private credit has grown in recent years for many of these same reasons. Private companies are able to raise significant amounts of capital in the private markets.

Most private investments are limited to accredited investors. At present, according to the SEC Small Business Report, only 19% of U.S. households qualify as accredited investors. Companies generally want to limit the number of their holders that are non-accredited investors. In practice, for various regulatory reasons, most opportunities tend to be limited to an even more select audience: institutional accredited investors, investors considered institutional accounts (as defined under the FINRA rules), qualified institutional buyers (QIBs), qualified purchasers (QPs) and qualified clients. These are fairly high but also inconsistent thresholds. Retail investors may have some exposure to private investment opportunities indirectly through their investments in mutual funds. However, many registered funds are limited in their ability to invest in private funds and/or in the securities of private companies. Certain registered funds also may not offer their interests to investors that are not qualified clients or may be required to limit their offerings, to the extent they do invest in private securities, to accredited investors. In other cases, registered funds may be required to set a high minimum investment amount that necessitates that the investor have significant wealth in order to participate in the proposed offering. As a result, some of the concern regarding an inability to, or disparities in the ability to, request the information that would be necessary to make an informed investment decision in the context of private placements is, quite frankly, misplaced.

[8] Data from CB Insights.

As discussed further below, in reviewing the proposed bills under consideration, the definition of "accredited investor" is central to Regulation D and also important to various other securities exemptions. It has been based on the notion of identifying those persons "whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act's registration process unnecessary."[9] In 2020, the SEC amended this definition. It may be appropriate to amend the definition once again in order to allow additional categories of persons an opportunity to participate in the private markets. In light of the evolution of the markets, also providing access to the private markets to a broader cross-section of persons through registered funds, which are highly regulated and offer investor protections, would, in my judgment, constitute a reasonable and welcome approach.

In many respects, avoiding drastic policy pendulum swings would best serve the market, promote capital formation and help to preserve the U.S. capital markets as the envy of the world. There are quite a number of measures that can be taken in order to make it easier and more attractive for smaller and midcap companies to become public companies. A number of the bills under consideration by the Subcommittee reflect this approach. The SEC Small Business Report provides useful recommendations for revitalizing U.S. public markets for smaller and midcap companies, and contains important data regarding smaller reporting companies and the challenges that they face given current regulatory requirements and market dynamics.[10] Similarly, the SEC Staff has built on the successes of the Jumpstart Our Business Startups (JOBS) Act of 2012 by, for example, extending certain accommodations to issuers that are not emerging growth companies ("EGCs"). To the extent that various bills under consideration incorporate into statute a number of these positions, the additional certainty is useful. Alleviating the burdens associated with becoming a public company and transitioning from EGC status also should help quite a number of companies considering the public markets. As noted earlier, reviewing and assessing the regulatory burdens imposed on public companies is an important priority, and a number of the bills would do so. Striking the right balance and reaching some new equilibrium between "private" and "public" given the changed market environment, and allowing broader access to the private markets while being mindful of investor protection concerns is a challenge. A number of the bills under consideration that would expand the accredited investor definition to include additional categories of persons, with certain protections, would, in my judgment, constitute a path forward. Building on a number of the measures under consideration to modernize the regulatory framework for registered funds would be another important step in the right direction. Below, I offer some thoughts on individual bills and some further suggestions on measures that would supplement these.

Legislative Proposals

Given the number of bills under consideration by the Subcommittee, below I review a number of these in more detail by category.[11]

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[9] Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Release No. 33-6683 (Jan. 16, 1987), 52 Fed Reg 3015 at 3017.

[10] See note 7.

[11] The H.R. numbers and titles noted in the headings of this section reflect the H.R. numbers and titles of the 119th Congress to the extent any are available. The discussion drafts posted at this February 26, 2025 hearing are substantially similar in content to the H.R. bills referenced in this testimony.

Accredited Investor Definition

There are various bills under consideration that would revise the accredited investor definition. As discussed above, the definition always has been intended to identify individuals that possess the financial sophistication and the ability to fend for themselves, such that the protections associated with registration under the Securities Act of 1933, as amended, (the "Securities Act") are not needed. Currently, for individuals, we rely on an imperfect proxy to ascertain this, which is based on the wealth tests. The 2020 amendments to the definition added criteria based on experience or skills.

H.R. __, *the Fair Investment Opportunities for Professional Experts Act* is consistent with this historic approach in that it would expand the definition by including individuals with certain licenses or other qualifications—which licenses and qualifications would be determined by SEC rulemaking. H.R. __, the Accredited Investor Definition Review Act would require that the SEC review the certifications and credentials that qualify an individual as an accredited investor every five years. H.R. __, the Equal Opportunity for All Investors Act would expand the accredited investor definition by including investors that had been certified through an impartial exam established by the SEC and administered by FINRA. These expansions are appealing, although in practice they may be difficult to operate and for broker-dealers and others to address.

H.R. __, *Risk Disclosure and Investor Attestation Act* would appear to permit individuals to invest in private issuers once they acknowledge certain risk disclosures that the SEC prescribes. The SEC's Small Business Capital Formation Advisory Committee in 2024 considered the accredited investor definition and made certain recommendations to the SEC regarding the definition. In making its recommendations, the Committee took into account "the importance of facilitating greater access to capital for founders and the tension in regulatory policy between accessibility and government paternalism," among other factors. In so doing, the Committee recommended the inclusion of risk disclosures; however, the furnishing of, and the acknowledgment of receipt of, such disclosures was not intended to be the sole means of qualification. Risk disclosures can be a useful supplement to any of the proposed additional means of qualifying individuals as accredited investors, but it would be inconsistent to accept this as a sole criterion for investor qualification. H.R. __, Investment Opportunity Expansion Act would expand the accredited investor definition to include individuals who invest ten percent or less of the greater of their net assets or annual income in a private offering. While this approach mitigates risk of loss, it fails to take into account financial sophistication, which has long been at the heart of the concept of what constitutes an accredited investor.

H.R. __, *Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act* would expand the definition of accredited investor to include persons who receive individualized advice from a person who is an accredited investor under Rule 501(a)(10), which includes certain persons that hold FINRA licenses; however, this particular provision may, in fact, be expanded by other bills under consideration. In order to address investor protection concerns, while still expanding the pool of persons qualifying as accredited investors, this could be modified to require that the individualized advice be received from persons subject to Regulation Best Interest, or who are registered investment advisers subject to a fiduciary duty.

There are other possibilities that have been contemplated in the SEC's 2019 proposing release relating to the amendments to the accredited investor definition, as well as in the report of the Staff of the SEC on its Review of the "Accredited Investor" Definition under the Dodd-Frank Act that might be helpful to consider in connection with the proposed bills. For example, qualification based on investing experience or experience investing through an angel investment group should be discussed.

Extending the Benefits of the JOBS Act or Otherwise Promoting IPOs

I review in more detail below a number of proposed bills under consideration that would extend a number of the benefits and reforms enacted by the JOBS Act, particularly by expanding the time period that a company can be classified as an EGC.

Since the passage of the JOBS Act in 2012, over ten years ago, significant market practice has developed with respect to the various disclosure-based accommodations available to EGCs, which should allay any investor protection concerns. Over time, and building on the success of the JOBS Act provisions, the SEC Staff in 2017 extended to all issuers the ability to submit confidentially draft registration statements under the Securities Act and the Securities Exchange Act for IPOs and for most securities offerings made within the first twelve months of the issuer having first become an SEC-reporting company.[12] The proposed bills would codify this practice, as well as address the time periods when an EGC or any other issuer that has confidentially submitted a registration statement for SEC review must publicly file its registration statement with the SEC. Codifying these requirements and shortening these time periods will be helpful to market participants.

H.R.___, *the Encouraging Public Offerings Act*, would effectively codify Securities Act Rule 163B and extend the ability to test the waters that is available to EGCs to other issuers. In 2018, the SEC adopted Rule 163B, which permits issuers to test the waters prior to a registered public offering by engaging in oral or written communications with potential investors that are, or that are reasonably believed to be, QIBs or institutional accredited investors without such communications being considered "gun jumping" communications.[13] Given that the broader access to the test-the-waters provisions have existed since 2019, and have not raised any investor protection concerns, it is both reasonable and appropriate to codify this communication safe harbor.

H.R. ___, *a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes* would codify existing Staff policy with respect to confidential submission of draft registration statements, and also would provide for confidential treatment of such confidentially submitted registration statements.

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[12] Draft Registration Statement Processing Procedures Expanded, https://www.sec.gov/corpfin/announcement/draft-registration-statement-processing-procedures-expanded.

[13] Solicitations of Interest Prior to a Registered Public Offering, Release No. 33-10699 (Sept. 26, 2019), https://www.sec.gov/rules/final/2019/33-10699.pdf.

H.R. ___, *a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes*: establishes that an EGC, as well as any issuer that relied on the EGC disclosure accommodations (and has since ceased to be an EGC), would not be required to present financial statements or acquired company financial statements (for example, for purposes of Rule 3-05 of Regulation S-X relating to acquired businesses, or Article 11 of Regulation S-X relating to pro forma financial statements) for a period longer than the two years of audited financial statements. This is another important clarification that would provide much-needed certainty to practitioners and to market participants.

H.R. __, *the Helping Startups Continue to Grow Act* would provide the benefits and reforms available to EGCs for an additional five years, provided that such companies continue to meet the other EGC requirements. Once companies cease to qualify as EGCs, they typically face significant additional disclosure and other reporting requirements, which impose substantial costs.[14] Most important from a cost and timing perspective, following loss of EGC status, the company must include with its first annual report on Form 10-K filed thereafter, an auditor's opinion on the effectiveness of internal control over financial reporting (ICFR). This bill is generally consistent with the goal of the JOBS Act's IPO On-Ramp to "right-size" public company regulation. To the extent an issuer continues to qualify as an EGC based on the other prongs of the definition (i.e., revenue, debt issued, etc.), other than the passage of time, it ought to continue to be able to conserve its resources, continue to provide investors the same kind and quality of information it has been providing since its IPO, and not cease being an EGC and thus becoming subject to a much more onerous reporting regime merely because an arbitrary period of time has elapsed. However, the bill also would modify the threshold to qualify as an EGC to $3 billion. This change may merit some further study. Similarly, the bill would remove the disqualification for "large accelerated filers," which prong should be carefully considered, especially when taken together with other proposed measures that would revisit the various definitions of smaller reporting company, accelerated filer and large accelerated filer. These might best be left to SEC rulemaking.

H.R. __, *the Middle Market IPO Underwriting Cost Act* this bill would require the Comptroller General to study and report on the costs encountered by small-sized and medium-sized companies when undertaking IPOs and certain offerings exempt from securities registration requirements. Given the decline in the number of public offerings by small and medium-sized companies, a more in-depth study of the contributing factors would help identify potential policy responses.

Reducing the Burdens for Public Companies and Addressing Public Company Disclosures

Importantly, the proposed bills would also expand the number of companies that could qualify for the well-known seasoned issuer, or WKSI, status. Allowing additional seasoned issuers to qualify as WKSIs would greatly facilitate the ability of many companies to access public markets, especially due to the enhanced flexibility for communications and the ability to file an

[14] These disclosures include enhanced executive compensation disclosures and pay versus performance disclosures. In addition, an issuer will have to hold a say-on-pay vote and a say-on-golden-parachute vote (if shareholders are approving an acquisition, merger or related transaction).

immediately effective shelf registration statement (an option that currently is available to only a small percentage of public companies). As the public markets are more volatile than ever, and the concerns expressed regarding increased reliance on the private markets, it is reasonable to provide experienced SEC-reporting companies that are not delinquent in their public filings and otherwise meet applicable conditions, including a lower public float test, the ability to file an automatically effective shelf registration statement, thereby seizing opportunities to finance when there are "open market windows" to do so. The SEC now has in place a policy of reviewing the filings of registrants every three years so a registrant's filings would remain subject to SEC Staff review on a regular schedule, which would not be altered by the proposed change.

Since WKSIs are seasoned issuers and are generally well-followed companies, WKSIs are subject to the least burdensome offering and communication requirements. Perhaps most importantly, a WKSI may file an automatically effective shelf registration statement and post-effective amendments. A WKSI's automatically effective shelf registration statement also may omit certain information and the specific offering-related details can be provided at the time of a specific transaction, providing the issuer with enhanced flexibility. As companies are increasingly concerned about publicly announcing any follow-on offering and having such an announcement result in shorting activity in their securities or other aberrational trading, being able to time the filing of a shelf registration statement until it is needed will be an important tool. For a company that would like to be able to raise capital in the public markets to fund an acquisition, knowing that it can file an automatically effective shelf registration statement will be meaningful. The alternatives now available in such an instance are far less appealing and much more expensive. A company that does not already have an effective shelf registration statement in place would have to file a new shelf registration statement with the SEC (or a registration statement relating to a particular proposed offering) and subject itself to the possibility of SEC Staff review. During this time, the market may react poorly to the filing of the registration statement. This waiting period, whether to learn if the registration statement will be reviewed, or for the SEC Staff comments if the filing will be reviewed, results in significant uncertainty for a company since it cannot time when it will be able to access the public markets. Of course, the company might choose to finance by conducting a private placement or other exempt offering; however, there will still be a liquidity discount associated with any such offering alternative compared to a public offering. As a result, making an automatically effective shelf registration statement more broadly available will provide greater flexibility to public companies and should lower their cost of capital. A WKSI also has greater flexibility with respect to oral and written communications, such as greater flexibility relating to the use of free writing prospectuses, which is likely to be important to many issuers.

H.R. __, *a bill to expand WKSI Eligibility* the proposed bill under consideration would expand the availability of WKSI status by updating the WKSI definition to apply to all companies that otherwise satisfy the WKSI definition with a public float of $75 million, rather than the current public float of $700 million. While an expansion of the definition is an important priority for the reasons set forth above, the threshold for WKSI status should reflect an appropriate and substantial public float. In light of the importance of conferring WKSI status on issuers, and the various ramifications of doing so, setting this threshold might best be left to SEC rulemaking. This particular threshold might be considered by reference to the definitions of other important terms, such as, "smaller reporting company," "accelerated filer," and "large accelerated filer."

H.R. __, *Smaller Reporting Company, Accelerated Filer, and Large Accelerated Filer Thresholds* would raise the thresholds and remove overlap in the definitions to qualify as a smaller reporting company, accelerated filer, and large accelerated filer. It also exempts certain low-revenue issuers from being required to have their management's assessment of the effectiveness of ICFR attested to, and reported on, by an independent auditor, as required by Section 404(b) of the Sarbanes-Oxley Act.

At present, the overlap between the definition of a smaller reporting company and an accelerated filer is fairly narrow. However, the SEC's 2020 amendments to these definitions and the choice not to keep the smaller reporting company definition and non-accelerated filer definition aligned have made these rules more challenging for issuers to understand. It would also be very constructive for the SEC to conduct a study regarding the accommodations provided to smaller reporting companies, taking into account how the costs associated with remaining public companies might be reduced for these filers. This would be consistent with the findings in the SEC Small Business Report, and also with the SEC's mission of promoting capital formation while focusing on investor protection concerns. In the same or in a different study, the SEC might review the definitions of non-accelerated filer, accelerated filer and large accelerated filer—all of which are referred to in various of the proposed bills under consideration.

This bill also would exempt certain low-revenue issuers from Section 404(b) of the Sarbanes-Oxley Act. Again, here it is instructive to refer to the SEC Small Business Report, which documents the average internal annual Sarbanes-Oxley Act compliance costs. Many of these costs are disproportionately higher for smaller reporting companies.[15] Academic studies have shown that there is little evidence as to whether an ICFR audit affects ICFR quality or the utility of management internal control reports and the ultimate quality of financial reporting.[16] Yet, the costs associated with the Section 404(b) attestation requirement are significant, and, as indicated in various studies, have not declined over time. Moreover, they are not scaled proportionately for smaller companies so these companies are likely to bear a disproportionately negative impact from the requirement without there being a commensurate proven benefit from a disclosure or investor protection perspective. When the SEC amended the definition of "smaller reporting company," it provided some relief for certain low-revenue companies from Section 404(b) attestation requirements—there has been no evidence that this change resulted in any investor protection concerns.

H.R. __, *the Enhancing Multi-Class Share Disclosures Act* this bill would require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material. As a general matter, there have been a number of recommendations from advisory groups and other interested parties relating to additional disclosures relating to dual and multi-share class structures. If the SEC were to prescribe reasonable disclosures relating to information that would be material to investors, it would be helpful.

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[15] Annual Report Office of the Advocate for Small Business Capital Formation Fiscal Year 2024, see note 7.
[16] See, for example, McCallen, Jennifer and Schmardebeck, Roy and Shipman, Jonathan E. and Whited, Robert Lowell, Evidence on the 2020 Exemption of Low-Revenue Issuers from the Internal Control Audit Requirement (May 30, 2022). Available at SSRN: https://ssrn.com/abstract=3420787 or http://dx.doi.org/10.2139/ssrn.3420787.

H.R. __, *Remove Aberrations in the Market Cap Test for Target Company Financial Statements* this draft would codify guidance relating to the determination of a company's market capitalization, in the context of testing the significance of an acquisition or disposition, and determining whether a target company's financial statements are required. This would provide very useful certainty.

Addressing the Private Markets

Exchange Act Section 12(g) Threshold

H.R. __, *a bill to exclude QIBs and IAIs From the Record Holder Count for Mandatory Registration* would modify the Securities Exchange Act Section 12(g) threshold, which triggers public reporting, in order to provide that the 2,000 or more holders of record shall exclude QIBs and institutional accredited investors. Under Section 12(g) of the Exchange Act, as amended by the JOBS Act, the Exchange Act reporting requirements are not triggered if the issuer has fewer than 2,000 holders of record of its equity securities and fewer than 500 holders of record who are not accredited investors. As noted earlier, unfortunately, discussions regarding whether the Section 12(g) threshold should be recalibrated in order to prevent companies from staying private "too long" lack a basis in fact. The JOBS Act modified the Section 12(g) threshold; however, the JOBS Act is not responsible for changing the capital markets and the JOBS Act was not the catalyst for the growth of the private markets. The growth of the private markets and the availability of funding from a multiplicity of private capital sources have contributed to companies staying private longer. Similarly, many other factors, such as the market structure changes to which I alluded earlier and regulatory developments, also have contributed to companies choosing to defer IPOs or to prefer mergers or other strategic alternatives rather than becoming public companies. The public markets are no longer particularly welcoming to smaller public companies. Smaller company IPOs generally do not fare as well as the IPOs undertaken by companies that are larger (by market capitalization at the time of their IPOs). Forcing a company to become subject to SEC reporting will not change market dynamics. Accordingly, institutional investors should not be "counted" toward the 2,000 holder of record prong of the Section 12(g) threshold that would trigger SEC reporting requirements. By excluding these holders from the count, companies would effectively have greater flexibility to remain private. This change would also not affect the information that is available to these investors. QIBs and institutional accredited investors are able to fend for themselves and obtain the information that they require to make informed investment decisions regarding private placements. In connection with making their investments in private companies, institutional investors generally negotiate for themselves information rights, as well as affirmative and negative covenants that allow them to monitor to an extent the activities of the companies. These rights are, from a business perspective, what the investors believe to be adequate to protect the value of their investments. We should rely on private ordering to determine the information companies provide to institutional shareholders.

Regulation A

H.R. __, *Regulation A+ Improvement Act* this proposed bill draft would increase the amount that companies can raise under Regulation A to $150 million and would require the SEC to adjust this amount for inflation regularly. Currently, the Regulation A Tier 2 offering threshold is set at $75 million for a twelve-month period. Based on reports provided by the SEC's DERA, the amounts being raised in such offerings are relatively modest and do not come close to breaching this threshold. Nonetheless, perhaps raising the threshold might make this another pathway to a smaller company IPO alternative. However, this should be considered in connection with the other proposed bill relating to state securities law preemption.

H.R. __, *Restoring Secondary Trading Market Act* this proposed bill would amend the Securities Act in order to preempt state securities laws for off-exchange secondary trading in companies that make available current public information, including information required by Regulation A. It is unclear, as written, whether this would address resales for all Regulation A Tier 2 securities. It may helpful to have the SEC undertake a study of the current resale exemptions available under the Securities Act, and the limitations that these impose on a liquid secondary market developing for the securities of smaller public companies. The SEC addressed resale exemptions in a limited fashion in its Concept Release on the Harmonization of Securities Offering Exemptions but not since and has yet to make any recommendation. In this context, such a study might lead to a definition of "qualified purchasers" that also includes resales of Regulation A securities and that also address other pressing matters such as the issues that arose when state securities regulators in a state recently and seemingly inadvertently took action that paralyzed the institutional debt markets.

Modernizing the Regulation of Funds

As discussed above, modernizing the regulatory framework relating to various fund products, including registered investment companies and business development companies (BDCs) (collectively, "regulated funds") that are subject to requirements of the Investment Company Act of 1940, as amended (the "Investment Company Act"), among other requirements, as well as private funds that operate in reliance on an exemption or an exclusion from the definition of an investment company under the Investment Company Act would promote capital formation and would expand investment opportunities in a controlled manner.

There are various proposed bills under consideration that include the following:

H.R. __, *the Improving Disclosures for Investors Act* that directs the SEC to promulgate rules with respect to the electronic delivery of certain required disclosures to investors. Under the bill, such rules would permit registered investment companies (i.e., mutual funds, closed-end funds, and exchange-traded funds), BDCs, registered broker-dealers, registered advisers, and other SEC-regulated entities to meet their obligations under U.S. securities laws to deliver regulatory documents to investors electronically. This would provide investors with easy access to disclosures, enhance transparency and make it significantly more convenient for investors to review important information in a timely manner. The transition to electronic delivery is expected to reduce the administrative burden on companies and investors, cut costs related to printing and mailing paper documents and increase efficiency. Nonetheless, the SEC would still

have the opportunity as part of its rulemaking to address any concerns, such as ensuring the security of electronic communications and obtaining the investor consent to receive documents electronically.

H.R. __, *the Increasing Investor Opportunities Act* that would amend the Investment Company Act to remove an informal SEC staff-level position that places a limit on the amount of assets a closed-end fund may invest in private funds. Closed-end funds should not be subject to a 15% limit on their investments in private securities in light of the already burdensome regulatory framework to which these vehicles are subject. Currently, the only way to address this staff position is for the closed-end fund to limit the offering of its shares to accredited investors with minimum initial purchases of at least $25,000. By allowing closed-end funds to invest a greater portion of their assets in private funds, the proposed bill would expand investor access to the private markets while maintaining the investor protections established under the Investment Company Act.

H.R. __, *the Small Business Investor Capital Access Act* that would amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for advisers to small private funds to reflect changes in inflation. The Act would require that this threshold be adjusted periodically for inflation, ensuring that it remains relevant over time. By increasing the threshold, smaller investment funds would face fewer regulatory costs.

H.R. __, *the Improving Capital Allocation for Newcomers (ICAN) Act* that would modify the Qualifying Venture Capital Fund Exemption under Section 3(c)(1) of the Investment Company Act by increasing the cap on aggregate capital contributions and uncalled capital commitments from $10 million to $150 million, and also increasing the allowable number of beneficial owners in a qualifying venture capital fund from 250 to 2,000. These changes would enable venture capital funds to raise and manage more capital without triggering the need to register under the Investment Company Act. In addition, it would enable a broader base of investors to participate in venture capital funds, making it easier for funds to scale and attract more capital.

H.R. __, *the Developing and Empowering our Aspiring Leaders (DEAL) Act* that would require the SEC to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940.

H.R. __, *To permit a registered investment company to omit certain fees from the calculation of Acquired Fund Fees and Expenses, and for other purposes* that would allow a registered investment company to exclude from the calculation of acquired fund fees and expenses those incurred indirectly from investment in a BDC. The Acquired Fund Fees and Expenses (AFFE) rule requires funds to add the actual expense that acquired funds incur to their own operating expenses. The change to AFFE was adopted by the SEC in 2006; however, as it applies to BDCs in particular, it double counts the expenses of a BDC investment resulting in an inflated, artificial percentage for the "total annual fund operating expenses" line item in the prospectus fee table. Furthermore, the registration statement requires an "Expense Example" that follows the methodology of the fee table and uses the inflated, artificial percentage in order to calculate the operating expenses for various time periods (1, 3, 5 and 10 years) of a $10,000 investment in the fund. Inclusion of AFFE in the calculation of the Expense Example inflates actual expenses exponentially over these various time periods. This change had as its consequence the exclusion

of BDCs from certain broad-based indices and that, in turn, led to institutional investors moving out of their BDC investments. This has meant that BDCs have less capital to deploy. BDCs are an important source of venture debt and growth capital for small and medium-sized private companies in the United States and fill a crucial gap not addressed by bank lenders. This is, therefore, an important change.

Generally, modernization of the rules and regulations related to regulated funds as a means of promoting capital formation would be an area as to which a further SEC study might be mandated. Comments on this topic were solicited by the SEC in connection with the Concept Release on Harmonization of Securities Offering Exemptions, and various SEC advisory committees have considered this as well. Consideration might be given to modernizing the framework relating to BDCs, especially in light of the fact that during the pandemic relief was granted and no investor protection issues were raised. Also, as a result of many years of exemptive and no-action letter relief, there is well-settled guidance relating to the issuance of multi-share classes of equity securities and the ability to enter into affiliate and joint transactions. There has been increased market interest in interval funds, tender offer funds and target date funds, yet the regulations relating to these vehicles has not kept pace with recent developments. These vehicles might well serve as regulated entities that provide a means for allowing broader access to investments in private funds and to investments in the securities of private companies. Such a study would necessarily have to consider the permissibility of various fee structures in order to compensate managers of such vehicles so that, for example, an incentive fee might be charged even when fund interests are offered to persons that are not qualified clients.

In connection with such a study, the SEC might consider allowing BDCs to rely on Rule 18f-3 under the Investment Company Act without the need to obtain exemptive relief from the SEC. Rule 18f-3 already allows mutual funds to adopt flexible pricing and liquidity policies, including the ability to issue multiple classes of shares with different distribution fees, while maintaining a single pricing structure. Extending the applicability of this rule to BDCs would allow them to issue multiple classes of shares with differing voting rights, fees or other rights subject to the same investor protection conditions under the rule's framework.

Additional Recommendations for the Subcommittee's Consideration

In light of the fact there are many factors that contribute to creating an ecosystem that promotes capital formation, the Subcommittee might be well advised to urge the SEC to undertake a study or studies that would review the following areas, each of which, in practice, is important both to companies and to the financial intermediaries that act as placement agents and underwriters in capital-raising transactions:

- a study by the SEC (possibly jointly with FINRA) aimed at streamlining the equity research rules in order to promote capital formation. The combination of the Global Settlement, Regulation AC, and the FINRA rules, together with MiFID issues, makes compliance with the research rules extremely costly for market participants. Many of the rules are overlapping. The Global Settlement no longer serves any useful purpose;

- an SEC review of the disclosure accommodations provided to FPIs that choose to become subject to SEC reporting requirements with a view to encouraging more FPIs to go public in the United States and list their securities on US national securities exchanges;

- an SEC analysis of the offering related communications safe harbors provided under the Securities Act for non-reporting and reporting companies, which have not been substantially updated since Securities Offering Reform in 2005, given the advances in communications since 2005 and in order to promote greater transparency in the public markets, provide investors with access to information and promote capital formation. There are some outdated communications safe harbors that are little-used because they are too prescriptive;

- an SEC assessment of the use of social media and the securities laws since that the SEC's interpretive guidance on this topic dates back to its 2000 release, and there has been a proliferation of social media usage, including by public companies, to communicate with investors; and

- an SEC review of the current resale exemptions available under the Securities Act, and the limitations that these impose on a liquid secondary market developing for the securities of smaller public companies.

Finally, consideration should be given to those rules applicable to smaller public companies and their ability to raise capital, such as their ability to use shelf registration statements and the eligibility requirements and instructions under I.B.6 of Form S-3 relating to primary offerings for cash as these apply to certain smaller public companies (those that have a public float of less than $75 million and are subject to the "baby shelf requirements," which limit their ability to sell securities to only one-third of their public float during the 12 calendar months immediately prior to the sale using Form S-3, excluding any sales prior to the issuer becoming subject to the baby shelf requirements).

Concluding Thoughts

While additional reforms should be considered to address the issues facing smaller public companies, today's proposed measures are a good step in the right direction. It is for these reasons that I support the proposed bills subject to the specific comments and qualifications made in this statement while, of course noting that the SEC's administrative flexibility relating to the implementation of many of the specific measures contemplated here should not be negatively impacted.

Chairwoman WAGNER. Thank you, Ms. Pinedo.

Ms. Thornton, you are now recognized for 5 minutes for your oral remarks.

STATEMENT OF ALEXANDRA THORNTON, SENIOR DIRECTOR OF FINANCIAL REGULATION, INCLUSIVE ECONOMY, CENTER FOR AMERICAN PROGRESS

Ms. THORNTON. Thank you.

Chairwoman Wagner, Ranking Member Sherman, and members of the subcommittee, thank you for the opportunity to testify today.

Capital markets work best when there is an informed bargain between the seller and the buyer of securities. Investors seeking returns provide their capital to businesses and funds, who in turn put that capital to use.

Information is an essential part of that bargain. Without it, there would be significant investor loss and economic waste. U.S. capital markets are the most robust in the world, in large part because they require those seeking to raise capital from investors to provide basic information to investors.

The government does not block investors. It does not approve or disapprove of investments. Congress decided long ago that investors needed the government to ensure they had fundamental accurate information and basic rights, and, with those tools, investors would be empowered to drive our capital markets and economy forward.

The disclosure of information improves price discovery, makes the markets more fair, more orderly, and more efficient, and protects investors from abuses, such as information asymmetry. Even the most sophisticated investors cannot exercise their superior knowledge and expertise if they do not have reliable information about a company's financials, operations, and risks.

Many of the bills before the committee today, however, would expand the ability of private market companies and funds to sell securities to a broader range of investors without providing accurate information about operations, management, risks, and financial position—the amount and type of information that potential investors and other participants in the public markets receive.

This is not expanding or improving capital formation, it is increasing risks for more investors and tilting the bargain in favor of the private party seeking capital. It is expanding the reach of those hidden risks into potentially millions of American homes.

The timing for many of these proposals seems particularly ill-advised. Private markets are becoming ever larger. Without mandated information, asset prices frequently become detached from the underlying intrinsic values of the assets themselves, especially among large, highly valued private firms, or unicorns. Private company and private fund stakes are frequently being sold in loosely regulated secondary markets at fractions on the dollar. Different groups of investors are frequently treated differently and provided with different information or none at all. While there is strong evidence that fraud occurs, it is difficult to police.

Introducing to these markets' nonprofessional investors, who do not have dedicated accountants, lawyers, risk officers, or investment professionals or billions of dollars that they can afford to

leave locked up for 10 years at a time, is extremely risky and will likely lead to extensive losses for those investors and waste of capital. It could facilitate the ability of private companies, funds, and their founders and early investors to offload their riskiest, worst opportunities onto a less discerning customer. That is not improving or forming capital, it is simply enabling a wealth transfer away from the retail investors who lack information.

Worse, the Securities and Exchange Commission, which ensures this essential bargain between companies, funds, and investors, is facing significant changes right now that could hamper its ability to protect investors.

When the securities laws were first adopted and, in the decades thereafter, offerings to even a single person or to a small number of employees were deemed to be public offerings in need of being registered. Beginning in 1982 with the promulgation of Regulation D, there has been a proliferation of exemptions from the public disclosure framework.

The stated intention of those exemptions, and their subsequent expansions has been to provide more access to capital for small businesses, but the reality is that those exemptions, along with a couple of loopholes in the law, have enabled virtually any company of any size to obtain capital from the public without complying with the public disclosure framework.

As a result, a substantial and growing number of companies are choosing to remain private as they raise capital and often only end up coming to the public markets to cash out significant investors and founders.

The result of Congress and the SEC creating and expanding exemptions from the Federal regulatory disclosure framework is that the vast majority of capital raised is exempt, and that explosive growth of the private markets has come at the expense of public markets.

The problem is not that the rules prevent small businesses or startups from obtaining capital. It is that the rules today allow companies with billion-dollar valuations, billions in revenues, and thousands of investors to never provide basic information to investors, regulators, and the public, and private funds to raise billions of dollars from underlying investors without basic expectations, like timely, comprehensive, and reliable disclosures about their finances, governance, and operations.

This situation enables capital distortion, like inflated valuations, lax internal controls, inconsistent disclosures across investors, and potential fraud and abuse. Today, there are more than 1,200 private companies with more than a billion dollars each.

In my written testimony, I have included several recommendations for how to rebalance public and private markets.

I want to thank you for inviting me to testify today. I look forward to answering question.

[The prepared statement of Ms. Thornton follows:]

Written Testimony of

Alexandra Thornton, Senior Director

Center for American Progress

Before the United States House of Representatives Financial Services Committee

Subcommittee on Capital Markets

"The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"

February 26, 2025, 10am

Chairwoman Wagner, Ranking Member Sherman, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss access to capital markets and facilitating capital formation.

My name is Alexandra Thornton. I am senior director of financial regulation at the Center for American Progress, an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action.

Capital markets work best when there is an informed bargain between the seller and buyer of securities. Investors seeking returns provide their capital to businesses and funds, who in turn, seek to put that capital to use. But what if the capital that is formed by those businesses and funds is not put to good use? What if it is used to provide more compensation for the company executives? Or what if the company's products do not sell? Would the investors have provided the capital if they had known about these risks?

The way the US. capital markets, which are the most robust in the world, guard against investor loss and economic waste is to require those seeking to raise capital from investors to provide basic information to investors. The government does not block investors. It does not approve or disapprove of investments. Congress decided long ago that investors needed the government to ensure they had fundamental, accurate information, and basic rights. And with those tools, investors would be empowered to drive our capital markets and economy forward.

Many of the bills before the committee today would expand the ability of private market companies and funds to sell securities to a broader range of investors without providing accurate information about operations, management, risks, and financial position—the amount and type of information that potential investors and other participants in the public markets receive. This is not expanding or improving capitalism. It is unreasonably increasing risks for investors and tilting the bargain in favor of the party seeking capital.

Expanding access to a wider swath of investors and the public would do nothing to reduce the hidden risks of those investments, but it would expand the reach of those risks into potentially millions of American homes.

The timing for much of this legislation seems particularly ill-advised.

Private markets are becoming ever larger.[1] Asset prices frequently become detached from the underlying intrinsic values of the assets themselves, especially among large highly-valued private firms, or unicorns, as I will explain later in my testimony. Private company and private fund stakes are frequently being sold in loosely regulated secondary markets among sophisticated investors at fractions

[1] McKinsey & Company, "Global Private Markets Report 2025: Private equity emerging from the fog," February 13, 2025, available at https://www.mckinsey.com/industries/private-capital/our-insights/global-private-markets-report.

on the dollar.[2] Adding further risk is the relatively new phenomenon of billion-dollar private company frauds every year or so.[3]

Introducing to these markets non-professional investors who do not have dedicated accountants, lawyers, risk officers, or investment professionals, or billions of dollars that they can afford to leave locked up for ten years at a time, is extremely risky and will likely lead to extensive losses and waste, as it could facilitate the ability of private companies, funds, and their founders and early investors to offload their riskiest, worst opportunities onto a less discerning customer. That is not improving or forming capital, it is simply enabling a wealth transfer away from retail investors who lack information.

Worse, the Securities and Exchange Commission (SEC), which ensures this essential bargain between companies, funds, and investors, is being severely strained. With fewer enforcement staff[4] and insufficient data collection,[5] not to mention the potential for greater influence from billionaires whose companies have been and likely would otherwise be subject to regulatory oversight,[6] investor protection is in jeopardy.

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[2] David Snider, "Secondary Stock Sales: A Guide for Startup Employees Looking to Sell Private Company Stock," Harness, October 5, 2024, available at https://www.harnesswealth.com/articles/secondary-sales-private-company-stock/#:~:text=In%20secondary%20sales%2C%20private%20company,to%20the%20potential%20future%20value..

[3] See, e.g., Verity Winship, "Private Company Fraud, UC Davis Law Review, December 2020, available at https://lawreview.law.ucdavis.edu/archives/54/2/private-company-fraud.

[4] Matthew Goldstein, Eric Lipton and David Yaffe-Bellany, "SEC Moves to Scale Back Its Crypto Enforcement Efforts," The New York Times, February 4, 2025, available at https://www.nytimes.com/2025/02/04/business/sec-crypto-task-force.html.

[5] Release No. 34-102386, Securities and Exchange Commission, February 10, 2025, available at https://www.sec.gov/files/rules/sro/nms/2025/34-102386.pdf.

[6] See, e.g., Dave Michaels, "SEC Probes Trading by Elon Musk and Brother in Wake of Tesla CEO's Sales," The Wall Street Journal, February 24, 2022, available at https://www.wsj.com/articles/sec-probes-trading-by-elon-musk-and-brother-in-wake-of-tesla-ceos-sales-11645730528?mod=Searchresults_pos1&page=1; Jonathan Weil, "Elon Musk Sold Tesla Shares Before Company Acknowledged Weakness," The Wall Street Journal, January 20, 2023, available at https://www.wsj.com/articles/elon-musk-sold-tesla-shares-before-company-acknowledged-weakness-11674177642; and Paul Wiseman, Senate confirms Howard Lutnick as commerce secretary, a key role for Trump's trade agenda," Associated Press, February 18, 2025, available at https://apnews.com/article/howard-lutnick-trump-tariffs-commerce-department-9788590bbee10d09d3cb91822b0c9687. ("His financial disclosure statement showed that he had positions in more than 800 business and other private organizations.").

Access to Capital Markets Is Important

Entrepreneurs and small businesses have been an important part of the American success story from our country's beginning. As SEC Commissioner Caroline Crenshaw has said, small businesses "form the backbone of communities, are drivers of jobs, are critical for the development of new ideas and new technology, and are an avenue to wealth creation…"[7]

Entrepreneurs and small businesses make an enormous contribution to the innovation and creativity that America is known for. At the same time, they benefit a great deal from our capital markets.

And they have more access to capital, whether through uniquely tailored loans or through the sale of securities using multiple public or private options, than ever before. According to the Congressionally created SEC Office of the Advocate for Small Business Capital Formation, in 2023, there were over 420,000 active angel investors, and more than 50,000 small businesses received angel funding.[8]

The simple reality is that, if a small business wants to get a loan, it must go to a bank and fill out detailed loan application documents with information about its assets, projected finances, operations, and more. Its executives may have to offer meaningful collateral, such as their homes or their essential equipment and inventories. Those business loans are considered by the banks and their regulators to be among the riskiest activities in banking. Thus, they are subject to significant regulatory limitations, reviews, and

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[7] Commissioner Caroline A. Crenshaw, "'Big 'Issues' in the Small Business Safe Harbor: Remarks at the 50th Annual Securities Regulation Institute," U.S. Securities and Exchange Commission, January 30, 2023, available at https://www.sec.gov/news/speech/crenshaw-remarks-securities-regulation-institute-013023.

[8] Annual Report Fiscal Year 2024, Office of the Advocate for Small Business Capital Formation, available at https://www.sec.gov/files/2024-oasb-annual-report.pdf.

compliance processes. For example, federal banking regulators frequently release guidance and notices intended to inform banks' risk management in lending to small businesses.[9]

By contrast, if a company wants to turn to the capital markets to raise capital, there may be no substantive, regulatorily imposed requirements at all. That is because today, after decades of deregulation, a company can raise an unlimited amount of money from an unlimited number of so-called sophisticated investors without making any disclosures at all. As the SEC itself explained in 2019, "[i]ssuers in [Rule 506] offerings are not required to provide any substantive disclosure and are permitted to sell securities to an unlimited number of accredited investors with no limit on the amount of money that can be raised from each investor or in total."[10]

Unlike banks and their employees, private equity and venture capital investors are generally not expected to follow regulator-mandated, standardized documentation requirements (and regulatory oversight) of their capital allocation decision making.

It is worth noting that small companies can also raise money through leveraged loans that are packaged into collateralized products—a practice that has been institutionalized in private equity and hedge funds and grown exponentially to trillions of dollars today.[11]

So, the problem is not that the rules prevent small businesses or start-ups from obtaining capital; it is that the rules today allow companies with billion-dollar valuations, billions in revenues, and thousands

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[9] See, e.g., Small Business Administration Lending Risk Management Principles, Office of the Comptroller of the Currency, OCC Bulletin 2021-34, available at https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-34a.pdf.

[10] "Concept Release on Harmonization of Securities Offering Exemptions," U.S. Securities and Exchange Commission, 84 Fed. Reg. 30460, 30470, June 26, 2019, available at https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf.

[11] See, e.g., "A Giant in the Shadows: Subprime Corporate Debt," Americans for Financial Reform Education Fund, January 2023, available at https://ourfinancialsecurity.org/wp-content/uploads/2023/01/1.6.23-Subprime-Corporate-Debt-A-Giant-in-the-Shadows.pdf.

of investors to never provide basic information to investors, regulators, or the public, and private funds to raise billions of dollars from underlying investors without basic expectations like timely, comprehensive, and reliable disclosures about their finances, governance, or operations. There is no regulatory requirement for these billion-dollar enterprises to provide investors with basic audits.

Congress and the SEC created this perverse regulatory regime in the name of capital formation. Yet, as we have seen with Theranos, WeWork, and so many others, the current capital markets regulatory regime enables capital distortion. The regime does so in various ways, such as inflated valuations, lax internal controls, inconsistent disclosures across investors, and potential fraud and abuse.[12]

When Congress established the federal securities laws and created the Securities and Exchange Commission to implement them, it was responding to the massive investor losses and waste of the Great Crash of 1929. Congress was concerned that, without basic information about a company's finances, governance, and operations, capital would be mis-allocated and wasted. The fundamental bargain then and now is that companies that want to raise capital from the public must first provide basic information to investors and the public, including the company's financials, governance, operations, and risks. Today, public companies even need to be audited, and their auditors are subject to significant regulatory oversight. These robust audits are essential to promoting the integrity of the companies and the markets in which they operate. This disclosure of information improves price discovery, makes the markets more fair, more orderly, and more efficient, and protects investors from abuses, such as information asymmetry. Even the most sophisticated investors cannot exercise their superior knowledge and expertise if they do not have reliable information about a company's financials, operations, and risks – a lesson that, sadly, has had to be re-learned with great frequency.

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[12] Crenshaw, January 30, 2023.

When the securities laws were first adopted, and in the decades thereafter, offerings to even a single person or to a small number of employees were deemed to be public offerings in need of being registered. Congress and the SEC have since reversed those decisions, with increasingly alarming results.

Beginning in 1982 with the promulgation of Regulation D, there has been a proliferation of exemptions from the public disclosure framework.[13] The stated intention of those exemptions and their subsequent expansions has been to provide more access to capital for small businesses.[14] But the reality is that those exemptions, along with a couple of loopholes in the law, have enabled virtually any company of any size to obtain capital from the public without complying with the public disclosure framework.

As a result, a substantial and growing number of companies are choosing to remain private as they raise capital, and often only end up coming to the public markets to cash out significant investors or founders. The result of Congress and the SEC creating and expanding exemptions from the federal regulatory disclosure framework is that the vast majority of capital raised is exempt. That explosive growth of the private markets has come at the expense of public markets.[15]

If a company can raise all the capital it needs in the private markets without making disclosures, developing robust operational safeguards, subjecting itself to audits, having a headquarters, dealing with a large number of retail investors, exposing details of its sales or operations to its competitors, suppliers, customers, or other business partners, or subjecting itself to SEC oversight and potential class action plaintiffs, why would it go public?[16]

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[13] Elisabeth De Fontenay, "The Deregulation of Private Capital and the Decline of the Public Company," Hastings Law Journal, Vol. 68:445, 2017, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2951158.
[14] Crenshaw, January 30, 2023.
[15] George S. Georgiev, "The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms," Emory University School of Law, Fall 2021, available athttps://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1001&context=faculty-articles.
[16] See, e.g., "In the Public Interest," Healthy Markets Association, January 2022, available at https://healthymarkets.org/product/public-vs-private-markets-a-special-report.

The situation is truly alarming. Today, there are more than 1,200 private companies worth more than a billion dollars each, with over 600 of those established in the U.S. private markets.[17] This number has grown rapidly in the last few years, with 354 added in 2021 alone.[18] Commissioner Crenshaw has pointed out that these "unicorns," as they are called, "have consistently relied on Rule 506 of Reg D to raise billions of dollars in U.S. capital."[19] These companies have been allowed to grow extremely large, competing with similar publicly traded companies and selling products and services to a broad swath of the American public, without making meaningful disclosures. As the examples of large, opaque company failures demonstrate,[20] these companies can pose huge risks to their investors, the economy, and the country. They do not belong in the private markets.

Since 2021, inflation and higher interest rates are laying bare the overvaluations of private market companies,[21] whose valuations are often driven by success narratives created for the next funding round rather than fiscal discipline. One study in 2017 – before the recent private market valuation boom -- found that on average unicorns were valued at 50 percent above their fair value.[22]

It is one thing to allow this for small or brand-new start-ups, but when this approach is applied to companies purportedly valued at one billion dollars or more, it is time to give new investors the facts.

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[17] CB Insights, The Complete List of Unicorn Companies, available at https://www.cbinsights.com/research-unicorn-companies.
[18] Katie Roof, "The Unicorn Boom Is Over, and Startups Are Getting Desperate," Bloomberg, February 14, 2025, available at https://www.bloomberg.com/news/articles/2025-02-14/silicon-valley-unicorn-startups-are-desperate-for-cash?cmpid=BBD021825_MONEYSTUFF&utm_medium=email&utm_source=newsletter&utm_term=250218&utm_campaign=moneystuffT.
[19] Crenshaw, January 30, 2023.
[20] See, e.g., Gillian Tan, Liana Baker, and Michelle Davis, "WeWork Postpones Long-Awaited IPO, Sending Its Bonds Falling," Bloomberg, September 16, 2019, available at https://www.bloomberg.com/news/articles/2019-09-16/wework-is-said-to-likely-delay-ipo-after-valuation-plummets?srnd=premium&sref=S5RPfkRP; and Zaw Thiha Tun, "Theranos: A Fallen Unicorn," Investopedia, January 4, 2022, available at https://www.investopedia.com/articles/investing/020116/theranos-fallen-unicorn.asp.
[21] Roof, February 14, 2025.
[22] William Gornall and Ilya A. Strebulaev, "Squaring Venture Capital Valuations With Reality," National Bureau of Economic Research, October 2017, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049719.

Otherwise—and this is the paramount concern for this committee—new investors, including those allowed new access to these highly risky markets, will end up losing even as founding and early round investors exit with profits based on inflated valuations.

Recommendations

Rather than enabling small businesses to access needed private capital, Regulation D and other exemptions are being used by companies of all sizes to skirt the disclosure requirements Congress established to ensure transparency and investor protection. There are many steps that Congress and the SEC can take to rebalance the public and private markets and make more room for capital for small businesses.

Section 12g of the Securities and Exchange Act of 1934[23] was intended to prevent companies from becoming too large without adhering to the public disclosure framework. Originally enacted in 1964, it required expanded disclosures when a private company reached 500 holders of record, which the JOBS Act of 2012 increased to 2,000. When 12g was enacted, the number of holders of record was closer to the number of actual owners of shares. But now, due mainly to changes in technology, the holder of record definition is exponentially larger since intermediaries today may hold millions of shares *on behalf of* thousands of investors yet are counted as one holder of record for purposes of the threshold. This is why Facebook was able to remain a private company and avoid public disclosures for years after it had thousands of shareholders.[24] Clarifying that "holder of record" under Section 12g means actual security owners or beneficial owners , not intermediaries, would help ensure that smaller businesses are not competing for capital in the private markets with huge companies.

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[23] 17 CFR Section 240.12g-1.
[24] Steven Davidoff Solomon, "Facebook May Be Forced to Go Public Amid Market Gloom," New York Times, November 29, 2011, available at https://archive.nytimes.com/dealbook.nytimes.com/2011/11/29/facebook-may-be-forced-to-go-public-amid-market-gloom/.

A critical companion measure would be for Congress to statutorily require all very large companies and funds to be public. Many private market companies have thousands of actual shareholders, employ hundreds or even thousands of employees, and may sell products and services to millions of customers in the U.S. and abroad. These companies and funds may have significant impacts on investors but also markets overall and commerce generally. For example, there should be no such thing as a unicorn. Companies with billion-dollar valuations should be required to make basic public disclosures of their finances, governance, and operations, as should companies with more than 250 employees.

Beyond that, instead of trying to expand exemptions that are currently being used by much larger companies, Congress could do more for small businesses by scaling back the exemptions to their intended purpose, possibly eliminating some of them altogether, and by building on the success of the public markets with their mandatory disclosures. In this way, businesses would be more fairly competing for investors' capital, as well as more fairly competing against one another.

At a minimum, Congress should ensure that what an issuer discloses to one investor, it discloses to all of them. If a pension fund or venture capital investor is getting updated, audited financials or sales updates, that information should be offered to everyone. To allow some investors to have access to material, non-public information used for investment decisions, while others do not have access, is simply to enable waste, fraud and abuse. Even if the government does not mandate an issuer disclose a particular piece of information, it should mandate that issuers not selectively disclose information in a discriminatory manner.

Further, Congress should be cognizant of the unique differences between professional investment firms and retail investors. Investors with billions of dollars and reliable cash needs and investment flows may be able to weather a seven or ten-year investment lockup period. Individual investors, with deaths, divorces, home purchases, and health concerns often cannot. So, while many current private market

investors are frustrated when they are unable to redeem their shares for cash or otherwise sell their investments, the inconvenience is often not catastrophic, as it might be with a family. Any retail investors given access to these investments should have clear, timely, and reliable redemption opportunities.

Together, the above measures would go a long way toward restoring the private markets to the businesses and investors they were intended for, while ensuring that larger companies that raise capital from the public comply with the public disclosure framework and thus provide the information those investors need to make investment decisions.

Thank you again for inviting me to testify today. I look forward to answering your questions.

Chairwoman WAGNER. I thank you, Ms. Thornton, for your testimony.

We will now turn to member questions. I recognize myself for 5 minutes for questioning.

Mr. Barnell, access to venture capital funding is not evenly distributed, with most funding concentrated in California, Massachusetts, and New York. Entrepreneurs in other parts of the country, such as St. Louis, where you and I come from, face greater difficulties in raising the capital necessary for scaling.

Can you discuss some of the difficulties you faced early on in raising capital?

Mr. BARNELL. Absolutely. We faced no shortage of challenges. We were two students, first-time entrepreneurs, raising capital in an industry that is highly regulated and technical.

I would say, hands down, the biggest challenge we had early on was that in St. Louis, there are only a handful of early-stage venture firms. Raising those first couple rounds is always the most challenging and so raising that capital was definitely the biggest challenge.

Chairwoman WAGNER. Have you ever met with VCs in California, for instance? What was your experience trying to gain investor interest in your company?

Mr. BARNELL. Extensively. We spent a lot of time, even early on, going to the coasts, and one of the things that we found, particularly for early-stage investment, angel/seed, is that investors like to invest in their own backyard.

I remember an angel investor who ran a fund out in San Francisco telling me, "We love what you are doing. We love the technology you have built but why would we invest in you when I can invest in 25 companies just like you in San Francisco?"

Chairwoman WAGNER. Mr. Barnell, can you discuss how the policies discussed today and the bills that we are putting forth, some 36 of them, can improve access to capital for startups in areas like St. Louis?

Mr. BARNELL. Yes. One of the other things I wanted to highlight from my experience—and I will focus on our early rounds as well—there is no shortage of people that want to invest in innovation, want to invest in companies like ours, the next big growth companies in the country, but I can say, coming from St. Louis versus traditional VC hubs, we do not have as many of those systems and infrastructures to do it. There are not as many demo days and incubators——

Chairwoman WAGNER. Uh-huh.

Mr. BARNELL [continuing]. and angel funds for people to join and participate in.

As I mentioned in my written testimony, things such as making it easier for venture funds to form, making it easier to make venture investments, crowdfunding, being thoughtful about the "accredited investor" definition—all of those things really would help companies like ours.

Chairwoman WAGNER. Thank you, Mr. Barnell.

Ms. Pinedo, retail investor access to pooled investment vehicles that invest in our private markets seems to be overly restrictive, whether it be through closed-end funds or other types of funds.

Do you believe that such restrictions on retail access are justified?

Ms. PINEDO. I agree that retail access is overly restrictive, in particular into interval funds, closed-end funds, and other funds.

To address some of the concerns that Ms. Thornton alluded to, it would be prudent to look at modernizing the regulation of funds and fund access for retail investors. That is included in my testimony, including specific recommendations along those lines.

It would be a way to allow access to other investors in a very controlled way within the framework provided by the Investment Company Act and with information requirements. It would address many of the concerns that Ms. Thornton recommended.

Currently, for example, many funds can only be sold to qualified clients. Many funds are limited in their ability to invest in private funds or in private securities. A number of the bills under consideration address the restriction——

Chairwoman WAGNER. Would address that, correct.

Now, let me ask you, would removing the limitations on closed-end fund investments in private securities help address this issue?

Ms. PINEDO. It would address, in part, the issue of directing more—of increasing or promoting capital formation. And——

Chairwoman WAGNER. Is there anything in the closed-end fund proposal discussed today that would remove investor protections?

Ms. PINEDO. Not one thing.

Chairwoman WAGNER. Why are private markets significant to capital formation, and why should we pursue policies that make private markets an attractive place to raise capital? Do such reforms have to come at the expense of making our public markets more attractive?

Ms. PINEDO. We should not see it as a zero-sum game. It would be entirely wrong for us to see these as in conflict with one another.

The SEC's Office of Advocate for Small Business, which takes into account and has as its goal investor protection, makes it quite clear that the private markets should not be seen as competing with the public markets. We need vibrant——

Chairwoman WAGNER. Thank you.

Ms. PINEDO [continuing]. private markets.

Chairwoman WAGNER. Thank you, Ms. Pinedo.

Ms. PINEDO. You are welcome.

Chairwoman WAGNER. The chair now recognizes the ranking member of the subcommittee, Mr. Sherman, for 5 minutes for questions.

Mr. SHERMAN. As our first witness pointed out, 90 percent of these startups fail, but it is a national interest to see them funded, because the 10 percent that succeed can revolutionize our society. That is why we need to make sure that these companies are able to get bank loans, that BDCs are able to invest, and that individual investors can invest. We want to protect the individual investors.

Republicans have often said that there has been a decline in the number of public companies and, therefore, there should not be—and that is because we put too many burdens on public companies. If you want to register securities, it is not that easy.

Another reason why there are fewer public companies is that we have made it easier to stay private. Nothing is a greater example of that than the definition of "accredited investor," which in effect has been over 90 percent repealed. You might ask, "Well, the statute is the same." Yes, the statute says a million dollars makes you wealthy, because it was passed in the 1970s. That today would be $7.7 million.

We have, by inaction—I think any statute that we pass that does not have an inflation adjustment in it is a mistake and this one is a big mistake. It has not been adjusted for a long time, so we have made it much, much easier to be an accredited investor on the wealth and income standard, assuming that is even the right standard.

Ms. Thornton, we have another rule, and that is, a company becomes public if it has 2,000 beneficial owners, but we have a giant loophole. First of all, we allowed the SEC to take that from 500 to 2,000. Arguably it should be taken back.

When we count beneficial owners, if there are 5,000 customers of Merrill Lynch who all have chosen to invest in a single security, those 5,000 people, how many do they count as under this rule?

Ms. THORNTON. Probably one.

Mr. SHERMAN. One. That is new math taken to a whole new level.

If we are going to have a limit on beneficial owners—and I think we should—we have to see through the street name. It is convenient to hold the security in street name, but we can count the beneficial owners.

As to accredited investors, a lot of our discussion here is on how to reform that. We have now a standard based on wealth and income. Really, we set those standards in the 1970s, so they are crazy, but wealth and income—even why are those relevant? They either connote knowledge, on the theory that rich people know a lot about money—sometimes—or ability to absorb the loss.

I would say that we ought to devise standards that are focused on knowledge—MBA, CPA, maybe attorneys, or the advisory team, then it must be truly independent—and focus on ability to absorb a loss.

Because our current rule makes you an accredited investor to invest 5 or 10 percent of your money in one of these startups or 120 percent of your net worth in one of these startups. We value your wealth based on how much money you have, independent of your home. Then we say, you can put a mortgage on your home now that you are an accredited investor to invest in a company with a 90 percent likelihood of failure.

I look forward to working with a definition of "accredited investor" that focuses on limiting the percentage of one's net worth or income that you are investing in any one issuance, limiting what you put into all private companies, and focusing on knowledge of the investor or their truly independent advisory group or advisors.

To have wealth or income—the idea that somebody has an income of $200,000 and therefore is highly knowledgeable and expert? Again, my colleagues have incomes of $200,000 just for working in Congress, and only some of them are geniuses.

I look forward to working on that, and I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from Arkansas, Mr. Hill, who is also the chair of our full Committee on Financial Services, for 5 minutes.

Chairman HILL. Thank you, Chairwoman.

Again, thanks to the panel for great testimony. We appreciate you being with us today.

Ms. Kacaba, I wanted to talk about the SEC's estimates on the cost of being a public company. These are the same numbers that I have in my notes from 2015, so they do not seem very updated to me. They say that, to go public, a traditional IPO has upfront costs of about $2.5 million and annual compliance costs of $1.5 million thereafter.

I was the interim chair of a small cap public company before I came to Congress, probably 10 or 13, 14 years ago, and our quarterly bill from just the accounting firm was $400,000 a quarter.

Those numbers seem super-out-of-date to me. Do you think they are accurate?

Ms. PINEDO. If it is okay, I will volunteer and answer that.

Chairman HILL. Yes, I directed it to you, so you——

Ms. PINEDO. Oh. I am Anna Pinedo.

Chairman HILL. Okay.

Ms. PINEDO. Yes.

Chairman HILL. I cannot see your name from over here.

Ms. PINEDO. That is quite all right.

You are absolutely correct that those are quite low. The average cost of going public for a company these days is more in the line of, just for—is probably more around $4 million, without counting the underwriters' spread, which is usually 7 percent of the amount that is offered, and then the cost of being public.

In the SEC's Office of Advocate for Small Business, the costs are estimated in the study that the SEC put out in December 2024, and the costs are significantly higher, just as you have recounted.

What is even more significant and more troubling, as noted in the SEC's Advocate study, is that the costs were disproportionately borne by smaller——

Mr. HILL. Yes.

Ms. PINEDO [continuing]. and medium-size businesses, particularly the costs associated with——

Mr. HILL. Right.

Ms. PINEDO [continuing]. Sarbanes-Oxley (SOX) compliance.

Chairman HILL. Yes, this has been a 25-year race to the bottom for encouraging companies to be public in this country. We can do that in a safe and sound way, but the company that I served as an interim chair of so many years ago just could not possibly do this. It had a market cap at the time of, like, $75 million to $100 million, and they were spending $6 million—their profitability was probably $6 million to $10 million in earnings before interest and tax, and they were spending what I just said $2 million of that, a third, on being public. It was a preposterous idea, and they went private, as you can imagine.

We do not have 5,000 companies in the Wilshire 5000 anymore. We have 3,700, so we do not even have enough qualifying public companies to be in the Wilshire 5000 index. We only have 3,700,

and that is because these costs are out of control—in addition to the benefits of being private.

I am for—if people want to be private, those costs have come down, the compliance burden is better. You can get to be a much larger-cap company with private financing. No problem. For people who want to access the public markets, we have built a wall that is ridiculous.

Let us say we want these costs you are talking about to be 1 percent of total expenses. You would have to be making, by my calculation, $500 million before tax to warrant being public. That is ridiculous. We are choking off the golden goose that lays the golden egg for pension funds, labor pension funds, individual retirement accounts (IRAs), 401(k) accounts.

Ms. PINEDO. Yes——

Chairman HILL. I hope, Madam Chair, that we can do something about this ongoing cost and work with the Securities and Exchange Commission and those commissioners to bring it down to give more opportunities to our businesses seeking liquidity that way.

Let us talk about accredited investors briefly. Do you think my idea of people that have professional qualifications in their area of expertise merits them being considered an accredited investor?

Ms. PINEDO. Consistent with some of the changes that the SEC made in 2020 of adding professional qualifications, yes. This goes to what Mr. Sherman was saying, of financial sophistication.

Chairman HILL. Right.

Ms. PINEDO. Financial sophistication has always been at the root of the definition.

Chairman HILL. Thank you very much for that.

Madam Chair, my time has expired. I yield back.

Chairwoman WAGNER. The gentleman yields back.

Yes, we have a number of bills that we hope are going to help increase access to our public markets. America has fallen behind.

The chair now recognizes the gentlewoman from California, Ms. Waters, who is also the ranking member of the full committee, for 5 minutes.

Ms. WATERS. Madam Chair, thank you so very much.

While a lot of time has been spent on what is and what is not happening with the SEC, I am reminded that Democrats have really been in the forefront of providing access to capital in support of small businesses. Democrats have a long history of promoting capital formation both for small businesses and for communities that have been historically shut out of our capital markets and banking system.

Now, if you will recall, during the pandemic and after, it became clear that the Paycheck Protection Program (PPP) was only serving megabucks and concierge clients. When we put that money together and some of the biggest corporations, et cetera, went after the money and we were able to put more money into it—Nydia Velázquez and I put another—I think it was about $60 billion—into the small businesses, the community banks, et cetera, et cetera. What I realized during PPP was how good it is for us to be able to make capital available to small businesses.

When I travel around the country, and I ask the small-business people how many participated, their hands go up, because they re-

member, and it saved their businesses. It helped them to keep their personnel, et cetera, et cetera.

Additionally, in December 2020, I worked with Secretary Mnuchin—who happened to be a Republican—and Democratic colleagues to secure $12 billion in capital investments and grants for Community Development Financial Institutions (CDFIs).

Now, CDFIs are very important. We have worked very hard, and I want to know whether or not the opposite side of the aisle are going to support us as we go for increases for CDFIs so that we can have more money for small businesses. It really has done a great job in helping them to have access to capital.

I want you to know that the CDFIs and these minority depository institutions could be leveraged up to $120 billion in new financing for small businesses.

In the American Rescue Plan, I led the effort to provide $10 billion to the State Small Business Credit Initiative to support tens of billions of dollars in new loans, investments, and technical assistance to support small businesses.

We have several pieces of legislation, like my bill entitled "Promoting and Advancing Communities of Color Through Inclusive Lending Act" to authorize $4 billion in additional support for CDFIs and minority depository institutions.

We have done a heck of a lot for small businesses.

It is time to stop talking about "we have to do more"—"the only thing we can do is get rid of regulations that protect people." The SEC is our cop on the block, and they protect these investors. It is time to talk about what we are all willing to do to make sure we have access to capital. We have avenues by which we can appropriate money into in order to do what we talk about we want to do.

I am going to have a whole package of bills, more bills, on how we can support access to capital for small businesses, and I want some support from the opposite side of the aisle, okay?

I am sorry I did not have any questions for you. We have been talking about this for years. I am trying to help everybody to understand this. It is time to act. Capital formation should be at the top of our agenda.

I yield back.

Chairwoman WAGNER. All right. I thank the gentlelady. She yields back, and I thank her for her passion and fervor on this issue.

It is—capital formation is the basis of who we are, in terms of the American economic system and capitalism. We passed 36 capital formation bills across the House floor last year, many in a bipartisan way, and we hope to get Senate support this time around.

I now recognize the gentleman from Oklahoma, Mr. Lucas, who is also the Chair of the Task Force on Monetary Policy, Treasury Market Resilience, and Economic Prosperity.

You are recognized for 5 minutes, sir.

Mr. LUCAS. Madam Chair, before I begin, I would like to submit for the record a letter of support from MetLife on my bill with Mr. Gottheimer, Mr. Foster, and Mr. Barr, the Retirement Fairness for Charities and Educational Institutions Act.

Chairwoman WAGNER. Without objection.

[The information referred to can be found in the appendix.]

Mr. LUCAS. Thank you, Madam Chair.

Thank you to our witnesses for testifying today.

The United States has the most robust capital markets in the world. Businesses, investors, the whole economy benefit when private and public markets are strong, resilient, and attractive. I think we all agree on that.

Mr. Barnell, could you continue to talk for a moment about why we should focus on improving access to markets, particularly in capital-intensive industries? I am from Oklahoma, and so agriculture and energy are near and dear to my heart, but they are incredibly capital-intensive.

Mr. BARNELL. Absolutely.

Speaking to our experience and speaking to St. Louis in particular, there are so many great ideas coming out of academic institutions, but capital is needed early on. We hear a lot about minimum viable products and beta testing. In capital-intensive industries, you need capital to prove out the concept before you can take the next step. Ensuring we have policy that does that is critical.

Mr. LUCAS. During the previous administration, the SEC pursued an aggressive rulemaking agenda. The breadth and depth of those rules were simply unprecedented. We have never seen anything like it. I have made the point that the former Chair seemed to value speed and scope over quality during his tenure.

In my view, the SEC should prioritize robust public engagement so we can trust that rulemakings are bolstering our markets, not stifling them.

Ms. Pinedo, how can this administration differ in its regulatory approach to strengthening both public and private markets? Please.

Ms. PINEDO. We have already seen a very different tone from the Acting Chair of the SEC. He has articulated in a speech just yesterday that the SEC intends to engage the public and solicit comments from the public and intends to prioritize capital formation, which is very welcome, and intends to solicit comment from the public on rulemakings, again, returning to the SEC's historic tradition.

In terms of the bills that are before the subcommittee today, I think that they strike an appropriate tone in considering the realities of the private markets and acknowledging that we are not going to roll back time, and we need to really do what we can to foster robust private markets while doing so in a way that acknowledges the importance of investor protection.

Whether that is promoting changes to the "accredited investor" definition that recognizes that there are additional financially sophisticated parties that can be accredited investors. For example, if they are chaperoned by registered broker-dealers, by registered investment advisors, if they are advised by others in making those decisions, if they pass a test that is administered by the SEC or by Financial Industry Regulatory Authority (FINRA), those are good qualifications and are wholly consistent with the mission of identifying investors that can fend for themselves. Those are not loopholes. Those are good, viable ways to qualify somebody as an accredited investor.

Likewise, a lot of the changes that are considered in the bills today that would modify, for example, the rules relating to business development companies, that would reverse the SEC's policy from 2006 relating to acquired fund fees, that would bring more investors into business development companies, that is an important change. It would bring more capital and more investors into BDCs, and that would promote capital formation.

We spoke a little bit about closed-end funds previously when Chair Wagner asked about it. That would allow closed-end funds to be sold to investors that are not accredited investors—again, an important change that would be beneficial yet protective of investors, because closed-end funds are regulated under the Investment Company Act of 1940 and under the Securities Act of 1933. All of those things are very positive.

Mr. LUCAS. Thank you for those insights.

It is important we listen to stakeholders once in a while, is it not, Chairman?

Chairwoman WAGNER. Hear, hear.

Mr. LUCAS. I yield back.

Chairwoman WAGNER. Hear, hear. We are going to have a great opportunity, FinancialServices.house.gov, right following this hearing, so everyone, all stakeholders, can give their 2 cents.

The chair now recognizes the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Madam Chairman.

Now, Ms. Thornton, the equity market has been transformed by an explosive growth in the private equity space. Twenty-five years ago—just think—we had 7,000 listed public companies in the United States and less than 1,000 companies owned by private equity investors. Today, more than 10,000 are owned by private equity investors and just 4,000 are now publicly listed.

How do you account for this?

Ms. THORNTON. Basically, it is because the rules have been changed since around 1982, as I said in my testimony, and expanded the exemptions to the public disclosure framework and the need for companies to be public companies and comply with that framework.

We also have an erosion of the 12(g) limit on company size when they can be in the private markets. Now companies whose shares are held by an institutional manager of some sort can basically count as one share, and so, when you have that 2,000-shareholder limit, it is kind of meaningless when you have that situation and you have huge companies in the private markets. Now, basically, companies can grow huge in the private markets.

Mr. SCOTT. Uh-huh.

Ms. THORNTON. We have 1,200, as I said, worldwide in the private markets. Over 600 of those are U.S.-based companies. Many of them are multibillion-dollar companies.

They are not mandated to disclose information, which is—I hear comments about how much disclosure has to be made when you go public. The reality is that when companies do fill out all that IPO information and for the first time in perhaps years disclose their financials and those financials are audited by an independent audi-

tor, of course information comes out about the true value of the company.

I think it is incumbent upon us to insist that, for new investors especially, that information be disclosed. It is critically important when a company has not been disclosing for many years.

Mr. SCOTT. Thank you.

Now, we are always concerned about the two anchors that weigh here: interest rates on one hand, inflation on the other.

How do you see that having an impact, those two?

Ms. THORNTON. I am not—I am not really sure about that, but I think that, as long as we make the rules such that people have a lot of options for raising money, then they should be able to do so.

We may need to provide more opportunities for small businesses, for example, to actually get loans and to have more funding, through CDFIs or whatever. We also need to make sure that public companies—all companies disclose what the impact of those changes in interest rates and changes in inflation have on their company, on their financials.

It is critically important, for example, that we have the Public Company Accounting Oversight Board, which makes sure that the auditors who audit financials of public companies actually are doing everything right.

I think that is maybe how it is connected. I have kind of——

Mr. SCOTT. Uh-huh. Yes.

Ms. THORNTON [continuing]. danced around it here, but I think that is really how it is connected. We need to keep all that structure in place to make sure that investors have information about the impacts of these market factors.

Mr. SCOTT. Yes, you are absolutely right, because right now these are the two parameters we are dealing with——

Ms. THORNTON. Yes.

Mr. SCOTT [continuing]. interest rates and inflation. Our Administration is dealing with this. We are dealing with it. We are moving to downsize the Federal Government. We are doing things right now that have never been done and restructuring it. We have to be careful, and I like your points on what we have to do.

Thank you very much.

Ms. THORNTON. Certainly.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from Texas, Mr. Sessions, for 5 minutes.

Mr. SESSIONS. Madam Chairman, thank you very much. This is the most interesting hearing on not just capital formation but the development of small-business IPOs and all the things that lend themselves to America's future.

Madam Chairman, I would like to ask unanimous consent to enter into the record a letter from Mr. Teague Egan, founder and CEO of an Energy Explorations Technologies, known as EnergyX, where he talks about "The Future of American Capital: Strengthening the Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation."

I ask that it please be entered in the record.

Chairwoman WAGNER. Without objection.

[The information referred to can be found in the appendix.]

Mr. SESSIONS. Madam Chairman, we heard from Andrew Barnell, who is from St. Louis, Missouri, where I used to live. I know St. Louis pretty well. He spoke about not just the need for IPOs and new economic drivers for small business but talked in his testimony to us about maybe being isolated in a market that was not as robust for raising money.

I would like to go, if I can, to Ms. Pinedo and talk with her about—and I read in her bio about how she brings a lot of money from overseas to America, foreign financing that is here. I would like to drill down on some of this because you talked about a balance that was necessary between private and public registered funds.

Specifically, I would like to talk about the role of engaging finders within the broker-dealer community. We do legislation here and if you have any ideas about exempting finders from registration maybe in certain areas but adding to this marketplace in cities that may be out of large investor areas, I would like to ask you to please help us along that thinking, please.

Ms. PINEDO. Sure.

The SEC has considered and various advisory committees to the SEC have considered a finders' exemption and have suggested a framework for an exemption for finders for a number of years now. The Small Business Forum that the SEC hosts every year has suggested and recommended that the SEC adopt a framework for finders.

I think that a limited framework for finders from the exemption for registration from broker-dealers would be something that would be advisable. However, it should be a limited framework in light of the fact that we do have a need, both at the State level and at the Federal level, to register persons who are providing services that are broker-dealer-related.

I would look at the language that the Securities and Exchange Commission has considered previously in terms of the finders' exemption and the language that the advisory committees to the SEC have previously considered in terms of what would be appropriate by way of a finders' exemption.

Along those lines, I would also consider adopting finally—you brought up the topic of foreign activity. I would consider adopting the—or encouraging the SEC to undertake a study regarding adopting the amendments to 15a–6, which are exemptions for foreign—for certain—the activities by foreign broker-dealers for limited activities in the United States.

These were amendments that were proposed by the SEC. They were well-received, generally, by practitioners and by others, and they were languished. They relate largely to the activities of foreign broker-dealers with major institutional investors.

Mr. SESSIONS. This is all, I think, good news, at least to me, because we found that there are people that want to overregulate not only broker-dealers. They want to come in with other areas of government and hold people necessarily accountable about factors that were beyond their control—perhaps inflation, perhaps interest rate changes. I think it is very important.

I want to thank each of you for being here today.

I think, Madam Chairman, that gives us lots of room to work within a well-regarded idea, and I want to thank you for holding this hearing today.

I yield back my time.

Chairwoman WAGNER. Thank you.

The gentleman yields back.

The chair now recognizes the gentleman from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Thank you very much, Madam Chair, and I appreciate very much this hearing today. I thank the ranking member also.

Most of us are interested in protecting investors without sacrificing opportunities to generate wealth, and I think that is what we have been talking about today. I do think that constant disclosure, as has been mentioned many times here—you have to place that against, versus the information that you need, the accurate information to protect investors. That is one of the issues I want to talk about.

The second one is—and I do not want to put words in anyone's mouth, but I did hear someone say that there really is no conflict between the private and the public market. I am not sure that is true. If it is, I would like to see it because it does seem that one benefits off the other a little bit.

Then, lastly, about the accredited investor, because I do agree with Mr. Sherman that it is not only wealth or assets, but also knowledge—although I would almost challenge him to tell us which one of our colleagues is not a genius. In fact, I would give him a few seconds here if he wants to name names.

Anyway, let us start with the cost of disclosure.

Ms. Thornton, you heard it here, and I think it is true: If you have a company that is making $6 million a year and $2 million of it has to go for all these disclosures, that is an impossibility.

What do you say to something like that, the example that was given by the chair of the full committee?

Ms. THORNTON. Perhaps we should think about what we require of those companies. It is always important to look back at regulations and rules and make sure that they accomplish what you want them to accomplish.

On the other hand, when you talk about small businesses and startups, there are risks there. There is a reason why, if they go to a bank, the bank requires a lot more from them than they would from a much larger, well-established company that has for years disclosed audited financials and so forth.

I am not an expert on the different costs that are charged, and there may be fees that are excessive that are charged when this happens. I am not sure.

Mr. VARGAS. Let me——

Ms. THORNTON. I would look at all those.

Mr. VARGAS. Let me ask Mr. Barnell.

You obviously have a company here that you are starting, and I hope you do have success. It certainly is a very noble cause. What about those costs we were just talking about?

Mr. BARNELL. We are still a private company——

Mr. VARGAS. Right.

Mr. BARNELL [continuing]. and we do robust reporting, and we do Public Company Accounting Oversight Board (PCAOB) audits, and so we have financials and all those sorts of things.

As a private company who is preparing to be public at some point—I do not have all the details of who we talked to, investment bankers and others. We know that there are several million dollars of annual costs as well as a number of hires that would need to be made within the company solely to deal with public reporting. So——

Mr. VARGAS. Is it a barrier that you think is insurmountable? Or do you think it is a barrier that is reachable?

Mr. BARNELL. I think it is not—nothing is insurmountable, right? I think it is certainly a consideration that would delay—it is a consideration that—we might go public later as opposed to earlier if we take those costs into consideration.

Mr. VARGAS. Okay.

Let us, then—talking about the private versus the public, why do we not go back to you, Ms. Thornton. You heard that—and, again, I do not want to put—I hate when people put words in my mouth, but I did think I heard there is really no conflict. Is that true?

Ms. Pinedo, you were shaking your head. I will give you the opportunity too——

Ms. PINEDO. It is not that there is no conflict. What I said is that, as a legislative and as a regulatory matter, we should be encouraging both a thriving private market and a thriving public market, not that there is no conflict. That would be reductionist.

There are reasons why some companies choose to be private and why we have private markets, and there are good and sufficient reasons why we should be encouraging companies to go public——

Mr. VARGAS. Okay. Let me give Ms. Thornton a chance to challenge that potentially.

Go ahead.

Ms. THORNTON. Yes. I would say two things.

One is, the companies that grow extremely large in the private markets, they are doing a couple of things. They are looking at public companies to try to justify their valuations rather than providing detailed information about their financials and everything else to justify their valuation.

By the way, in a public company that discloses a lot of information, is having market participants look at the company, look at the information that is disclosed, and they are analyzing it. That provides a lot of support for other investors who are looking at that company to invest.

You have large private companies that are competing with similar companies in the public markets and that does not seem——

Mr. VARGAS. Okay. My time has expired, and I yield back, and I thank the chair.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from Ohio, Mr. Davidson, who is also the Chair of the Subcommittee on National Security, Illicit Finance, and International Financial Institutions, for 5 minutes.

Mr. DAVIDSON. I thank the chairwoman.

I thank you, our witnesses, for being here today and for your work in this field.

I ask unanimous consent to submit this letter from the Accredited Investor Alliance supporting our work to expand market access.

Chairwoman WAGNER. Without objection.

[The information referred to can be found in the appendix.]

Mr. DAVIDSON. America is home to less than 5 percent of the world's population, but we account for nearly 25 percent of Global Gross Domestic Product (GDP). Even better, our capital markets account for more than 50 percent of the world's invested capital. Unfortunately, this abundance is not easily accessed by most Americans.

Now, as investors, Americans benefit more than most countries because our retirement savings are overwhelmingly deployed and invested in our capital markets, and this is not the case around the world. Even in Europe, it is not as common.

However, when American companies want to raise capital, they often confront substantial barriers, as you all have highlighted today.

One of the most basic problems is the "accredited investor" limitation. Essentially, unless you are already rich, it is harder to get rich. This paternalistic approach from government limits individual freedom to invest your own money. It is supposed to protect investors, but the reality is, in practice, it protects deal flow for the donor class. For simplicity, current law equates wealth with sophistication.

The problem is especially acute for entrepreneurs who need to access capital to grow their businesses. Generally, businesses have no ambition to build the sort of scale that it takes to access traditional capital markets. An initial public offering, as Ms. Pinedo highlighted, costs millions and can take millions more in compliance and recurring costs.

It is entirely unsuited to small and mid-market firms, particularly those who want to remain private. While large companies can take on debt outside of banks by accessing the bond market, small and mid-market firms generally have no such market access.

We should make it far simpler to raise equity and debt from private capital.

All investors take on risk with a rational expectation of a risk-appropriate rate of return. Anyone who acknowledges those risks and knows what they are investing in should not be prevented from doing so via government-enforced restrictions. After all, the right to transact is fundamental. It is not a permission granted by government.

That is what we have turned it into, as a complete contradiction of our Constitution, our Bill of Rights, recognizing that our rights are endowed by our creator. In limiting the government's ability to infringe upon these, we act as somehow the government is the giver of our ability to transact.

My bill for this protects accredited investors, who would simply say that they certify to the issuer of securities that they understand the risks of investment in private issuers. This would have the effect of providing more opportunities for all investors.

Ms. Pinedo, could you expand on how such a change would improve capital formation?

Ms. PINEDO. "Pinedo." Yes.

I think, again, one has to go back to the fundamental purpose of the "accredited investor" definition, which is to allow investors that are able to fend for themselves to invest in opportunities that do not require the protections associated with registration. That would be investors that are financially sophisticated, and we have to ascertain the financial sophistication through some means——

Mr. DAVIDSON. You still support the framework that the government could be the giver of the rights and——

Ms. PINEDO. No.

Mr. DAVIDSON [continuing]. if we deem you sufficiently——

Ms. PINEDO. No.

Mr. DAVIDSON [continuing]. sophisticated——

Ms. PINEDO. No.

Mr. DAVIDSON [continuing]. using some alternative legal criteria, then, okay, we will let you do it?

Ms. PINEDO. That might include any of a number of the bills that are presented today for the subcommittee's consideration.

Mr. DAVIDSON. I believe that will move—be progress, but I do not think that you can proceed from that premise.

Maybe, Mr. Conwell, when you look at your challenges, what are you seeing in the market? What is the challenge that venture firms like you are trying to do when you want to increase the ability of people that want to participate in the markets but also the people that are trying to raise capital? What are you confronting?

Mr. CONWELL. We are confronting a limiting of sources, right? As you are raising a fund, right now, if you are raising $10 million or less, you can raise from over 250 people, right? The moment you go over that, it is only 100 people, so it becomes really easy to figure out the math of what is the minimum amount you can take from an investment. If I am raising $40 million, the minimum check I can take is $250,000.

Mr. DAVIDSON. Wow.

Mr. CONWELL. That means the amount of people I can go to raise that capital is very limited and that means I have to fit in their framework for my fund to work. That is very limiting.

Mr. DAVIDSON. Thank you so much.

My time has expired, and I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from Illinois, Mr. Casten, for 5 minutes.

Mr. CASTEN. Thank you, Madam Chair.

Mr. Barnell, I appreciated your comments because they were giving—well, I sort of appreciated them. They were giving me flashbacks, because, before coming here, I had raised a couple hundred million from private equity and always felt that tension where I did not want one more person in my office who represented my majority investor telling me what to do—I see Mr. Conwell laughing—but we had not quite gotten big enough to have the full reporting requirements to go public. I am sympathetic to that tension.

I also think that every debate we have on this committee is fundamentally about the tension between capital market access and

investor protection. Push more in one direction, you go the wrong way on the other. I think that it is healthy to talk through it, but I want to try to highlight that.

Mr. Conwell, how much did you say you are currently managing in your current fund?

Mr. CONWELL. Currently, it is $9.3 million.

Mr. CASTEN. Okay. Is that your first fund?

Mr. CONWELL. First fund, yes.

Mr. CASTEN. How many Limited Partnerships (LPs) do you have in there?

Mr. CONWELL. 194.

Mr. CASTEN. Okay.

When you make an investment in one of your target companies, do they all have to sign off on the investment, or do you have a deal arrangement with them that they have agreed to be in the fund and then they trust you to make those investment decisions?

Mr. CONWELL. It is an agreement where they fully trust me to make the investments——

Mr. CASTEN. Okay.

Mr. CONWELL [continuing]. in the fund. They are given all the documentation up front——

Mr. CASTEN. Sure.

Mr. CONWELL [continuing]. to let them know how I invest and what I——

Mr. CASTEN. Yes, which is fine, and that was my experience. My point is that none of those investors essentially get any disclosure other than, when you come back to raise your next fund, you are going to have to describe your fund performance, but you are not providing those investors with disclosure—as you should not, because——

Mr. CONWELL. No, I do. I do. I do provide them with the disclosures.

Mr. CASTEN. Compare, if I was doing a public listing, I would have to provide 3 years of audited financials. I would have to provide details on my management team. I would have to do all that stuff. Your——

Mr. CONWELL. I give them all the infor——

Mr. CASTEN. Your LPs do not—let me move on. Your LPs do not have to go through doing that disclosure. Which is fine. I am just flagging that there is a question of where the protections are for the LPs as accredited investors because we trust they have this, and they do not.

Ms. Pinedo, there has been a lot of talk by my colleagues across the aisle, which is just wrong, so I am hoping you can correct it.

Can you talk about the trend line in total capital available for investments, public and private, over the last couple years? Rising or falling?

Ms. PINEDO. In my testimony, I have data regarding the amount of capital that has been raised in public offerings, which has declined by comparison to the amount that——

Mr. CASTEN. No——

Ms. PINEDO [continuing]. has been raised——

Mr. CASTEN. Yes, but——

Ms. PINEDO. Sorry.

Mr. CASTEN [continuing]. the total available has surged, right?

Ms. PINEDO. The total available has surged.

Mr. CASTEN. Broadly speaking, that has been because private equity has really surged and taken off?

Ms. PINEDO. Absolutely. Yes.

Mr. CASTEN. The idea that there is a shift—and just on that point, do you know what the total market cap is of all private equity funds versus the total market cap of public traded——

Ms. PINEDO. Oh, it vastly—it vastly is—yes, it——

Mr. CASTEN. Yes, it was like $56 trillion of private—of market——

Ms. PINEDO. Yes.

Mr. CASTEN [continuing]. cap in public funds——

Ms. PINEDO. Absolutely. Yes.

Mr. CASTEN [continuing]. versus 3 1/2——

Ms. PINEDO. Private equity and private credit in recent years as well.

Mr. CASTEN. Yes.

Ms. PINEDO. Yes.

Mr. CASTEN. Essentially, the surge of private equity has created pockets of capital that early-stage companies that are worth less can access thanks to people like Mr. Conwell——

Ms. PINEDO. Yes.

Mr. CASTEN [continuing]. and we still have public markets on the back end for exits, which is where the huge value creation is.

Ms. PINEDO. That is right.

Mr. CASTEN. The story that people are fleeing public markets is really a story about, there has been a huge surge in alternative types of capital that are available——

Ms. PINEDO. Yes.

Mr. CASTEN [continuing]. that people like my company Mr. Barnell, you would not have had that—you could not have gone public when you were two kids out of college. Nobody would have given you money. You found people to give you money. That is awesome, right? Thanks to people like Mr. Conwell. Like, that is—let us celebrate what that is.

Back to my initial question. I have never met a CEO, myself included, who does not want dumber money. Dumb money is awesome. If you do not have accountability, you can do what you want. It is fantastic.

Ms. Thornton, should we be concerned that the Trump administration is laying off tons of people at the SEC, including all of the directors who were responsible for making sure that there were appropriate disclosures of Mr. Musk's purchase of Twitter?

Ms. THORNTON. Yes——

Mr. CASTEN. That seems like working backward on investor protection, right?

Ms. THORNTON. Absolutely.

Mr. CASTEN. Should we be concerned that all of my Republican colleagues are trying to say that, if you tokenize a security, you should not have to—it would have to be regulated by the SEC, which is the disclosure-based organization. You should just—all of a sudden, you are a commodity, magically?

Ms. THORNTON. We should be very, very concerned about that, because people have an expectation of profit when they invest. There are people who are new to this type of investing, and they could lose a lot. They could—when Sam Bankman-Fried did his thing——

Mr. CASTEN. Yes, and I am——

Ms. THORNTON [continuing]. we saw——

Mr. CASTEN [continuing]. sorry to cut you off, because I have 15 seconds. I just want to get one——

Ms. THORNTON. Yep.

Mr. CASTEN. Are there any proposals before the committee today that would increase investor protection?

Ms. THORNTON. I do not recall seeing any when I did my initial review of the 36——

Mr. CASTEN. That is exactly my point. There is a healthy tension. There is an effort going on in the Trump White House to fleece the investment in public. I welcome——

Chairwoman WAGNER. The gentleman's time has expired.

Mr. CASTEN [continuing]. the tension but let us not deny what is going on here.

Chairwoman WAGNER. The gentleman's time has expired.

The chair recognizes the gentleman from Indiana, Mr. Stutzman, for 5 minutes.

Mr. STUTZMAN. Thank you, Madam Chair.

I ask for unanimous consent to submit for the record a letter from the American Securities Association regarding the hearing today.

Chairwoman WAGNER. Without objection.

[The information referred to can be found in the appendix.]

Mr. STUTZMAN. Thank you.

First of all, thank you to all of you. This has been a fascinating hearing.

I was absent from Congress for the last 8 years and was an entrepreneur and looking to raise capital to start companies or to revitalize companies or to grow companies, and so, Mr. Conwell, your story is fascinating. Congratulations, on one hand, but I know you have, probably, some scars to show for how you got to where you are, as well as Mr. Barnell.

I would like to ask a little bit about—and I appreciate the gentleman's comments. We are really in that balance between access to capital but protecting investors. I have been in many meetings where you are trying to explain the project and say, this is why we believe it is going to be successful, and we would love your participation and investment as well.

It really—it is—as he mentioned, there is dumb money out there. That is unfortunate but we also—people are wanting to participate, because they are doing—they are working on it in their daily job, they are raising their family, but they are also feeling like, I have a little bit of money here, I would like to participate somewhere. How can I do that? What is the easiest way to do that?

I guess, a question for Mr. Conwell: Could you touch on maybe crowdfunding just a little bit and how that is playing in today's fundraising and capital formation?

Mr. CONWELL. If you would not mind, I would like to cede that question to Ms. Rebecca. She deals with crowdfunding, and she is the expert here.

Mr. STUTZMAN. Okay. All right. That is fine with me.

Ms. KACABA. Could you repeat the question?

Mr. STUTZMAN. Can you talk a little bit about crowdfunding? It has been around for a little while, but, with technology and easier access, could you talk a little bit about where crowdfunding is playing in capital formation in today's markets and fundraising?

Ms. KACABA. Yes. It is incredibly important. The technology that we have built at DealMaker and that a lot of our colleagues have built in this space is foundational to help more entrepreneurs get funded in today's day and age.

We can do that, especially for jurisdictions that are not Silicon Valley or Wall Street, by getting deals like Mr. Andrew Barnell's in front of people in all different regions. We can draw from the communities, and we can help form businesses that are not based in those city centers.

Mr. STUTZMAN. What about investor protections through that avenue? What are some of your thoughts on that? Is there enough protection? Is there enough information disclosed for——

Ms. KACABA. The legislation is incredibly well-designed. We have Form C. We have the 1-A.

What we have actually seen is that, with that standardized disclosure, more junior investors can become more sophisticated, because every deal they look at, there is the same format, where they can read the same information. It is actually desirable that the whole exempt markets move in that direction.

Mr. STUTZMAN. Yes. Okay.

Mr. Barnell, Congratulations on your success. I know that, as an entrepreneur, you are always looking forward. Sometimes it is good for us to always just take a glance back and look at how far we have come, but there is always more work to do.

Could you talk a little bit—you mentioned in your remarks about the difficulty of raising funds in the Midwest. I guess I am just curious, because I come from Indiana, and I would agree with that comment, but I am kind of curious about your experience and why you mentioned that in particular. Do you have any ideas, what could be done to change that?

Mr. BARNELL. Yes, absolutely.

There is one stat I always like to cite. It is not that there is an absence of industry or capital to deploy, right? I think sometimes it is that the infrastructure does not exist. If you look at the data, 20 percent of the GDP in the country, 20 percent of the jobs are in the Midwest, but only 4 percent of the venture capital is deployed there.

Mr. STUTZMAN. Yes.

Mr. BARNELL. It is not an absence of the capital; it is an absence of the means to make it happen.

Which is why I think things such as making it easier for venture funds to form—because we have fewer venture funds per capita than other places—easier to crowdfund. Those are the ways we solve the solution and make it easier and provide the knowledge

for people to invest in companies when they want to and when they see the opportunity.

Mr. STUTZMAN. Is it just a matter of connecting those who have funds to those who have projects?

Because, I know that—in the Midwest—Congressman Steil and my district are some of the heaviest manufacturing districts in the country. A lot of these folks, maybe they came off the farm, know how to build a widget, but they do not necessarily know how to finance something.

Is that something—are there places out there that we try to connect people to be able to fund projects like that?

Mr. BARNELL. I do not know all the solutions, but I could speak to some of our experience. We are a colorectal cancer screening test. Early on, we had a lot of doctors and gastroenterologists say, "I want to invest in this. I have never done it. How do I do it? Is this like buying a stock?" Right?

I think it is the education; it is the funds. I think there are a lot of things that we need to do to make it happen, but I think, if you move in that direction, over time, you are going to be in a much better place from a capital-formation perspective.

Mr. STUTZMAN. Yes.

Thank you, Madam Chair.

Chairwoman WAGNER. The gentleman's time has expired.

The chair now recognizes the gentleman from Wisconsin, Mr. Steil, who is also the Chair of the Subcommittee on Digital Assets, Financial Technology, and Artificial Intelligence, for 5 minutes.

Mr. STEIL. Thank you very much, Madam Chair. Thanks for holding today's hearing.

I would like to start with you, if I can, Ms. Pinedo.

Emerging growth companies. How do we get companies onboarded, navigating through the capital raise and particularly in early formation?

As we look at the number of companies that are choosing to go public, we continue to see that decrease. Emerging growth companies and the regulatory environment in that space are trying to lighten that burden to encourage early-stage companies to move forward, to access the public markets, and to use the public markets as a vehicle for growth.

I know you are familiar, broadly, with this space. I would love you to comment on it. In particular, what types of industries are uniquely utilizing this?

Mr. Stutzman correctly noted both of our districts have a history of capital-intensive manufacturing. There are also a lot of tech companies, whether or not it is biotech or other areas. What type of industries or companies might be uniquely interested in emerging growth companies?

Ms. PINEDO. Almost all of the companies that have gone public since the JOBS Act was adopted have qualified as Emerging Growth Companies (EGCs). The JOBS Act has been a resounding success.

It would be—I take issue with the subcommittee member who said that the bills under consideration today would eviscerate investor protection. That is simply not true. The framework for disclosures by EGCs is robust. There are some disclosure accommoda-

tions that are made for EGCs, but there are strong investor protections. The EGCs——

Mr. STEIL. Are there certain industries that are uniquely inclined to look to the emerging growth company?

Ms. PINEDO. It is a wide array of industries that have utilized the IPO on-ramp, and that includes tech companies, life-sciences companies, industrials, consumer products companies. It is a very broad representation, and it has been very dependent on the market and what the market is receptive to.

Mr. STEIL. Should Congress extend the IPO on-ramp, the EGC threshold?

Ms. PINEDO. Absolutely. Without question, it has been a success. It will continue to be a success, and it will continue to attract companies.

Mr. STEIL. I appreciate you saying that. I have legislation that would do just that.

Ms. PINEDO. Yes.

Mr. STEIL. A final comment on this. Is there stuff—are there rules, regulations, adjustments that should be made at the SEC, without acts of Congress, as it relates to emerging growth companies?

Ms. PINEDO. The Acting Chair referenced in his speech that the SEC intends to look at rightsizing regulation and looking at the disclosure accommodations for different size companies—smaller reporting companies and other companies—and looking at the disclosure burdens that are applicable to different companies.

Among the bills under consideration today are looking at the definition of "smaller reporting company, accelerated filer, large, accelerated filer." All of those things are appropriate measures and good things for capital formation——

Mr. STEIL. Thank you very much. I just want to be cognizant of the time, because I want to come back over to Mr. Conwell and Mr. Barnell in particular.

As Mr. Stutzman referenced, I am from Wisconsin, he is from Indiana—a manufacturing base, but a long way from Silicon Valley, New York City, or other traditional VC hubs.

In your testimony, Mr. Conwell, you referenced some of the challenges you face in obtaining capital.

Mr. Barnell, you have talked about this as well.

Are there specific policy changes or adjustments that you would like to see?

I will start with you, Mr. Conwell.

Then I will come to you, Mr. Barnell.

Mr. CONWELL. For me, I am very focused on this limited partner, limit in funds. Currently it is 100, which, including yourself, makes it 99.

In the JOBS Act, when they increased the limit for funds that were $10 million or less to have up to 250, that is what allowed me to raise my funds. If not for that, this does not happen. In the 47 companies I invested in, probably more than half of them would not exist, right?

Now that I am going to higher than a $10 million limit, those individuals are—I can no longer raise from them, and, if they feel like I have done a good job, they can no longer participate with me.

Mr. STEIL. Thank you very much.

Fifteen seconds, Mr. Barnell. Anything jump to mind?

Mr. BARNELL. Just very briefly, for us, it really was investors like to invest locally, right, especially at an early-stage. Facilitating that, I think, is important.

Mr. STEIL. The answer is, everyone should move to Wisconsin and, as a backup plan, Indiana.

Thank you very much. I appreciate your being here.

Madam Chair, I yield back.

Chairwoman WAGNER. Do not leave St. Louis, Missouri, out, Mr. Steil.

The gentleman yields back.

The chair now recognizes the gentleman from New York, by the way, Mr. Lawler, for 5 minutes.

Mr. LAWLER. Thank you, Madam Chair.

I have a letter to submit, without objection, on behalf of the Innovation Coalition.

Chairwoman WAGNER. Without objection, so ordered.

[The information referred to can be found in the appendix.]

Mr. LAWLER. Thank you.

It is ingenuity in the generations of entrepreneurs and innovators utilizing emerging technologies that have built America and will be crucial looking forward. Entrepreneurs and small businesses drive the American economy. In 2019, the Small Business Administration calculated that close to 44 percent of our GDP was a result of small businesses.

We should be doing everything we can to promote investment, promote entrepreneurship, and foster small-business growth, whether it be cutting red tape, providing additional access to capital, or simply getting government out of the way.

That is why I introduced the Helping Angels Lead Our Startups (HALOS) Act to promote access to investment capital for small companies and ensure that startups can continue to generate interest and connect with investors.

This would ensure that demo days, pitch competitions, and community economic development events where there is no specific investment offering are not considered general solicitation under Reg D.

The HALOS Act, which is noticed with this hearing, is one of a number of commonsense legislative reforms we should be taking to ensure that startups and businesses have the resources they need to develop, to grow, and thrive.

The JOBS Act directed the creation of regulation crowdfunding to build on crowdfunding as a new and innovative way for startups and small businesses to raise capital, typically over the internet. The number and size of regulation crowdfunding offerings has continued to increase over time. Noticed with this hearing is proposed legislation from my colleagues including a measure that seeks to build on that success.

Ms. Kacaba, I know you touched on this briefly, about the benefits, but how would enhancements to regulation crowdfunding help small businesses raise capital? Would it be beneficial to expand the number and range of investors that can participate in

crowdfunding offerings? Are there additional enhancements that you believe we should make to improve the utility of it?

Ms. KACABA. Yes, absolutely, and thank you for the question. I agree with what you said. The JOBS Act, since its inception, has helped so many small businesses form and so many jobs be created.

There are very simple, small adjustments that we can make so that the online crowdfunding space can flourish to allow more growth and more jobs to get funded. Those are in our written statement that we advocate for. The HALOS Act is an incredible step in that direction.

Mr. LAWLER. I appreciate it.

Any of you care to comment as well?

No? Okay.

I think, from the standpoint of additional enhancements, Ms. Kacaba, what would you say are the necessary steps?

Ms. KACABA. I think it is important to remember that non-accredited investors are looking to build wealth. Studies show that younger generations do not believe they are going to build their wealth from their direct jobs. They are looking for other ways in the gig economy, and they are looking to make investments.

If you regulate them out of a space where we are doing bad-actor checks, we are doing background checks, we are doing disclosure documents, you are just forcing them to put their money into other sectors, like crypto, like Non-Fungible Tokens (NFTs), like the public markets, and there are no caps in those spaces.

Under the JOBS Act, there is a cap on how much they can invest in every single offering, and so the JOBS Act is well designed that way. If we remove the cap on Reg A, we can grow the space, we can grow online offerings, and we can grow the ecosystem and communities of people that want to invest in businesses they love.

We have a customer, Monogram. It was started by two doctors. They saw the need for a robotic knee replacement surgery arm. VC was not interested in funding that business but there are a lot of people out there that know someone that has had knee surgery that thought that was a really interesting business. Now that company is public on National Association of Securities Dealers Automatic Quotation System (NASDAQ).

If we can grow the online capital formation space by increasing the caps and streamlining the way Reg A and Reg CF work together, we can get more businesses funded.

Mr. LAWLER. I appreciate it.

With that, I yield back.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentlelady from Michigan, Mrs. McClain, for 5 minutes.

Mrs. MCCLAIN. Thank you, Madam Chair.

Before I get started, I would like to enter for the record a letter from Engine, which is a nonprofit group advocating for tech startups.

Chairwoman WAGNER. Without objection.

[The information referred to can be found in the appendix.]

Mrs. MCCLAIN. Thank you.

I am going to piggy-back a little bit off my colleague from New York, Mr. Lawler, in what we have been talking about.

I love economic growth. It is the backbone of our great country in which we live in. We must remember that it is our economic system that gives us our social programs. I find it sometimes ironic that some Members across the aisle from us are for growth, they are just not for public growth—they are only for public growth. They are not for growth in the private sector.

We have to do more to incentivize growth in the private sector, right? Not just the government, but—private sector is good. Entrepreneurship is good. That is what this country was built upon, so I am here to advocate for more private-sector growth that all Americans can participate in.

I have a little bit of experience. I have had a business for 35 years in the financial-planning sector. Just out of curiosity, with all of the departments that I had, anyone wants to guess where I had the most resources, in terms of people and money, what department maybe that was?

Think of maybe the processing. We did about 13 billion. Maybe the processing sector?

Ms. PINEDO. Legal and compliance.

Mrs. MCCLAIN. Compliance. Spot-on. Every year, right?

Now, I do agree regulation is needed. I would say guardrails are needed, right? At some point in time, we have to let the businesses run, right? We have to have a little bit of faith in people, and overregulations do more harm than good on the consumer, because we want competition. Competition is good, right? It lowers the prices.

In order to achieve this economic growth and development, though, we need a strong and healthy capital formation. We have to get this, ideologically. If we are not allowed to invest in our future, my company would have never been able to survive. We have to reinvest. It is critical.

Ms. Pinedo, what are some of the most burdensome regulations that prohibit capital formation, in your opinion?

Ms. PINEDO. It is not so much that they prohibit capital formation as that they make being public less appealing than in past times. A lot of that is related to Sarbanes-Oxley 404 attestations so that is certainly something. One of the bills under consideration which addresses SOX attestation for low-revenue issuers would be very helpful.

Another would be looking at the disclosure burdens and the standards for disclosures as it relates to different types of companies or companies of different sizes——

Mrs. MCCLAIN. Sure.

Ms. PINEDO [continuing]. so that disclosures are more rightsized, if you will. That would address whether companies that are smaller reporting companies or accelerated reporters and so on could address the disclosure burdens depending on their size. That would be another issue.

Likewise, a different but related issue that is not under consideration but probably ought to be is bringing back some of the ecosystem that once existed for companies that are public, and that would be addressing the regulation of research and addressing the regulations and the rules related to offering-related communications.

I mentioned that our smaller public companies and our medium-size public companies no longer benefit from being public. A large part of that is because of the lack of research and the lack of liquidity in their stocks.

Mrs. MCCLAIN. I think we would all agree that we have to do more to incentivize as opposed to disincentivize.

In my last few seconds, what can we do, in your opinion, to ease some of the compliance and disincentives? What could we do immediately, in your opinion?

Ms. PINEDO. Extending some of the JOBS Act benefits, which these bills do, would be a great start.

Mrs. MCCLAIN. Thank you.

With that, Madam Chair, my time has expired. I yield back.

Chairwoman WAGNER. The gentlelady yields back.

The chair now recognizes the gentleman from Montana, Mr. Downing, for 5 minutes.

Mr. DOWNING. Thank you, Madam Chair.

First of all, I have a letter from Carta that I would like to submit for the record.

Chairwoman WAGNER. Without objection.

[The information referred to was not submitted prior to printing.]

Mr. DOWNING. Thank you, Madam Chair.

I am really excited about the work we are doing on this committee. My previous job, I was the securities commissioner for the State of Montana, and one of our charges was capital formation. It was always an interesting project, because we have so much talent, so many entrepreneurs, and we also have money to try to find investments. Figuring out how to put the two together and do it within the regulatory framework, it was exciting work but obviously had its challenges.

Now, Mr. Conwell, according to the Small Business Administration, 99.3 percent of businesses in Montana are classified as small businesses and employ about 67 percent of Montanans.

Being a rural State and talking about the challenges that I had as a regulator, can you explain the challenges for rural, small businesses to find potential investors when they are located in places that lack any kind of capital-raising networks?

Mr. CONWELL. That is a compounding issue. It is one of—if you are in a community like that, there are going to be less funding companies already, so there is less information, there are less people you can go to learn from.

When you are getting started, you start off just kind of fumbling off in the dark, running into walls, trying to figure out where to go, what is an investor.

Once you figure that out, then you start going out in your community like, "Well, where are they?" Then you realize at some point, "I have to go to New York or California, and that is what it is." That is what we see time and time again.

Even though we talk about the coast—I am from Baltimore. My founders leave and go to New York all day, every day, all right? It is something that we see in all of these communities.

A lot of it is because—well, some of it is because the information is not as widely out there of, like, these are the other ways you can

get capital, people sharing that in their communities. You need more demo days, those accelerators, all of that.

Then, also, incentivizing the folks there locally to participate, really the angel investors, at the early stages, getting people started. Having those individuals in your local community who know you, who believe in you, who have seen you grow, who have affinity with you, being able to put money behind you but with an incentive—tax credits, something like that—something to make people start thinking, "Oh, like, this is a viable thing."

I believe something like that will start to buoy communities and rural communities, and we have seen something like that in Maryland. We have an economic development corporation, TEDCO, that does outreach into our rural areas specifically to do things like this.

Mr. DOWNING. Right. Right.

Moving on, I have struggled in a life, raising money basically under Reg D exemptions, alternative investments, and with the "accredited investor," criteria. It has always—it bugged me when I was on that side of it because it did not seem to really correlate to your ability to make a decision on taking risks.

I would think, if you were somebody inexperienced and uneducated who had a windfall, maybe you inherited some money, you are an accredited investor, but you could be a Ph.D. in economics and finance with $100,000 and you cannot invest that. It really limits folks that can participate in these.

I am going to go to Ms. Kacaba.

The current accredited investor standard limits investments in the private markets to individuals with an annual income of at least $200,000 or a net worth of over a million dollars. The median income in Montana is nearly $71,000, with only 8 percent of households making $200,000 or more.

We have discussed throughout this hearing that the overly restrictive "accredited investor" definition denies small businesses access to a large pool of investors. It is no surprise that the investors that typically meet this standard live in urban areas. I am coming from a very rural district.

Do you believe rural investors can be just as sophisticated as urban investors and should be allowed to more freely participate in private markets?

Ms. KACABA. Absolutely, yes, and thank you for the question. I think that is a really important point.

They are looking to generate wealth creation. The rules that we have in front of us already prevent them from investing too much in any one offering, so the rules are properly structured for them already. We need to realize that, if we do not let them into the private markets, their money is going to go elsewhere. The private markets are well-regulated, and so they should be allowed to participate.

Mr. DOWNING. Thank you.

Can you maybe elaborate on or discuss how the current accredited investor standard unfairly denies rural investors growth in their retirement accounts, like a normal hardworking Montanan?

Ms. KACABA. Yes, because they are limited in the offerings that they can get access to. Even some of the changes that we have ad-

vocated for—removing common control—would allow them access to investment in VC companies.

For example, there might be a VC with a portfolio of 10 companies, and they want to do follow-on investment in 1. Nine of those companies are excellent companies. They do not hit a 50-percent growth rate that a VC requires for follow-on investment, but maybe they are doing 35 percent. Lots of people in Montana could invest in that and make a good bit of money.

Mr. DOWNING. Awesome.

Thank you. I have run out of time but thank you for your responses.

Chairwoman WAGNER. The gentleman yields back.

The chair now recognizes the gentleman from New York, Mr. Garbarino, for 5 minutes.

Mr. GARBARINO. Thank you, Chairwoman. Thank you very much for holding this hearing today.

Before I start my questions, I would like to offer this letter from Scroobious, which talks about a virtual platform designed to connect early-stage founders, investors, and partners, for the record.

Chairwoman WAGNER. Yes, so ordered.

[The information referred to can be found in the appendix.]

Mr. GARBARINO. Thank you. Thank you, Chairwoman.

Business development companies, or BDCs, are an important source of capital to Main Street businesses, having a statutory mandate to invest in U.S.-based small and midsize companies.

However, the SEC has applied a rule, known as the acquired fund fees and expenses, to BDCs that presents a misleading picture of the true costs of investing in a BDC. Because of this, BDCs were excluded from certain indices—indexes, causing an outflow of institutional investor dollars in BDCs.

I am saying "BDCs" a lot.

I have put forward a bill recently that would fully exclude BDCs from the acquired fund fees and expenses (AFFE) requirement to fix this problem.

Ms. Pinedo, can you explain how the SEC's posture on AFFE has impacted BDCs, their investors, and portfolio companies?

Ms. PINEDO. Sure.

Just as you said, BDCs are filling an important gap. BDCs provide venture debt and other funds that banks are not providing to smaller and medium-sized businesses.

When the SEC changed its policy in 2006 to require the presentation of AFFE, it now requires the presentation in the fee table of an artificial and kind of inflated percentage of fees over a period of time, over a 1-, 3-, 5- and 10-year horizon. As you indicated, when that change became applicable, it triggered BDCs from falling out of a number of indices. Because so many institutional funds are index trackers, it meant that institutional investors moved out of investing in BDCs.

That meant that BDCs lost a tremendous amount of investor interest—in particular, institutional investor interest. We should be promoting investor interest in BDCs again, because BDCs provide capital to Main Street and provide capital and fill this gap that is no longer being served by banks. We should also be considering other important steps to modernize the regulation of BDCs.

I wholeheartedly support reversing the AFFE policy and in my written testimony provide a number of suggestions for modernizing the regulatory framework relating to BDCs.

Mr. SHERMAN. Will the gentleman yield?

Mr. GARBARINO. I have to get through this. I am sorry. Thank you.

Mr. SHERMAN. Okay.

Mr. GARBARINO. In your view, exempting BDCs from the AFFE requirement would result in more accurate disclosures to investors?

Ms. PINEDO. Yes, it would.

Mr. GARBARINO. Okay. Great.

Alternative investments, which can include private credit real estate infrastructure, have shown value in recent memory. These vehicles help balance debts in portfolios, spur job growth, facilitate capital formation, and help provide more uniform investment returns for individuals.

What role do you see, Ms. Pinedo, the alternative investments playing in capital formation?

Ms. PINEDO. Alternative investments, including BDCs, interval funds, tender offer funds, target date funds—all of these different funds can provide an important role in capital formation in terms of supporting investments in other private funds and investing in securities of private companies.

Again, we should be looking at ways to enhance and promote retail investment opportunities in private funds and in modernizing the regulation of these regulated funds, as well as in looking at ways in which we can further extend the reach of a lot of these regulated funds so that they can offer fund interest not just to qualified clients but also to a broader range of investors.

Mr. GARBARINO. Thank you.

You talked about regulatory modernization in your answer before about BDCs. Would you agree that regulatory modernization is necessary to provide greater options to qualified and accredited investors as well?

Ms. PINEDO. I do. I do think that is absolutely necessary.

I think we have talked a little bit about potential changes to the definition of "accredited investor" during today's hearing. Many of the measures I do support. In the context of BDCs in particular, the AFFE change is important.

I think many of the changes that—much of the relief that the Securities and Exchange Commission provided for BDCs during the pandemic, which did not sacrifice investor protection, should be extended and was important. Again, to the extent that BDCs are significant for capital formation, it would be helpful to extend it.

Chairwoman WAGNER. The gentleman's time has expired.

Mr. GARBARINO. Thank you.

Mr. SHERMAN. Madam Chair, I ask unanimous consent to put into the record a letter from the North American Securities Administrators Association.

Chairwoman WAGNER. Without objection, so ordered.

[The information referred to can be found in the appendix.]

Mr. SHERMAN. I would also like to add to the record that the Business Development Company (BDC) bill is one that I introduced

in the 116th, 117th, and 118th Congress and look forward to introducing——

Chairwoman WAGNER. I love it when we can play well together——

Mr. SHERMAN. Yes.

Chairwoman WAGNER.—across both aisles. Lovely, lovely.

I believe our last person to come forward with questions is our member, the gentleman from Tennessee, Mr. Ogles.

You are recognized for 5 minutes, sir.

Mr. OGLES. Thank you, Madam Chair.

Thank you to the witnesses. I know sitting here through the hearing is arduous, but we appreciate you being here, because the information you provide is valuable to us but also to the American people.

Mr. Barnell and Mr. Conwell, would you agree that over-regulation is a major barrier to entrepreneurial capital formation for American investors?

Mr. BARNELL. Yes.

Mr. CONWELL. Yes.

Mr. OGLES. I want to put a pin in that for a moment.

As we see the current Trump administration aggressively moving to try to rightsize government, as we see the Department of Government Efficiency (DOGE) initiative under Elon Musk digging and looking for areas of waste, there is only so much the American Government, the U.S. Government, can do to cut waste in spending. We have to do our jobs and that is tough but the future of our economy, the future of combating the $37 trillion in debt, and growing, is the American economy.

As we look at capital formation, the purpose of this committee, I want to ask the question: As we look to the future, capital formation, entrepreneurism, the future of saving the Republic, what role does the regulatory regime play in hindering that growth, that entrepreneurism, and, quite frankly, our future?

I will start with you, Mr. Barnell.

Mr. BARNELL. What I will highlight—and I wholeheartedly agree that I think the foundation of our economy, job creation, innovation, it is all driven by startups.

I think one of the things that I highlighted in my written testimony is, ultimately, we do see, as we continue to grow, the requirement potentially ultimately to access to public markets. One thing I highlighted a little bit earlier was that the disclosure requirements, the regulatory requirements that go along with that, is a challenge. It is a real challenge from a cost perspective as well as from a compliance perspective.

That would be one thing that I would highlight that, as we continue to grow, would certainly be something that we would not want to hinder our ability to continue to save lives through our innovative technology and also drive job growth.

Mr. OGLES. Madam Chair, we saw in the last administration the weaponization of the government, whether it is the Justice Department or the regulatory agencies, against the American people, against industry, against businesses.

Again, I just to emphasize this role of getting regulation out of the way of the economy, getting regulation out of the way of those

who want to start the next—the next whatever, right? The next Tesla, the next Facebook, the next whatever. Whatever is over the horizon that we cannot see and anticipate yet may very well be hindered by this regulatory regime that was put in place that is literally targeting the consumer by getting in the way of business.

Mr. Conwell.

Mr. CONWELL. As I mentioned in my testimony, when I raised my fund, I raised $10 million, but I had been oversubscribed. I had gotten north of $30 million worth of interest. I turned away more than 200 investors who wanted to invest in my fund due to the limits, and I invested in 47 companies. Had I raised $30 million, I would have invested in over 100.

Because I am one of the earliest investors, I am typically the first investor in many of the companies. Like a company out of Memphis, Tennessee, Blank Beauty. It was a little company making this cool robot that would make custom nail polish. Their first customer was Walmart. What they did is they created a vending machine that will make you a custom nail polish.

Walmart also has this issue of people stealing things, and so they are putting stuff behind glass. They are looking to replace that glass with this really cool, fun, innovative robot that is increasing sales and getting more people in the door from a little company out of Memphis, Tennessee, that nobody had ever heard of or seen. I was the one to seed them and made sure that this could be a thing.

Mr. OGLES. As someone who is a Congressman from Tennessee, we thank you for investing in our economy and the job growth, et cetera.

I am running low on time, so I will catch the next two ladies really quickly.

Ms. Kacaba.

Ms. KACABA. Yes.

Mr. OGLES. Go ahead.

Ms. KACABA. Yes, I think the points you are raising are incredibly important. There are so many companies like Mr. Conwell highlighted that DealMaker backs and funds in rural jurisdictions.

The written submission that we have submitted is just to get some of the regulations out of the way so that we can do more. If there are different nuances made—if the caps are improved, if 5110 is removed—there are different ways that we can get more entrepreneurs funded, more jobs created.

Mr. OGLES. Madam Chair, imagine that: Less government is better.

Ms. Pinedo, the last word.

Ms. PINEDO. For all the reasons we discussed today, I support the bills that have been introduced.

Mr. OGLES. Madam Chair, we thank you for your time, your leadership, and I yield back.

Chairwoman WAGNER. The gentleman yields back.

Last but not least, just under the wire, the gentleman from Massachusetts, Mr. Lynch, is recognized for 5 minutes.

Mr. LYNCH. Thank you, Madam Chair. I appreciate it.

As Mr. Barnell mentioned in his opening statement, he talked about the fact that 90 percent of startups fail. As Congress sees it, we question, should we allow more people to get into that—to in-

vest in something where 90 percent fails? Should we allow small pension funds or individuals who might be investing their life savings or their retirement in an area where we are going to see 90 percent failure?

That is what troubles us. We do want to energize and finance startups, because, as the ranking member has said, all you need is that 10 percent that succeeds, and you can change the world, right? We are trying to manage this balance.

Ms. Thornton, are we doing that properly now? Are we protecting small investors? Would an expansion of "accredited investor" and opening up to a wider group be in the best interest overall of American investors?

Ms. THORNTON. I think your concerns are well-placed, about expanding who can invest in the private markets, because of a couple of things.

First of all, there is no mandated disclosure in private markets, so even if you were a sophisticated investor, you would not know that much about these companies. In addition, in the public markets, information is disclosed publicly, a lot of information, and market participants analyze it, and there are all kinds of other market participants that help investors understand that company.

The other big thing that I would be very concerned about is just that, if you expand it beyond the current people who invest in the private markets, you could be talking about people who have investment savings that they are planning on using for retirement. You could have pensions that have their rules replaced with allowing them to invest more in alternative investments. You could really see—these are very highly risky markets, and you could really see harm to people's retirement savings. It could be truly harmful to them.

Mr. LYNCH. Yes.

The other thing I worry about, as you have mentioned, is pension funds. I think 67 percent of investments in private equity come from pension funds. It is the same thing with the hedge fund investors, I think somewhat less. Maybe 30 percent of the inflow on hedge funds is coming from pension funds as well.

We have seen some situations where in recent collapses—I think it was one of—I think it might have been Silicon Valley Bank where California Public Employee's Retirement System (CalPERS)——

Ms. THORNTON. Yes.

Mr. LYNCH [continuing]. the California pension fund, was significantly invested in that, and it went south.

The level of transparency that we would like to see and availability of that information to the public is just not there. It is just not there at all.

Ms. THORNTON. Yes.

Mr. LYNCH. Are there steps that we could take to rebalance this in a way that does not choke off investment, meaningful investment, to startups and other high-risk but worthy investments and yet give people an opportunity to, over the long term, earn sufficient interest on their pension fund savings?

Ms. THORNTON. I really think that the main thing is to get the big companies out of the private markets, to force them to comply

with the public disclosure framework. There will then be more diversity in the public markets, by the way. Then the private markets will be better equipped for what they are appropriate for, which is small companies, small businesses and startups, that need long-term capital that is quiet, that are not worried so much about losing all their money.

Mr. LYNCH. What was your position on the private fund advisor rule that the SEC had proposed?

Ms. THORNTON. I thought that was a very well-done rule. I thought it was really important, because——

Mr. LYNCH. Okay.

Ms. THORNTON [continuing]. right now, investors are not getting good advice. They cannot be sure that they are. Let us put it that way, I thought there was some—they may be paying higher fees. They may be paying hidden fees that they are not aware of.

Mr. LYNCH. Okay.

Madam Chair, thank you for your courtesy, and I yield back.

Chairwoman WAGNER. The gentleman yields back.

I just want to thank all of our witnesses for their testimony today. We certainly had very robust participation by our members, which I am always glad and heartened to see.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses to the chair. The questions will be forwarded to the witnesses for his or her response.

Witnesses, please respond no later than March 31, 2025.

[The information referred to can be found in the appendix.]

Chairwoman WAGNER. This hearing stands adjourned.

[Whereupon, at 12:19 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIALS SUBMITTED FOR THE RECORD

geneoscopy
Transforming
Gastrointestinal Health

Investing in a Healthier America: Chronic Disease Prevention and Treatment
Written Testimony Submitted to
U.S. House Committee on Ways & Means Subcommittee on Health
Andrew Barnell, Co-Founder and CEO, Geneoscopy, Inc., St. Louis, Missouri

Thank you for the opportunity to provide written testimony in response to the Subcommittee's hearing on chronic disease prevention and treatment. As discussed at the hearing, diet, nutrition, food, and disease screening and detection are all intertwined. We would like to discuss these items further below, specifically, how Geneoscopy is innovating in detection and screening.

Evidence shows a significant association between a diet high in ultra-processed food and an increased risk of cancer and specifically colorectal cancer.[1] Colorectal cancer is the second deadliest cancer in the U.S., causing more than 50,000 deaths annually. Of particular concern is the significant increase in the incidence of colorectal cancer among younger Americans. Since 1994, cases of early-onset colorectal cancer (i.e., colorectal cancer diagnosed before the age of 50) have increased by 51%, and since 2004, there has been a rapid shift in mortality patterns, with colorectal cancer moving from being the fourth leading cause of cancer-related deaths among young men and women to now being the leading cause in men and the second leading cause in women.[2]

Fortunately, routine colorectal cancer screenings for Americans aged 45 years and older are an effective intervention to detect precancerous polyps so that they can be removed before they develop into cancer, thereby preventing colorectal cancer.[3] Despite this, one in four adults aged 45 to 75 are not getting screened as recommended. In 2021, only 19.7%, or fewer than 4 million out of 19 million eligible adults aged 45-49 were up to date with their colorectal cancer screening.[4] As such, it is essential that more colorectal cancer screening options be available to people aged 45 and older and that such tests be accessible and affordable for all who are eligible for screening.

Colon cancer is the most preventable cancer if people get screened for it regularly. Colorectal cancer almost always develops from precancerous polyps (abnormal growths, also called adenomas) in the colon or rectum. If you can find and remove the precancerous polyps through screening, you can head off cancer before it develops. A New England Journal of Medicine study concluded that the more adenomas found during screening, the less cancer is subsequently

[1] Isaksen, I. M., & Dankel, S. N. (2023). Ultra-processed food consumption and cancer risk: A systematic review and meta-analysis. *Clinical nutrition (Edinburgh, Scotland)*, *42*(6), 919–928. https://doi.org/10.1016/j.clnu.2023.03.018.
[2] https://www.nbcnews.com/health/health-news/colon-cancer-deaths-younger-men-women-report-rcna134084
[3] https://www.cdc.gov/chronicdisease/programs-impact/pop/colorectal-cancer.htm
[4] https://www.cdc.gov/pcd/issues/2023/23_0071.htm

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diagnosed.[5] Screening can also identify early-stage cancer. When colorectal cancer is found at an early stage, before it has spread, it is more treatable, and the five-year relative survival rate is about 90%. The percentage of individuals diagnosed with advanced-stage colorectal cancer has increased from 52% in the mid-2000s to 60% in 2019.[6] Survival rates are lower when cancer has spread outside the colon or rectum.[7] Unfortunately, many patients avoid screening, and so their cancer is diagnosed at later stages. Approximately 40% of patients fail to get screened in part because they do not want to have a colonoscopy, which is the gold standard for colorectal cancer screening in the U.S. Colonoscopies are frequently met with patient aversion due to the required bowel preparation, sedation, and potential time away from work.[8]

An alternative to colonoscopy for average-risk patients is noninvasive screening tests, like Geneoscopy's ColoSense, which can be used at home. ColoSense can play a critical role in addressing access to care challenges by reducing barriers to early detection, particularly among underserved populations. Traditional screening methods, like colonoscopies, can be inaccessible due to cost, geographic location, or the need for specialized facilities – challenges that disproportionately affect low-income, rural, and minority communities. A noninvasive test such as ColoSense offers a more affordable, convenient, and less intimidating option, increasing the likelihood that patients will seek regular screenings given their potential to detect precancerous polyps and cancer at earlier stages when it is most treatable.

Everyone is at some risk for developing colorectal cancer, though some groups are at elevated risk. Of particular concern, in the U.S. African Americans have the highest colorectal cancer incidence and mortality rates of all racial groups. African Americans are approximately 20% more likely to develop colorectal cancer and an estimated 40% more likely to die from it than most other populations.[9] Moreover, as noted earlier, colorectal cancer incidence and mortality rates among people ages 45-54 have increased in recent years. The percentage of individuals diagnosed with colorectal cancer who are under the age of 55 doubled from 11% in 1995 to 20% in 2019.[10] In 2021, the U.S. Preventive Services Task Force (USPSTF) lowered the recommended age for people to begin colorectal cancer screening from 50 to 45.[11] With that change, 17 million more people entered the recommended screening cohort. Clearly, there is an urgent need to increase screening efforts.

As technological innovations in the field of preventive screening and diagnostics advance for the country's deadliest diseases, more effective screening modalities become available. For example, ColoSense uses mRNA technology that has demonstrated the potential to improve the

[5] https://www.nejm.org/doi/full/10.1056/NEJMoa1309086
[6] https://acsjournals.onlinelibrary.wiley.com/doi/full/10.3322/caac.21772
[7] https://www.cancer.org/cancer/colon-rectal-cancer/detection-diagnosis-staging/detection.html
[8] https://www.sciencedirect.com/science/article/pii/S2211335519300750
[9] https://acsjournals.onlinelibrary.wiley.com/doi/full/10.3322/caac.21772
[10] https://acsjournals.onlinelibrary.wiley.com/doi/full/10.3322/caac.21772
[11] https://www.uspreventiveservicestaskforce.org/uspstf/recommendation-topics/uspstf-a-and-b-recommendations

detection of colorectal cancer and advanced adenomas (AA) above and beyond other tests on the market. Top-line data from the CRC-PREVENT clinical study for Geneoscopy's test demonstrated 93% sensitivity for colorectal cancer and 45% sensitivity for AA.[12] In addition, ColoSense's ability to detect AA does not materially erode for the youngest screening bracket of 45-49-year-olds as occurs in other screening methods.[13] This finding may lead physicians to choose different screening modalities for different patient demographics. When it comes to screening, more choice is better, and the best colorectal cancer screening test for a given patient is the one that physicians will use. Geneoscopy's clinical trial showed that the new technology worked successfully for people across demographic groups all over the country and has the real promise to advance the vital goal of increasing access to health care innovation for historically underserved populations. In Geneoscopy's trial, 30% of participants had an income below $50,000 annually, 9% were on Medicaid, and 5% were from rural areas[14].

There are a few key hurdles to bringing life-saving cancer screening tests to patients. First, getting approval by the Food and Drug Administration (FDA); second, qualifying for coverage and payment by the Centers for Medicare and Medicaid Services (CMS); and third, inclusion in the USPSTF screening recommendations given that commercial insurers generally will not cover a test until it is included in USPSTF guidelines. Start-up companies like Geneoscopy take risks when developing new technologies and face the "valley of death" when coverage and guidelines inclusion do not come quickly after FDA approval. To keep pace with biotech innovation and provide access to these innovations, we propose that:

(1) There should be automatic, temporary Medicare coverage for a four year transitional period of all medical devices – including screening tests and diagnostics – that are approved under the FDA Breakthrough Devices Program. To that end, we support H.R. 1691, the Ensuring Patient Access to Critical Breakthrough Products Act of 2023, and H.R. 5389, the National Coverage Determination Transparency Act. These bills would provide the predictable pathway innovators seek for coverage and payment and expedite patient access to novel cancer screening tests like ours. It is imperative that once the FDA approves a test, CMS updates its coverage and payment policies in a timely manner. For example, ColoSense was approved by FDA in May 2024, and we promptly requested that CMS update its National Coverage Determination for colorectal cancer so Medicare beneficiaries and dually-eligible individuals could have access to it. Given feedback we have received from CMS, Medicare coverage for ColoSense likely will not be granted until the end of CY2025 or the first quarter of CY2026 – an estimated full year and a half to two years after receiving FDA approval. This means that Medicare beneficiaries and dually-eligible individuals will face a significant delay in accessing ColoSense and if not otherwise screened could develop colorectal cancer during that timeframe.

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[12] https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpma/pma.cfm?id=P230001
[13] https://doi.org/10.1158/1940-6207.CAPR-20-0294
[14] https://pubmed.ncbi.nlm.nih.gov/37870871/

(2) We recommend temporary inclusion in the USPSTF screening guidelines when devices are approved under the FDA Breakthrough Devices Program. This would allow patients to have access to FDA breakthrough designated and approved devices until USPSTF completes the next update of its guidelines for the particular disease or condition, which could take up to six years depending on the particular review cycle.

The USPSTF plays an integral role in colorectal cancer prevention and early detection because its recommendations are used by commercial insurers to determine coverage of colorectal cancer screening tests. Further, any colorectal cancer screening modalities that receive an A or B rating from the USPSTF are fully covered by insurance thus eliminating patient cost-sharing, which facilitates access and utilization. Many commercial insurers will decline to cover a preventive screening test until it is included in the USPSTF guidelines, regardless of strong data supporting the test, endorsement by other guidelines such as from the American Cancer Society, or a positive coverage decision by CMS. The USPSTF typically updates its recommendations every five years, although it often takes longer. Once the USPSTF begins the process to update guidelines, it usually takes more than two years. Based on the standard five-year timeframe, the USPSTF should have commenced the two-year process in January 2024 to update the colorectal cancer screening guidelines, but the agency has taken no such action, despite patient advocacy groups this summer making a formal request for an update; it remains unclear when USPSTF will begin the update process.

(3) We believe it is appropriate and good policy for Medicare quality metrics to align with Medicare coverage and payment policy; if Medicare deems something worthy of payment, then it follows that providers should receive credit for using the test. Currently, the Partnership for Quality Measurement (PQM), which establishes Stars quality metrics, relies on the measure steward, the National Committee for Quality Assurance (NCQA) to set quality measures for Medicare and commercial insurance. However, NCQA will not add a new cancer screening test to its measures – even if Medicare provides coverage and payment – until it is included in the USPSTF guidelines. As such, USPSTF guidelines dictate commercial coverage and quality metrics for prescribing clinicians, including those serving Medicare beneficiaries and dually-eligible individuals. Payment drives practice and therefore, until USPSTF includes a new test, health plans typically will not cover a test, and clinicians will not prescribe it for commercial or Medicare patients. Without quality metric credit, too many providers likely will opt to use older, less effective tests because they are already in the quality measurement system.

To address this issue, we recommend that CMS establish a new process to ensure that the latest cancer screening tests covered under Medicare are automatically considered for inclusion in the PQM Stars quality metrics. Instead of relying only on the arduous process for inclusion in USPSTF guidelines, this new process should be a dynamic collaboration between CMS, NCQA, and USPSTF to expedite the evaluation and integration of new tests into quality metrics once Medicare coverage is established. Additionally, CMS should

consider incentivizing health plans and clinicians to adopt newly covered tests in quality measurement programs, which may lead to faster alignment between coverage and payment, and ultimately facilitate providers and patients in utilizing the most effective screening tests.

Individually and together, these three factors create a significant barrier to innovative, FDA-approved tests reaching patients in the U.S. health care system.

Thank you again for the opportunity to share our work on chronic disease prevention as it pertains to colorectal cancer; we urge you to take steps to address the "valley of death" that companies like ours face. These barriers not only slow access to ColoSense but will thwart access to other much-needed tests in the Geneoscopy pipeline, as well as those in development by other companies. We hope we can work together to facilitate access to innovative tests to screen, diagnose, and prevent myriad serious and life-threatening diseases for patients of all ages.

About Geneoscopy

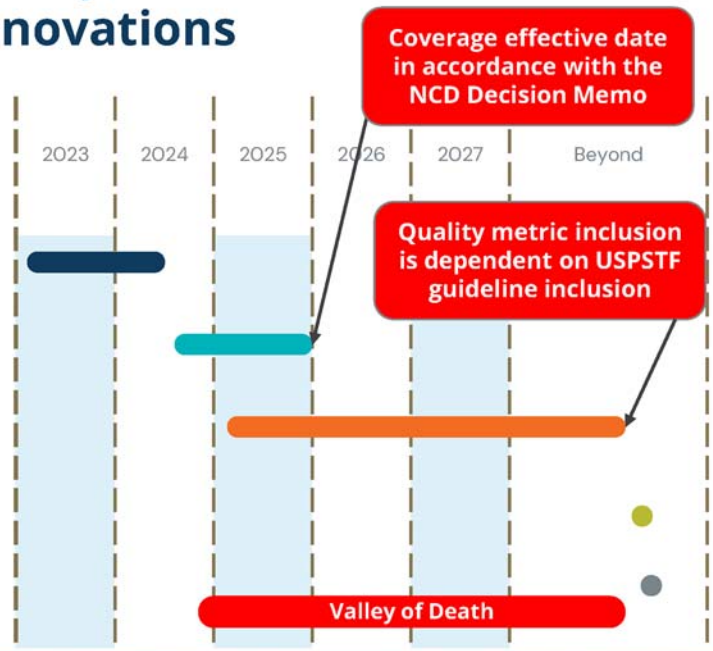
Geneoscopy was founded in 2015 with a vision to improve how gastrointestinal diseases are prevented, detected, and treated. My sister, Dr. Erica Barnell, and I co-founded Geneoscopy after Erica developed a groundbreaking technology to isolate and interrogate mRNA while she was pursuing her MD/PhD at Washington University School of Medicine in St. Louis, Missouri. Geneoscopy's initial product is a noninvasive colorectal cancer screening test, ColoSense, that detects colorectal cancer and high-risk precancerous polyps—advanced adenomas.[14] Designated a Breakthrough Device by FDA, ColoSense received FDA approval on May 6, 2024.[15]

[14] https://pubmed.ncbi.nlm.nih.gov/11916153/
[15] https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfpma/pma.cfm?id=P230001

Government Processes Delay Access and Slow Adoption of Screening Innovations

Requirements for Medicare & Commercial Coverage and Steps to Secure Provider Utilization of Innovative Technologies for CRC Screening

- Task 1: Breakthrough Device Designation Grants 18 Month Accelerated FDA Approval
- Task 2: CMS NCD Reconsideration Delay Due to "Internal Capacity Restraints" (9-12+ month process)
- Task 3: USPSTF Updates About Every 6 years ACA Refers to USPSTF for Payor Coverage Mandate CRC Review Cycle *Estimated* to Begin 2025
- Task 4: NCQA (Medicare & Commercial) Quality Metrics Rely on USPSTF Guideline Inclusion
- Task 5: Coverage by Commercial Payors and Provider Utilization/Adoption Following USPSTF & NCQA



MetLife
200 Park Avenue
New York, NY 10166

Graham Cox
EVP & Head of Retirement & Income Solutions

February 21, 2025

The Honorable Frank Lucas
U.S. House of Representatives
Washington, DC 20515

The Honorable Josh Gottheimer
U.S. House of Representatives
Washington, DC 20515

The Honorable Andy Barr
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Foster
U.S. House of Representatives
Washington, DC 20515

Dear Representatives Lucas, Gottheimer, Barr, and Foster,

Thank you for your leadership in introducing H.R. 1013, *the Retirement Fairness for Charities and Educational Institutions Act*. This bill would enhance 403(b) plans by amending Federal securities laws to allow these plans to invest in collective investment trusts (CITs) and unregistered insurance company separate account contracts.

During times of economic uncertainty and high inflation, Americans need safety and stability in their investments. Stable value insurance separate account contracts are a type of low-risk retirement investment that offer principal preservation, participant liquidity, and consistent returns similar to bond funds but without the associated volatility.

MetLife is pleased to support this bill because it would permit 403(b) plans to invest in these lower-cost financial products on the same basis as all other retirement plans. This creates parity for charity, hospital, and educational workers who participate in 403(b) plans. Under this bill, 403(b) plans would be excluded from the definition of a security, thereby not requiring registration of variable products funding these plans under the Securities Act and registration of the separate accounts under the Investment Company Act.

MetLife is the leading global provider of life insurance, annuities, and employee benefits. Since 1868, MetLife has helped people plan for their future by protecting what matters most – their families, their ambitions, and their achievements. We work with families, corporations, and governments to provide solutions that offer financial guarantees, including those with a focus on delivering successful retirement outcomes.

We appreciate your work toward strengthening investment parity for 403(b) plans. Teachers, school administrators, university officials, and employees of charities should be offered the same opportunity to invest in low-cost CITs and insurance company retirement products as other retirement plan participants.

Thank you for remaining focused on enhancing retirement opportunities for these essential workers.

Sincerely,

Graham Cox

Energy Exploration Technologies (EnergyX)

Statement for the Record

Hearing before the House Financial Services Subcommittee on Capital Markets

"The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"

February 26, 2025

Chairwoman Wagner, Ranking Member Sherman, and Members of the Subcommittee,

Thank you for the opportunity to submit testimony in support of raising the Regulation A+ (Reg A+) offering limit. My name is Teague Egan, and I am the Founder and CEO of Energy Exploration Technologies, Inc. (EnergyX), a company pioneering breakthrough clean energy technologies, specifically lithium and base metals extraction and refinery, and battery technologies—key industries driving the clean energy transition. As a serial entrepreneur, I have founded and built multiple companies, and I have seen firsthand how access to capital fuels innovation, job creation, and economic growth.

EnergyX Background

In 2018, I founded EnergyX with the goal to revolutionize the energy sector by developing sustainable and efficient technologies for lithium extraction and energy storage. Our mission is to become a leader in the global energy transition by innovating and developing the direct lithium extraction (DLE) and refinery value chain, further reshaping the battery and base metal material supply chain, and accelerating the transition to renewable energy by providing advanced solutions for lithium production and storage.

Currently, the traditional methods of lithium extraction, such as evaporation ponds, are slow and inefficient, taking years to process lithium from brine sources. DLE, on the other hand, allows for faster, more efficient extraction of lithium, making the process more scalable and responsive to growing market needs. DLE enables the extraction of lithium from US resource deposits that were previously unviable due to geographical constraints, opening up new sources of lithium which will go towards helping address supply shortages and improving national security needs.

The EnergyX DLE technology roots began with patents from the University of Texas in Austin, where in just a few short years, we have grown it to a portfolio that now totals over 120 patents. With our Innovation HQ in Austin, and key locations in both North and South America, the EnergyX team continues to break barriers on R&D of disruptive material and engineering systems to fundamentally transform the energy industry. At our 40,000 sf Austin HQ our 100+ team of scientists, engineers, and operators and working around the clock to scale our technologies from pilot to commercial levels.

In 2022, we commissioned our first in-field pilot plant yielding an incredible 94% lithium recovery rate, approximately 300% improvement over existing pond methods. Since then, our growth has included two additional pilots and two demonstration plants under construction in Chile and Texas. In 2023, EnergyX acquired our first wholly owned lithium resource in Chile consisting of 107,000 acres, and in 2024 our second lithium resource in Texas of 15,000 acres. These are the locations of the previously alluded demo plants. Our Texas project, in the lithium rich Smackover region, is on schedule for its first commercial train of 7,500 tons/year by 2027 and a commercial target of 30,000 tons/year by 2029.

The continued success in our phased approach to commercialization has been made possible by our trusted partners and investors. Our investors include major auto OEMs, as well as oil and gas energy majors, that include General Motors (GM), POSCO and Eni, who will be strategic offtake partners using this lithium for domestic US EV manufacturing. In April 2023, GM Ventures led a $50 million Series B financing round for EnergyX. In October 2024, EnergyX closed a historic $75 million Reg A+ fundraising round, attracting approximately 32,000 investors. These investments underscore the confidence in EnergyX's innovative approach to lithium extraction and its potential impact on the energy sector.

The Important Role of Reg A+ Retail Investment

At EnergyX, we have successfully leveraged retail investment as a core funding strategy since 2020, utilizing Regulation Crowdfunding (Reg CF) and Reg A+ to complement institutional capital. To date, we have raised $130 million, with retail investors playing a critical role in our ability to scale and deploy new technologies, and create high-skilled jobs in the clean energy sector.

Reg A+ has been an incredibly powerful tool, enabling us to raise capital from the open market and individual investors who believe in the future of clean energy. However, the current $75 million cap is outdated and truly limits access to capital needed for building the types of large scale projects EnergyX is planning. We have actually been forced to turn away investors because of this cap, slowing the momentum of a high-growth company like ours.

Retail Investment: A Key Driver of Growth

Reg A+ and Reg CF have been essential components of EnergyX's funding strategy, allowing us to:

- Scale next-generation lithium extraction technology, addressing supply chain challenges in electric vehicle (EV) and battery production.
- Advance research and development in direct lithium extraction (DLE), improving efficiency and sustainability in mineral production.
- Attract major strategic investors, including GM Ventures and POSCO, further validating our technology.
- Earn recognition from the U.S. Department of Energy (DOE) with a highly competitive award, reinforcing the national importance of our work.

- Create high-quality jobs and expand our workforce, contributing to America's clean energy leadership.

Retail investors are not just funding EnergyX—they are helping to drive the clean energy revolution. By allowing individuals to invest in transformative industries, Reg A+ empowers everyday Americans to participate in wealth creation opportunities that were once only reserved for institutional investors and venture capital firms.

The Need to Raise the Reg A+ Cap

The demand for investment in EnergyX far exceeded the $75 million limit during our last Reg A offering. We were forced to refund investors, despite their strong interest in supporting our mission. This inefficiency hinders innovation and economic opportunity.

While we absolutely understand the need to protect investors, especially non-accredited investors, and limit their individual investment amount based on their financial status, we question the reasons to limit the companies access to Reg A capital on the open market. If EnergyX raised $75 million from 32,000 investors, that means the average investment was approximately $2,350, but what if 50,000 or 100,000 individual investors wanted to participate in this offering, why should those above our 32,000 be prevented access?

Raising the Reg A+ cap to $150 million or more would:

1. Give more opportunity and accessibility to a growing population of retail investors.
2. Align more closely with open market practices investors seeking growth investment opportunities.
3. Enable high-growth companies to meet investor demand without refunding oversubscribed investments.
4. Expand retail investor access to innovative industries, democratizing investment opportunities.
5. Support U.S. leadership in critical sectors like clean energy, ensuring domestic companies can scale and compete globally.

Retail Investment Strengthens the U.S. Economy

Reg A+ is not just about raising capital—it is about economic growth, innovation, and global competitiveness. Clean energy, infrastructure, and deep technology require significant investment to scale. Raising the Reg A+ limit would:

- Fuel American innovation, giving startups the capital needed to compete on the global stage.
- Create jobs and economic expansion, supporting high-growth industries with long-term impact.
- Strengthen domestic supply chains, reducing reliance on foreign investment and manufacturing.

Conclusion

Reg A+ has been instrumental in EnergyX's success, allowing us to scale, innovate, and contribute to the clean energy transition while engaging retail investors in a meaningful way. However, the current $75 million cap is limiting, preventing both companies and investors from fully realizing the benefits of this funding mechanism.

We strongly urge the Committee to pass legislation that will increase the Reg A+ offering limit, ensuring that high-impact companies have the capital they need to thrive and that retail investors can continue to participate in America's most promising industries. Again, thank you for this opportunity to submit my testimony for the record.

Sincerely,
Teague Egan
Founder & CEO, EnergyX

February 26, 2025

The Honorable Ann Wagner
Chair
Subcommittee on Capital Markets
Committee on Financial Services
United States House of Representatives

The Honorable Brad Sherman
Ranking Member
Subcommittee on Capital Markets
Committee on Financial Services
United States House of Representatives

RE: Accredited Investor Alliance – Please Consider Legislation to Expand the Accredited Investor Definition, Which Would Help Promote Substantial Capital Formation

Dear Chair Wagner and Ranking Member Sherman:

Thank you for scheduling the February 26, 2025, hearing to examine *The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation*.

The undersigned organizations and companies, which comprise the Accredited Investor Alliance (AIA), urge you to consider and approve legislation that would simplify and expand the accredited investor definition. Stakeholders established the AIA in 2024 to advocate for expanding the pool of accredited investors, which would support individual investors and those saving for retirement and advance businesses of all sizes – both early-stage and established – across the economy.

Meaningfully expanding the pool of accredited investors while preserving appropriate investor protections would help democratize access to investment opportunities and foster capital formation, ensuring that a broader demographic can partake in the financial growth and innovation our country offers.

The AIA specifically advocates for a detailed and multifaceted examination of the accredited investor definition by Congress and the Securities and Exchange Commission (SEC), taking into account the broader dynamics of our ever-changing economy and the increasingly pivotal role of private markets.

The AIA believes that income and net worth thresholds alone are not determinative of a person's financial sophistication or acumen, and that there should be additional pathways for individuals to qualify as accredited investors.[1]

[1] The SEC in 2020 expanded the accredited investor definition to include individuals with a Series 7, 65 and 82 license, but additional and appropriate credentials, including the Series 66, CPA, CFP and CFA designations, were not included. Moreover, the SEC has not proposed expansion to qualifying education and job experience.

We also believe that the current conduct standards applicable to financial professionals working with investors, such as the investment adviser fiduciary duty and the broker-dealer's best interest standard, are sufficiently robust and provide adequate safeguards to ensure that recommended investments are suitable for and in the best interest of investors.

Bipartisan legislation has been consistently and overwhelmingly advanced by the House of Representatives over several Congresses. **The AIA is grateful to you for championing the *Fair Investment Opportunities for Professional Experts Act*** last Congress, which the House passed on June 5, 2023. As you know, this important bill would include individuals with certain licenses and qualifying education or job experience to qualify as an accredited investor.

On March 8, 2024, the House passed the ***Expanding Access to Capital Act***, a package of capital formation legislation previously examined by the Financial Services Committee. The package incorporated several bills dealing with the accredited investor definition, including legislation to include as accredited investors individuals who receive individualized investment advice or individualized investment recommendations with respect to a private offering from a qualified professional.

The AIA is also encouraged by provisions from Senate Banking Committee Chairman Tim Scott's capital formation bill introduced last Congress, the *Empowering Main Street in America Act*, that would expand the definition of accredited investor to include individuals that successfully pass a qualitative examination.

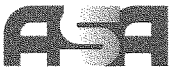
Thank you again for convening the House Financial Services Committee hearing to examine policies that will boost capital formation. The AIA appreciates your consideration of straightforward legislation that would meaningfully expand the accredited investor definition, which would enable investors and those saving for retirement to grow and diversify their investment portfolios.

Sincerely,

The Accredited Investor Alliance

American Securities Association
Angel Capital Association
CAIS
Carta
Engine
Financial Services Institute (FSI)
Financial Technology Association
Inland Empire Real Estate Group
Institute for Portfolio Alternatives
Investment Adviser Association
NAIFA
Small Business & Entrepreneurship Council
Small Business Investor Alliance

CC: The Honorable French Hill
The Honorable Maxine Waters



american securities association
America's Voice for Main Street's Investors

February 26, 2025

The Honorable Ann Wagner
Chairwoman
Capital Markets Subcommittee
U.S. House of Representatives
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
Capital Markets Subcommittee
U.S. House of Representatives
Washington, DC 20515

Re: Capital Markets Subcommittee Hearing Entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"

Dear Chairwoman Wagner and Ranking Member Sherman:

The American Securities Association (ASA)[1] submits these comments for the scheduled February 26th hearing of the Capital Markets Subcommittee to examine several legislative proposals that will increase capital access for businesses and create more opportunities for investors.

The ASA commends the Committee for immediately prioritizing capital formation in this new Congress. Many of these bills are necessary because the last Securities and Exchange Commission (SEC) ignored its statutory mandate to facilitate capital formation.[2]

While we expect the new administration to direct the SEC to the regulatory for small businesses, we need strong leadership from Congress so the SEC's policies can't be reversed by unelected bureaucrats who disagree with them.

The hearing will consider bills that expand upon successful provisions of the 2012 Jumpstart our Business Startups (JOBS) Act, modernize the SEC's accredited investor definition to better reflect financial sophistication, and reform private offering regulation to help small businesses raise capital. The ASA supports many of these efforts, along with a bill from Rep. Huizenga that would permit e-delivery of disclosures for investors and a bill from Rep. Gottheimer that would help the SEC protect senior citizens from fraud and identity theft scams.

As this Committee is well aware, businesses can only grow from small to large if they are able to access capital at each stage of their lifecycle. Unfortunately, the SEC and its embrace of anti-market regulations have impeded that access and harmed our economy. Without meaningful

[1] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

[2] https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-reins-in-independent-agencies-to-restore-a-government-that-answers-to-the-american-people/

reform to the SEC itself and to its capital formation rules, the U.S. risks its status as the gold standard for global capital markets.

2017 Treasury Report

A 2017 report from the Treasury Department[3] contained dozens of recommendations for how to improve the U.S. capital markets. These recommendations included:

- Repeal of immaterial disclosure mandates that burden small public companies and serve as a disincentive to initial public offerings (IPOs);
- Reforming the shareholder proposal rules under Securities Exchange Act Rule 14a-8 which is abused by well-funded special interests pursuing political agendas;
- Extending provisions of the JOBS Act "on-ramp" to allow more pre-IPO and newly public companies to benefit from tailored regulation;
- Amending the discriminatory accredited investor rules to allow more Americans to participate in the private capital markets; and
- Changes to equity market structure that take into the unique trading profile of smaller public companies.

The ASA believes that Congress should use this Treasury report as a basis for the reforms it is considering.

Additionally, we believe that FINRA can revisit its research rules to make certain they are not imposing unnecessary costs or impediments on the IPO process. Finally, the Chairman's office at the SEC should revisit the Global Settlement Agreement because we have had 25 years of policy by court decree that was in theory designed to protect investors from research analysts but in reality has significantly contributed to fewer public companies.

Protecting Shareholders Against Political Activism

During the last administration, the SEC empowered well-funded and highly politicized special interest groups to inject cultural and social issues into the boardroom.[4] Specifically, it changed the standard for public company shareholder proposals from a "material impact on business operations" to any "broad societal impact". This midnight act ushered in a multi-billion-dollar tax on investor savings and forced public company directors to act like politicians.

[3] https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf

[4] https://townhall.com/columnists/scottpowell/2025/02/10/musk-doge-and-washingtons-unavoidable-corruption-n2651958?state "Gramsci advocated the abandonment of the traditional proletarian revolution uprising, and the embrace of communist infiltration and progressive subversion through the culture. For Gramsci, the Marxist transformation could be best accomplished subliminally through government bureaucracies, NGOs, universities, the media, churches, and cultural institutions."

This mission creep into the purview of corporate law, which is exclusively reserved to the states, led to a dangerous "federalization of corporate governance"[5] that opened the flood gates for political actors to interfere with the public company profit motive.

The current SEC shareholder proposal process is expensive. As one issuer estimated, it spent over $21 million in legal and other expenses over a 10-year period addressing politically motivated shareholder proposals.[6] While very large companies may have the resources available to respond to and manage the shareholder proposal process every proxy season, mid-size and smaller public companies do not. There is no question that companies considering an IPO may refrain from going public if they believe they will be forced to defend against never-ending social, cultural, and political campaigns intended to change their core business.

While the recent issuance of Staff Legal Bulletin 14M (SLB 14M) makes necessary changes to how the SEC deals with shareholder proposals[7], this body must make permanent changes to protect investors from the excessive costs imposed on their savings by political activists.

While SLB 14M is a step in the right direction, a more sophisticated set of political activists are now exploiting a loophole in the SEC's universal proxy rule to force public companies to include their proposals in the company's proxy materials.[8] Rule 14a-4 includes a loophole that circumvents the existing shareholder proposal system under Rule 14a-8.

Activists have already proven they can be successful using this strategy to force immaterial political questions to be considered during annual proxy seasons. Left unaddressed, it will become the preferred vehicle for activists who use our securities laws to try to impose their radical political views onto society at large. Congress must demand that the SEC close this destructive loophole.

Conclusion

We look forward to working with the Committee's members to promote capital formation for small business and protect investors from the costs of political activism in our equity markets.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President & Chief Executive Officer
American Securities Association

[5] See e.g. Shareholder Proposals: An Exit Strategy for the SEC (Dan Gallagher, John Cook) Washington Legal Foundation, September 2015. Available at https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/09-25 2015GallagherCookWP.pdf

[6] https://d1io3yog0oux5.cloudfront.net/_404a909a83556bd8ac7096277a868b76/exxonmobil/db/2301/22254/proxy_statement/2024+ExxonMobil+Proxy+Statement.pdf

[7] https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf

[8] https://www.cooley.com/news/insight/2024/2024-08-06-2024-shareholder-proposal-highlights

February 26, 2025

The Honorable Ann Wagner
Chairman
Subcommittee on Capital Markets
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
Subcommittee on Capital Markets
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Hearing Entitled: The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation

Dear Chairman Wagner and Ranking Member Sherman:

The undersigned organizations representing the U.S. innovation ecosystem support congressional efforts to drive economic growth, job creation, and opportunity that fuels American innovation. We appreciate the Committee's continued focus on improving capital formation at all stages of a company's lifecycle, particularly for entrepreneurs and investors outside of traditional funding hubs, as well as expanding investment opportunities for everyday investors.These efforts are even more important today, as startups and small businesses continue to face economic headwinds and global competition is increasing.

Promoting access to capital

The U.S. capital markets are the engine that powers innovation and economic growth, but raising capital can be daunting for many startups, funds, and businesses. While the availability of private capital has grown substantially over the past few decades, opportunities to access these resources are limited outside of traditional capital-raising hubs and networks. Capital has become more mobile, but proximity matters, particularly for the earliest stages.

The Committee is considering a number of legislative proposals that could help companies raise capital across their lifecycles by:

- Expanding exempt offering pathways and reducing regulatory barriers to help more entrepreneurs access capital.
- Tailoring regulations to help ease the transition for companies who choose to enter the public markets, including by extending the emerging growth company on-ramps.

Supporting emerging managers and bolstering local networks

Emerging managers play a key role in supporting startups across the country. These smaller funds are more likely to participate in earlier rounds and invest locally. Policies that help drive capital to emerging ecosystems, broaden local networks, and promote increased opportunities for underrepresented founders and capital allocators will help create more economic opportunity and a more inclusive ecosystem.

The Committee is considering a number of legislative proposals that could help bolster emerging fund managers and help foster the development of regional ecosystems, including by:

- Increasing the size and investor limits for qualifying venture capital funds, which could help smaller fund managers assemble competitive funds and reach more investors, providing greater access to capital for entrepreneurs in emerging ecosystems.
- Expanding the category of qualifying venture capital investments to include fund-of-fund investments and portfolio company investments acquired through secondary transactions, which could drive more capital into emerging markets, increase diversity in the venture ecosystem, and help unlock liquidity.
- Providing additional on-ramps for individuals to qualify as accredited investors, increasing community-based sources of capital for entrepreneurs.

Expanding access to investment opportunities

Today, private market investment opportunities are largely reserved for institutional or wealthy investors. Most individuals are generally prohibited from participating in the private markets because of the wealth-based accredited investor standard. For these investors, the public markets are often the only available option, but as the number of publicly traded companies has declined, so has the number of investment opportunities. These investors are also missing out on upside potential as companies are staying private longer. More people should be able to access these opportunities and participate in this economic journey. Expanding private market investment opportunities while preserving important investor protections will not only drive innovation, but will also help broaden economic opportunity.

The Committee is considering a number of legislative proposals that could help expand retail investor exposure to private markets in a responsible way, including by:

- Modernizing the accredited investor standard by expanding on-ramps to reflect financial sophistication rather than only financial means, which will help democratize access to private market investment opportunities.
- Expanding access to private market investments through professionally managed funds, where investors benefit from fiduciary obligations, diversification, and institutional diligence. For example, by removing the SEC staff-imposed 15% cap on private fund investments, closed-end funds would be able to provide retail investors more exposure to private markets.

***

Thank you for your leadership in advancing policies to ensure America's entrepreneurs can access the capital they need at each stage of their lifecycle and provide more opportunities for investors. These efforts are critical to driving American competitiveness, innovation, and upward mobility, and we look forward to working together on a bipartisan basis to achieve these important goals.

Sincerely,

Angel Capital Association
CapGains, Inc.
Carta
Center for American Entrepreneurship
Engine
Financial Technology Association
Institute for Portfolio Alternatives
Mercury
National Venture Capital Association
Small Business Investor Alliance
Technology Councils of North America

cc: The Honorable French Hill
The Honorable Maxine Waters

February 26, 2025

U.S. House Committee on Financial Services
Chairman French Hill
Ranking Member Maxine Waters
2129 Rayburn House Office Building
Washington, D.C. 20515

U.S. Senate Committee on Banking, Housing, and Urban Affairs
Chairman Tim Scott
Ranking Member Elizabeth Warren
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairmen Hill and Scott and Ranking Member Waters and Warren,

We represent startup founders, investors, and members of the innovation ecosystem from industries and communities across the country. Access to capital remains one of the most significant barriers startup founders face. Founders need better pathways to raise the capital they need to launch and scale their startups and to serve as leaders in innovation and as job creators. To better unlock capital for startups in all communities, policymakers should expand the accredited investor definition so that more people can participate in private securities offerings.

Small businesses and startups are vital to the U.S. economy. There are approximately 35 million small businesses in the U.S., comprising 99.9 percent of all businesses and employing nearly 46 percent of the private-sector workforce.[1] Many of these businesses rely on early-stage capital to grow. But access to networks serves as a barrier to capital access for more than 70 percent of aspiring entrepreneurs.[2] The current accredited investor definition limits the pool of potential investors, restricting the flow of capital that could otherwise fuel innovation, job creation, and economic growth across communities. Expanding the definition will drive capital to U.S. startups, increase and expand participation in the startup ecosystem, and strengthen U.S. competitiveness in global innovation.

Presently, the vast majority of Americans are not eligible to fund early-stage startups. Some estimate that fewer than 19 percent of U.S. households meet the current thresholds to become accredited investors.[3] The current accredited investor definition assumes that individuals without independent or generational wealth lack the financial knowledge to invest wisely, which is a flawed premise that ignores the proliferation and accessibility of investing education and guidance, professional experience, educational background, and financial literacy.

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[1] U.S. Small Business Administration Office of Advocacy, *Frequently Asked Questions about Small Businesses, 2024* (July 23, 2024), https://advocacy.sba.gov/2024/07/23/frequently-asked-questions-about-small-business-2024/.

[2] Jennifer J Schulp, *Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform* (Feb. 8, 2023), https://www.cato.org/testimony/sophistication-or-discrimination-how-accredited-investor-definition-unfairly-limits#the-accredited-investor-definition-harms-investors-and-entrepreneurs.

[3] The exact percentage is difficult to pinpoint given the limitations of available information. See: *Cydney Posner SEC issues staff report on definition of accredited investor* (Dec. 18, 2023), https://cooleypubco.com/2023/12/18/staff-report-definition-accredited-investor/#:~:text=The%20report%20provides%20data%20on,%2C%20or%201.8%25%20in%201983..

Moreover, the present income and net worth thresholds box out untold numbers of would-be investors and fail to account for common-sense factors, like cost-of-living (COL). High-income investors are concentrated in U.S. coastal metropolitan areas,[4] meaning startups in rural or low COL regions may have less access to investors that meet the accreditation criteria.[5] By expanding the definition to include more pathways, we can improve capital access for more founders, with investment stretching beyond coastal technology hubs.

Last Congress, this committee advanced and the House passed several pieces of capital formation legislation with bipartisan support, including multiple bills that would have expanded the pool of eligible investors in private offerings and clarified accreditation criteria.[6] Americans need greater opportunity to build wealth, in part by investing in startups. And startups need more opportunity to access capital so that they can continue to drive American innovation and fuel job growth. We encourage you to once again take up legislation to allow more Americans to become accredited investors, unlocking startup capital and increasing economic opportunity for investors.

We thank you for exploring efforts to boost capital access for startup founders and expand participation in the startup ecosystem.

Sincerely,

[4] Schulp, *supra* note 2; and Anthony Cimino, *Carta Policy Insights: Decoding the data | Accredited investor criteria* (July 9, 2024), https://carta.com/blog/policy-insights-07-2024/.

[5] Schulp, *supra* note 2; and, Securities and Exchange Commission, "Amending the 'Accredited Investor' Definition," Proposed Rule, https://www.sec.gov/rules/proposed/2019/33-10734.pdf.

[6] House Financial Services Committee, House Passes Additional Slate of Bipartisan Financial Services Capital Formation Legislation (June 5, 2023), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408841.

1Huddle
Newark, NJ

5th Dimension Strategies
Overland Park, KS

A&R Solar
Tualatin, OR

Action Figure AI
Washington, D.C.

Active Capital
St. Louis, MO

Adam W. Barnery -Energy Coach
Boston, MA

Adjunct Leadership Consulting
Milwaukee, WI

Align Advisors
Old Greenwich, CT

American Business Network
Dallas, TX

Andromeda Surgical
San Francisco, CA

Angel Capital Association
Easton, CT

Arizona Venture Capital, Inc.
Phoenix, AZ

Arkansas Venture Capital
Little Rock, AR

Athaba Holding Inc.
Yonkers, NY

Attane Health
Kansas, MO

BAMco Enterprises LLC
Bloomington, IN

Bento Biology Platforms
Reston, VA

Biomedical Research Laboratories
Tempe, AZ

Black Women Talk Tech
San Juan, Puerto Rico

CapGains Inc.
Coral Springs, FL

Capwave AI
New York, NY

Carefully
Brooklyn, NY

Center for American Entrepreneurship
Great Falls, VA

CHALK Coaching
Gallatin, TN

Chi Tech Collective
Chicago, IL

Chikara Health Records
Lewes, DE

Christa B. Downey Coaching LLC
Lansing, NY

Citrine Angels
Bethesda, MD

Clone Yourself
North August, SC

Cofounders Capital
Cary, NC

Cooley Creative LLC
Rochester, NY

Digital4Startups Inc.
Chicago, IL

Divinc
Austin, TX

DRW Life Skills Institute
Orlando, FL

Emergent Campus
Florence, CO

Engine
Washington , D.C.

Eskaud
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FinToolbox
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Foundess
Boston, MA

FreeFuse
Woodland Hills, CA

FundBlackFounders
New York, NY

Global Urban Village
Seattle, WA

Gulf of South Angels
New Orleans, LA

Hacom LLC
Santa Ana, CA

Halcyon Venture Partners
Washington, D.C.

Harbright Managers LLC
Cary, NC

hobbyDB
Louisville, CO

Hollarhype
Boston, MA

Imperia Global LLC
New York, NY

InANutshell Consulting
Lexington, MA

Infiltron Software Suite
Warner Robins, GA

InvestorMatch.AI LLC
Corvallis, OR

Investor of Color LLC
Eules, TX

Junction AI
Bentonville, AK

Kabila
Alpharetta, GA

Kate Brigham Consulting
Boston, MA

KCRise Fund
Kansas City, MO

Keiretsu Forum Northwest
& Rockies
Seattle, WA

Launch NY
Buffalo, NY

Lua LLC
Portsmouth, RI

Lucy Technologies, Inc.
San Jose, CA

Lula Smarter Property
Maintenance, Inc.
Overland Park, KS

MediaFirst PR
Roswell, GA

Maine Center for
Entrepreneurs
Portland, MA

Make Startups
August, GA

Malfy Capital
Boston, MA

MediaTech Ventures
Austin, TX

Mindshift Capital
Cincinnati, OH

Miner Enterprise, LLC
Boston, MA

MITO Material Solutions
Indianapolis, IN

Mossy Ventures
Renton , WA

MRGN AI
New York, NY

My Panda
Atlanta, GA

National Small Business
Association
Washington, D.C.

Native Max Magazine
Northglenn, CO

NeoTerra Capital
Austin, TX

New England Medics
Innovation Center
Providence, RI

Next Wave Impact Fund
Cincinnati, OH

Nombolo
Portland, OR

Novy
Cedar Rapids, IA

O'Ryan Health
Wellesley, MA

OnTrack Management
Group LLC
Lexington, KY

Opengrants.io
Folsom, CA

PIE
Portland, OR

Pioneer1890
Alexandria, VA

Pioneers 21
El Paso, TX

Portelle Inc
Eastchester, NY

Prepare 4 VC
Boston, MA

Queen City Angels
Cincinnati, OH

Renee
Santa Monica, CA

Robin Hood Ventures
Philadelphia, PA

Rubitection Inc.
Pittsburgh, PA

SBE Council
Washington, D.C.

Scroobious
Boston, MA

Sensagrate
Scottsdale, AZ

SixThirty CYBER Fund
St. Louis, MO

Snaark AI
Boston, MA

Sonder VC
San Carlos, CA

SportsVisio
Dunbarton, NH

StartEngine Crowdfunding
Burbank, CA

Startup Junkie
Fayetteville, AR

Startup Tucson
Pennington, AZ

STY Holding Inc.
Mountain House, CA

Swift Associates
Portland, OR

Tampa Bay Wave
Tampa, FL

TBD Angels
Boston, MA

TCA Venture Group
Palos Verdes Estates, CA

Terrament Inc
Brooklyn, NY

The JumpFund
Chattanooga, TN

The Pelican Angels Fund
New Orleans, LA

The Questus Group
Decatur, GA

The RollingSouth Fund
Greenville, SC

The VC 411
Washington, D.C.

TheraTec
Horace, ND

TIE Scale Up
Cambridge, MA

Tostie Productions LLC
San Diego, CA

TruPlay Games
Austin, TX

UBERDOC
Boston, MA

UpStart Collective
Portland, OR

Various Ventures
Hull, MA

VentureHue
Detroit, MI

Vitalize Venture Capital
Dover, DE

Voatz Inc
Boston, MA

Walker International
Transportation LLC
Valley Stream, NY

Zane Venture Fund
Atlanta, GA

Zella Life
Los Angeles, CA

cc: Members of the House Committee on Financial Services and Members of the Senate Committee on Banking, Housing, and Urban Affairs

February 26, 2025

Rep. Ann Wagner, Chairman
Rep. Brad Sherman, Ranking Member
House Committee on Financial Services
Subcommittee on Capital Markets

Re: Capital Markets Subcommittee Hearing Entitled: "From a Dream to IPO: Expanding Avenues to Obtain Capital for American Companies"

Dear Chairman Wagner, Ranking Member Sherman, and members of the Subcommittee on Capital Markets,

Thank you for holding a hearing on the capital formation needs of American companies. The U.S. startup ecosystem is the most dynamic in the world, driving global innovation, fueling economic growth, and creating jobs in communities across the country. However, capital access remains a significant challenge for many founders, particularly those outside major technology hubs and from historically underrepresented backgrounds. Systemic biases in venture capital, including pattern matching and the lack of recognition of overlooked markets, have concentrated funding among a narrow subset of founders, leaving many promising startups underfunded. I appreciate the opportunity to provide this statement for the record on ways policymakers can support founders raising capital.

Expanding access to capital is not just a matter of fairness—it is an economic imperative. Startups drive job creation and technological advancements, yet arbitrary barriers to investment limit their potential, slowing national economic growth and innovation.

My name is Allison Byers, and I am the founder and CEO of Scroobious, a Westwood, MA-based virtual platform and community designed to efficiently connect early-stage founders, investors, and partners. Through Scroobious, I help under-networked founders craft investable fundraising pitches and connect with aligned investors by leveraging technology to make the capital-raising process more transparent, accessible, and efficient. Our AI-powered curation platform matches founders with the right investors, while our flagship Pitch It Plan (PiP) program provides structured guidance on pitch development and storytelling. Since launching, Scroobious has supported over a thousand founders, facilitated millions of dollars in funding, and helped investors efficiently discover and connect with promising startups.

In addition to my work with founders and investors, I have been actively involved in legislative efforts to improve access to capital. I co-authored California's SB54, which was signed into law as the first legislation regulating venture capital by requiring funds to publicly report diversity metrics about their investments. I am currently working on similar bills in New York and Massachusetts. These efforts align with the broader goal of modernizing outdated policies that restrict capital flow and limit participation in the private investment economy.

I am also an angel investor and a member of the Angel Capital Association's DEI Task Force, where I work to expand access to capital and improve inclusivity in the startup ecosystem. Prior to founding Scroobious, I co-founded and led a medical device company, raising nearly $10 million, including angel investment at launch and institutional capital from venture funds in later fundraising rounds. That experience was transformative but also exposed the many systemic barriers startup founders face. I know firsthand what it's like to navigate a system where capital flows disproportionately to those with existing connections. Breaking down these barriers is essential for fostering a more inclusive and competitive entrepreneurial landscape.

Unlike many startups, I deliberately chose not to pursue venture capital for Scroobious in its early years. This decision allowed me to maintain control over the business model and ensure that our mission remains focused on inclusivity and accessibility, rather than optimizing for venture-scale returns at the outset. Angel investors played a critical role in making this possible. They provide not just capital but also mentorship, connections, and operational insights that are invaluable to early-stage founders. This aspect of angel investing is particularly crucial for under-networked founders who do not have existing relationships with institutional investors or established industry insiders.

It is a common misconception that venture capital is the predominant or most desirable source of funding for most startups. While it is an important source of capital, the reality is that only a small fraction of startup founders raise venture funding. Most founders cobble together their initial capital from various sources including personal funds, friends and family, loans, and credit. For a growing number of founders, angel investment is a critical source of capital. Unlike institutional venture firms, angel investors often write smaller checks, but these investments can be the catalyst that propels a startup forward.

Additionally, angel investors as an asset class differ significantly from venture capital firms. They typically have smaller return expectations, longer investment horizons, and a greater emphasis on founder relationships. Unlike general partners of venture funds, who have a fiduciary duty to their limited partners and must prioritize their returns, angel investors have a fiduciary duty only to themselves. This key difference allows them to align more closely with founders, supporting businesses based on long-term potential rather than immediate financial milestones. Because of this flexibility, angel investors can take on riskier, earlier-stage companies that may not yet be viable for institutional capital.

Angels also provide strategic support beyond financial investment, leveraging their experience, networks, and industry insights to help founders navigate growth challenges. They introduce founders to additional investors and offer critical mentorship; an estimated 85% of angels are also entrepreneurs, familiar with the challenges of raising capital.[1]

Increasing accessibility to angel investing would unlock more capital for innovation, expanding opportunities for a broader range of founders. At the same time, it would allow more individuals to participate in wealth-building through startup investment, diversifying the investor base and strengthening the overall startup ecosystem.

[1] https://www.getpin.xyz/post/angel-investor-founder-allison-byers

Despite their essential role in startup growth, angel investors face their own set of challenges. Many struggle to find others with whom they can pool their capital, especially those writing smaller checks. While I am now part of multiple angel groups and syndicates, I have seen firsthand how difficult it is for new angel investors to break into existing networks, access quality deal flow, and gain confidence in their investing strategy. Even for those who qualify as accredited investors, the lack of education and guidance in this space can be a major barrier. Many potential investors are unaware that they qualify as accredited or that investing in startups is even an option for them.

The most significant barrier, however, is that the accredited investor definition unfairly restricts who can invest in private companies. While I respect legislation designed to protect individuals from financial harm, it is worth noting that there are no restrictions against online gambling, luxury purchases, or other ways in which people can freely spend their wealth. Why, then, are these same individuals restricted from participating in the private investing economy—a space that not only offers the potential for wealth creation but also supports groundbreaking innovation? This inconsistency limits economic mobility and reinforces systemic wealth disparities. The current standard equates a lack of generational wealth with a lack of financial acumen, excluding countless individuals who have the expertise and capacity to invest. While the SEC made minor updates to the definition in 2019, the financial thresholds remain unchanged. The standard does not account for cost-of-living variations across the country, nor does it recognize alternative measures of investment readiness, such as financial literacy, access to investment education, or relevant professional experience.

Expanding the accredited investor definition would have a profound impact on the startup ecosystem. It would increase the pool of eligible investors, channeling capital to a more diverse range of founders and startups outside of traditional coastal hubs. It would allow more Americans to participate in wealth-building through startup investment and drive more innovation across the country.

The committee has considered multiple pathways to expand accreditation, including recognizing individuals with certain licenses or professional qualifications, implementing a knowledge-based qualification metric, lowering the financial thresholds, and allowing anyone to invest up to 10% of their net worth. As you move forward with your efforts to improve capital access for startups, I urge you to once again consider these options in modernizing the accredited investor definition.

Thank you for your commitment to strengthening the startup ecosystem, for holding this hearing, and for the opportunity to provide feedback as a founder, investor, and advocate for capital accessibility.

Sincerely,

Allison Byers
Founder & CEO
Scroobious

NASAA

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February 25, 2025

The Honorable French Hill (R-AR)
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters (D-CA)
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

RE: NASAA Urges Lawmakers to Strengthen Not Weaken the Role of Securities Regulators in Capital Formation

Dear Chairman Hill and Ranking Member Waters:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to communicate our preliminary feedback on the 36 discussion drafts posted on February 21, 2025.[2] As you will read below, we respectfully disagree with legislation that, if enacted, would (i) expand opaque private markets while simultaneously (ii) making those markets even more opaque and (iii) preempting or restricting the role of securities regulators in those darker markets. We urge all lawmakers to consider the predictable harm that will come with expanding access to illiquid, risky investments for retail investors while simultaneously further restricting regulatory oversight. Any additional retail investor access to dark markets should come with complementary private securities disclosures and continued robust authorities for state and federal securities regulators.

I. NASAA Strongly Opposes Laws That Would Weaken Investor Protection and Preempt State Efforts to Promote Responsible Capital Formation.

NASAA strongly opposes four (4) bills published on February 21, 2025, that would severely constrain states in their efforts to protect investors and administer laws to promote responsible capital formation. The draft bills are (1) The Unlocking Capital for Small Business Act of 2025, (2) the Small Entrepreneurs' Empowerment and Development Act (or SEED Act) of 2025, (3) the Restoring the Secondary Trading Market Act, and (4) the Improving Crowdfunding Opportunities Act. The text is the same or similar to titles included in H.R. 2799,

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

[2] We commend lawmakers and their congressional staff for publishing discussion drafts first. *See* Hearing Entitled: The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital, U.S. House Committee on Financial Services (Feb. 26, 2025).

the Expanding Access to Capital Act, as amended, which 205 members of the U.S. House of Representatives (the "House") voted against.[3]

As explained in our letter dated May 17, 2023 (attached),[4] NASAA fundamentally believes these four (4) bills would be counterproductive to our collective efforts to right-size local efforts designed to promote responsible capital formation for the next generation of American small businesses and the individual investors who provide much of the operating capital for these businesses. State securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach communities. State securities regulators use this information to enhance their education and outreach programming for entrepreneurs and small businesses.

NASAA also strongly opposes eight (8) bills published on February 21, 2025, to amend the SEC's accredited investor definition.[5] As explained in our letter dated June 15, 2023 (attached),[6] NASAA fully agrees that the SEC's accredited investor definition requires reform. However, we fundamentally believe that building markets that are more trustworthy to more people starts with ensuring that additional access to our markets comes with additional transparency.

In turn, none of these eight (8) bills should become law without Congress first incorporating complementary private securities disclosure requirements into the legislation to strengthen investor protection and provide more information on these companies and this market. For example, NASAA would be pleased to assist lawmakers with legislation to require the filing of (1) a Form D in the U.S. Securities and Exchange Commission ("SEC") Rule 506(c) offering before the issuer engages in general solicitation (a so-called "Advance Form D"), (2) an amendment to the Advance Form D with the remaining information required by Form D within

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[3] *See* Roll Call 78 | H.R. 2799, 118th Congress, 2nd Session, Clerk of the U.S. House of Representatives (Mar. 8, 2024).

[4] *See* NASAA Letter to House Leadership Expressing Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended (May 17, 2023).

[5] They are (1) the Fair Investment Opportunities for Professional Experts Act, (2) the Accredited Investor Definition Review Act, (3) the Equal Opportunity for All Investors Act of 2025, (4), the Increasing Investor Opportunities Act, (5) a bill to exclude qualified institutional buyers and institutional accredited investors from the record holder count for mandatory registration, (6) the Risk Disclosure and Investor Attestation Act, (7) the Investment Opportunity Expansion Act, and (8) the Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act.

[6] *See* NASAA Urges Senate Leadership to Promote Trust in Our Capital Markets (June 15, 2023).

15 calendar days after the date of the first sale of securities in the Rule 506(c) offering, and (3) a closing amendment to the Form D after the termination of any Rule 506 offering.[7]

NASAA will be reviewing these 12 bills more closely. We will reach out to the introducing lawmakers of the preemption bills and selected accredited investor bills outlined above. While we strongly oppose these bills as presented in draft form, we will offer technical corrections to the introducing lawmakers.

II. NASAA Opposes the Remaining Market Structure Proposals.

A majority of the remaining proposals are market structure proposals that are aimed at boosting the private markets and weakening the disclosure regime central to the public markets.[8] As explained above and in our 2023 letters, we do not believe these policy goals will result in more public offerings by well-run businesses. To the contrary, the results likely will be larger private securities markets that expose retail and institutional investors and the public alike to the direct and indirect consequences of fraud and scams that have metastasized in the opacity of these markets. Moreover, these larger, dark markets may have systemic consequences for our financial markets and undermine our management of financial markets stability.

By their nature, private markets are opaque and minimally regulated. Expanding these markets would exacerbate an already critical problem for our nation and our capital markets—nobody, including businesses, investors, legislators, and regulators, has a clear line of sight into

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[7] The law governing private securities offering disclosure is weak. Generally, private companies do not have to make their offering disclosures accessible to the SEC. Instead, they can submit an 8-page form notice ("Form D notice") to the SEC and the applicable states where securities have been sold without registration under the Securities Act of 1933 in an offering based on a claim of a qualifying exemption. The notice is published in a public database called EDGAR and includes basic information regarding the securities issuer, the offering, the investors, and related fees. It also includes a disclaimer that the notice may contain inaccurate or incomplete information. In the case of FTX for example, there is no doubt that stronger disclosure and corporate governance requirements in the private securities markets would have made it easier to spot or prevent the alleged fraud and other misconduct earlier. By way of illustration, under existing law, FTX Trading Ltd. submitted Form D notices to the SEC after raising over $1.4 billion in capital from dozens of investors. Moreover, in these notices, the corporation only had to disclose basic information regarding it, the offering, the investors, and related fees. Had the law required more timely and fulsome disclosure, regulators and other market watchers may have identified the gaps and weaknesses in FTX's corporate governance earlier. *See*, *e.g.*, NASAA Federal Policy Agenda for the 119th Congress (Feb. 12, 2025); 2024 NASAA Enforcement Report (Feb. 27, 2024); U.S. Securities and Exchange Commission Investor Advisory Committee Panel Discussion Regarding Exempt Offerings under Regulation D, Rule 506 (Sep. 21, 2023); NASAA Letter to Committee Leadership Regarding Lessons from the FTX Bankruptcy (Nov. 30, 2022);

[8] *See*, *e.g.*, (1) the Encouraging Public Offerings Act of 2025; (2) a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes; (3) a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes; (4) a bill to expand WKSI Eligibility; (5) Smaller Reporting Company, Accelerated Filer, and Large Accelerated Filer Thresholds; (6) Regulation A+ Improvement Act of 2025; (7) the Developing and Empowering our Aspiring Leaders Act; and (8) Amendment for Crowdfunding Capital Enhancement and Small-business Support (ACCESS) Act of 2025. *See also* NASAA Letter to Congress Urging a No Vote on H.R. 2799, the Expanding Access to Capital Act of 2023, As Amended (Mar. 6, 2024); NASAA Urges Senate Leadership to Promote Trust in Our Capital Markets (June 15, 2023); NASAA Letter to House Leadership Expressing Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended (May 17, 2023).

these ever-larger markets. In these dark markets, all but the most sophisticated, well-funded investors lack access to adequate information about the businesses and operations of the private companies in which they are investing. Public and private companies alike struggle to account for private companies when they conduct risk assessments for themselves and, as applicable, provide disclosures. Importantly, regulators and legislators, who are charged in different ways with protecting the investing public, lack the basic information necessary to know how investors are faring in these markets and whether private markets are operating in a fair, orderly, and efficient manner. In fact, they lack information necessary to identify risks that, if addressed, could prevent or mitigate the next financial crisis. This combination of blindfolds undermines our shared goal of having free markets that, because of regulation and appropriate transparency, are fair, orderly, and efficient. Passing legislation or adopting rules to further reduce the information the government has regarding private offerings and funds would only make it more difficult for the government to sustain stable markets.

III. Next Steps

As noted, we will be reaching out to selected offices about certain bills. At the same time, we welcome and urge offices to contact us with any questions or requests they have about any of the bills under discussion on February 26, 2025.

Thank you for your time and consideration. Should you have questions or wish to engage on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Leslie M. Van Buskirk

Leslie M. Van Buskirk
NASAA President and
Administrator, Division of Securities
Wisconsin Department of Financial
Institutions

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NASAA

May 17, 2023

The Honorable Kevin McCarthy (R-CA)
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Scalise (R-LA)
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Katherine Clark (D-MA)
Democratic Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Emmer (R-MN)
Majority Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Pete Aguilar (D-CA)
Democratic Caucus Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Elise Stefanik (R-NY)
Republican Conference Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James Clyburn (D-MD)
Assistant Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gary Palmer (R-AL)
Republican Policy Committee Chairman
U.S. House of Representatives
Washington, D.C. 20515

Re: NASAA Calls on House Leadership to Join NASAA in Its Strong Opposition to H.R. 2799, the Expanding Access to Capital Act, As Amended

Dear Speaker McCarthy and Republican and Democratic leaders:

Maintaining robust public capital markets is critical to the financial futures of Americans and the global economy. The regulatory structures established in state and federal securities laws have resulted in the United States having the deepest and most liquid markets in the world. However, efforts are underway to pass legislation that would harm the public capital markets and preempt state investor protection laws to the detriment of entrepreneurs, small businesses, and individual investors.

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I write to urge you and your colleagues to oppose H.R. 2799, the Expanding Access to Capital Act, as amended ("H.R. 2799"). As explained below, NASAA strongly opposes four (4) titles in H.R. 2799 because they would make it impossible or more difficult, depending on the bill in question, for state securities regulators to promote responsible capital formation and protect investors in their states. The titles are Division B, Title I (the Unlocking Capital for Small Businesses Act of 2023), Title IV (the Small Entrepreneurs' Empowerment and Development ("SEED") Act of 2023), Title VII (the Improving Crowdfunding Opportunities Act), and Title VIII (the Restoring the Secondary Trading Market Act). As also explained below, NASAA opposes other titles in this legislation except Division A, Title III (SEC and PCAOB Auditor Requirements for Newly Public Companies). When combined, this legislation will only weaken investor protection and add to the explosive growth of unregulated private securities markets and private funds, thereby depriving the public securities markets and the investors that rely on them opportunities to build secure financial futures.[2]

A. NASAA Strongly Opposes Laws That Would Weaken Investor Protection and Preempt State Efforts to Promote Responsible Capital Formation.

NASAA strongly opposes the four anti-state regulation titles in H.R. 2799. They would be a gigantic step backwards in our collective efforts to right-size local efforts designed to promote responsible capital formation for the next generation of American small businesses and the individual investors who provide much of the operating capital for these businesses. State securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach community members. State securities regulators use this information to

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

[2] On April 24, 2023, Chairman Patrick McHenry (R-NC) of the U.S. House Committee on Financial Services ("HFSC") introduced H.R. 2799, the Expanding Access to Capital Act of 2023. As of May 16, H.R. 2799 had no cosponsors. On April 26, 2023, the HFSC held a mark-up session during which Chairman McHenry offered an amendment in the nature of a substitute ("ANS") to H.R. 2799. The HFSC recorded a partisan vote of 28 ayes (Rs) to 21 nays (Ds) on H.R. 2799 and a voice vote on the ANS to H.R. 2799 (or "H.R. 2799, as amended"). H.R. 2799, as amended, removed the following five (5) titles from H.R. 2799: **(1)** H.R. 1807, the Improving Disclosure for Investors Act of 2023; **(2)** H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; **(3)** H.R. 1553, the Helping Angels Lead Our Startups Act of 2023; **(4)** H.R. 2627, the Increasing Investor Opportunities Act; and **(5)** H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023. In short, NASAA opposes the first four bills and is reviewing the fifth. *See, e.g.*, 2022-2023 NASAA Past-President Melanie Senter Lubin, Written Testimony before the House Financial Services Committee Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans (Apr. 19, 2023).

enhance their education and outreach programming for entrepreneurs and small businesses.

1. NASAA Strongly Opposes the Unlocking Capital for Small Businesses Act.

Despite the title, the Unlocking Capital for Small Businesses Act (the "Unlocking Capital Act") would do little to facilitate the sustainable growth of small businesses. Rather, it will facilitate the further growth of unregulated markets and weaken the government's oversight of those who market risky investments to retail investors. In short, the legislation would establish two categories of investment professionals, private placement brokers and finders, and allow them to engage in many activities that have for decades been regulated because of investor protection concerns. To do this, the title would implement the following changes to state and federal securities law:

a. Amend Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") to add a registration safe harbor and disclosure regime for private placement brokers.

b. Amend Exchange Act Section 15 to add a nonregistration safe harbor for finders.

c. Amend the definition of "financial institution" in Section 5312 of Title 31, United States Code, to remove "private placement broker" from the universe of SEC-registered brokers that can be considered financial institutions.[3]

d. Amend Exchange Act Section 3(a)(4), which defines "broker," to add "private placement brokers" to the list of exceptions from the Exchange Act broker definition.[4]

e. Amend Exchange Act Section 29 to protect issuers from voided contracts if they obtain a self-certification by the private placement broker and/or finder of their status and the issuer did not know or had no reasonable basis to believe the self-certification was false.[5]

f. Amend Exchange Act Section 15 to preempt state governments from enforcing "any law, rule, regulation, or other administrative action that imposes greater registration, audit, financial recordkeeping, or reporting requirements on a private placement broker or finder [than those required by the Unlocking Capital Act]."[6]

This title would establish a registration safe harbor for private placement brokers. To establish the safe harbor, the title directs the SEC to promulgate regulations that are "no more stringent than those imposed on funding portals" and "require the rules of any national securities

[3] *See* 31 U.S.C. § 5312.

[4] *See* 15 U.S.C. § 78c(a)(4).

[5] *See* 15 U.S.C. § 78cc.

[6] On April 13, 2023, Representative Andrew Garbarino (R-NY) introduced the same or similar legislation as H.R. 2590. As of May 16, the bill had no cosponsors.

association [such as the Financial Industry Regulatory Authority ("FINRA")] to allow a private placement broker to become a member of such national securities association subject to reduced membership requirements".[7] The title also defines "private placement broker" in three parts. First, such brokers are persons who receive transaction-based compensation for effecting a transaction by introducing an issuer of securities and a buyer of securities either **(A)** for the sale of a business effected through the sale of securities or **(B)** for the placement of securities that are exempt from registration requirements under the Securities Act of 1933 ("Securities Act").[8] Second, with respect to a transaction for which such transaction-based compensation is received, private placement brokers cannot handle or take possession of funds or securities or engage in any activity that requires registration under state or federal law as an investment adviser. Third, private placement brokers cannot be a finder as defined by the Unlocking Capital Act. By virtue of the above-described amendment to Exchange Act Section 29, private placement brokers would be encouraged under this title to self-certify their status as a private placement broker.

The Unlocking Capital Act would establish a disclosure regime for private placement brokers. Specifically, the legislation directs these brokers to disclose in clear, conspicuous writing to all transaction parties the broker's role in the transaction, the compensation to the broker in connection with the transaction, the person to whom any such payment is made, and the direct or indirect beneficial interest in the issuer of the broker, an associated person of the broker, or the immediate families of the broker or the associated person.

In addition, the Unlocking Capital Act would establish a nonregistration safe harbor for finders. Specifically, the title exempts finders from registration requirements under Exchange Act Section 15 and directs voluntary participation if any in national securities associations such as FINRA. The title defines "finders" to be private placement brokers who **(A)** receive transaction-based compensation of equal to or less than $500,000 in any calendar year; **(B)** receive transaction-based compensation in connection with transactions that result in a single issuer selling securities valued at equal to or less than $15 million in any calendar year; **(C)** receive transaction-based compensation in connection with transactions that result in any combination of issuers selling securities valued at equal to or less than $30 million in any calendar year; or **(D)** receive transaction-based compensation in connection with fewer than 16 transactions that are not part of the same offering or are otherwise unrelated in any calendar year. Again, by virtue of the amendment to Exchange Act Section 29, finders would be encouraged to self-certify their status as a finder.

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[7] Title III of the Jumpstart Our Business Startups ("JOBS") Act enacted in 2012 contains provisions relating to securities offered or sold through crowdfunding. The SEC's Regulation Crowdfunding ("CF") and FINRA corresponding set of Funding Portal Rules set forth the principal requirements that apply to funding portal members. Funding portals must register with the SEC and become a member of FINRA. Broker-dealers contemplating engaging in the sale of securities in reliance on Title III of the JOBS Act must notify FINRA in accordance with FINRA Rule 4518. *See* FINRA, Funding Portals and Crowdfunding Offerings and SEC, Registration of Funding Portals.

[8] The legislation further states that the transaction-based compensation cannot be for a transaction with respect to "(I) a class of publicly traded securities; (II) the securities of an investment company (as defined in section 3 of the Investment Company Act of 1940); or (III) a variable or equity-indexed annuity or other variable or equity-indexed life insurance product".

Last and importantly, the Unlocking Capital Act would amend Exchange Act Section 15 to prevent state governments from imposing registration and other requirements on private placement brokers and finders that are greater than the new safe harbors. Stated differently, state governments seeking to register private placement brokers would need to set up new bespoke registration and regulatory regimes for private placement brokers. In addition, state governments could no longer require finders to apply to be registered or licensed with the state before they begin to solicit investors in the states.

NASAA strongly opposes the Unlocking Capital Act. This title would take away the authority of states to decide how best to structure a regulatory framework appropriate for the types of activities conducted by these investment professionals. Prior to conducting business in a state, most securities brokers must apply for registration to demonstrate that they have the requisite knowledge, skills, and business background to solicit and sell securities to investors. State securities regulators cannot protect investors or otherwise support responsible capital formation if they lack a line of sight into who is promoting securities in their states. While NASAA is pursuing or otherwise supporting sensible changes that would right-size the licensing and registration process for these investment professionals, we likely would need the collaboration and cooperation of the SEC and FINRA to align applicable SEC and FINRA rules with any changes advanced by state securities regulators. To this point, we continue to urge Congress to call on the SEC and FINRA to work with state securities regulators to evaluate potential changes to the existing regulatory framework.[9]

2. NASAA Strongly Opposes the Small Entrepreneurs' Empowerment and Development Act.

Division B, Title IV of H.R. 2799 is the SEED Act of 2023. This title would sow further opportunities to defraud investors by making the following counterproductive changes to the law:

a. Amend Securities Act Section 4 to establish yet another overly broad, federal exemption (or safe harbor) for so-called "micro-offerings." Specifically, the safe harbor would exempt the sale of securities from registration requirements under the Securities Act if **(A)** the aggregate amount of all securities sold by the issuer

[9] NASAA has long opposed the Unlocking Capital for Small Businesses Act. *See, e.g.*, NASAA Letter to Congress Regarding H.R. 6127, the Unlocking Capital for Small Businesses Act of 2018 (Nov. 19, 2018). For the same reasons, NASAA opposed unsuccessful efforts by the SEC in 2020 to establish a federal broker-dealer exemption for private placement finders. *See* NASAA, NASAA Outlines Opposition to SEC's Proposed Federal Broker-Dealer Exemption for Private Placement Finders (Nov. 13, 2020). *See also* NASAA Letter to Committee Leadership Regarding Opportunities to Strengthen Diversity in Our Capital-Markets (Dec. 12, 2022); NASAA Letter to Appropriations Committee Leadership Regarding Securities Policy Riders (Dec. 1, 2022); NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data (Sept. 2022) at 7 ("In 2021, U.S. members were highly successful in fulfilling their gatekeeper role. They denied 232 applications for licensure (an increase of 76% from 2020), conditioned the approval of 278 applications (an increase of 67% from 2020) and suspended 26 securities professionals (an increase of 13% from 2020). They also revoked licenses of 50 securities professionals and barred 61 individuals from the industry."); and Maryland Securities Division Commissioner Melanie Senter Lubin, Written Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs Regarding Protecting Investors and Savers: Understanding Scams and Risks in Crypto and Securities Markets (July 28, 2022).

(including all entities controlled by or under common control with the issuer), including any amount sold in reliance on the safe harbor during the 12-month period preceding the sale, does not exceed $250,000 and **(B)** the issuer is not disqualified as a bad actor.

b. Direct the SEC to issue a new bad actor rule governing these micro-offerings within 270 days of the law's enactment and to make the new rule substantially similar to existing federal bad actor provisions.

c. Amend Securities Act Section 18(b)(4) to add micro-offerings as a covered security thereby preempting state registration or qualification requirements with respect to micro-offerings.[10]

By way of background, presently, issuers of securities can offer and sell securities through many types of offerings *without* registering those securities with the SEC. For example, issuers can use any of the following 10 types of offerings up to the stated limits: **(1)** Section 4(a)(2) (no offering limit); **(2)** Rule 506(b) of Regulation D (no offering limit); **(3)** Rule 506(c) of Regulation D (no offering limit);[11] **(4)** Regulation A: Tier 1 ($20 million); **(5)** Regulation A: Tier 2 ($75 million); **(6)** Rule 504 of Regulation D ($10 million); **(7)** Regulation CF, Section 4(a)(6) ($5 million); **(8)** Intrastate: Section 3(a)(11) (no federal limit but states usually have limits between $1 and $5 million); **(9)** Intrastate: Rule 147 (no federal limit but states usually have limits between $1 and $5 million); and **(10)** Intrastate: Rule 147A (no federal limit but states usually have limits between $1 and $5 million).[12]

In addition, during the last three decades, Congress and the SEC have enacted laws and regulations to further expand the ways and amounts that issuers can offer and sell securities without registering them with the state governments. In 1996, the federal government enacted the National Securities Markets Improvement Act (the "NSMIA"). This legislation preempted much state regulation of securities offerings. Among other changes, NSMIA preempted state registration of "covered securities" such as nationally traded securities and mutual funds.

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[10] *See* 15 U.S.C. § 77r(c)(1) and 15 U.S.C. § 77r(c)(2)(A). On April 13, 2023, Chairman Patrick McHenry (R-NC) of the HFSC introduced the same or similar legislation as H.R. 2609. As of May 16, the bill had one cosponsor: Representative Tom Emmer (R-MN).

[11] For information regarding related enforcement actions, see NASAA 2022 Enforcement Report Based on an Analysis of 2021 Data (Sept. 2022) at 10 ("Although legitimate businesses may rely on private offering exemptions to lawfully raise capital, illegitimate issuers continue to exploit the exemptions to defraud the general public. Regulation D ensures that illegitimate issuers no longer need to file registration statements with federal regulators, and for all practical purposes their actions are exempt from federal review. Coupled with the federal preemption of state regulation, Regulation D allows white-collar criminals and bad actors to act in a regulatory vacuum – devoid of meaningful oversight and mechanisms to prevent abuse. Not surprisingly, state regulators reported numerous instances of misconduct tied to Regulation D private offerings. In 2020, state securities regulators opened 196 investigations and 67 enforcement actions involving offerings reliant upon the law. This includes 69 investigations and 24 enforcement actions relating to Rule 506(c), which generally permits issuers to publicly advertise unregistered securities so long as they limit sales to accredited investors.").

[12] *See* SEC Overview for Exemptions to Raise Capital (last updated Apr. 6, 2023) (setting forth a chart that provides certain regulatory information and requirements that govern 10 different avenues for raising capital under existing exemptions from federal securities laws).

However, NSMIA still permitted state review and registration of non-covered securities and requirements to submit notice filings to state securities regulators of covered securities. In subsequent years, Congress repeatedly forced its priorities and policies on states by adding to the list of covered securities and thereby further restricting the ability of state governments to decide whether and how to regulate certain securities offerings.

NASAA strongly opposes the SEED Act for five key reasons. First, this legislation is contrary to the purposes of the securities laws necessary for well-regulated capital markets and investor confidence. Second, it is simply unnecessary. There are many paths to raise capital, especially for an offering of $250,000 or less. Third, this legislation injects new complexity into an exemption framework that is complex already.[13] Fourth, registration and notice filings are the regulatory tools regulators use to know who is operating in their states. They cannot protect investors without a line of sight into companies selling these securities. They also cannot help entrepreneurs and small businesses if they do not know they are operating in their jurisdiction. Fifth, absent these filings (which essentially are communications to the states), state securities regulators may first learn about the transactions through other communications such as a call from a concerned citizen or investor and be obligated to open an investigation, all without the benefit of the information that would have been communicated through these filings. For some issuers, it may require more resources to respond to the investigation than it would have required to prepare a basic filing. At the end of the day, all this legislation would do is reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

3. NASAA Strongly Opposes the Improving Crowdfunding Opportunities Act.

Division B, Title VII is the Improving Crowdfunding Opportunities Act. In short, this title would enact a mix of provisions that weaken requirements for various participants in crowdfunding transactions.

a. SEC Regulation Crowdfunding

Crowdfunding refers to a financing method in which money is raised through soliciting relatively small individual investments or contributions from a large number of people. If a company would like to offer and sell securities through crowdfunding, they must comply with state and federal securities laws. State legislatures and regulators were first to enact tailored crowdfunding laws and did so with the twin goals of benefiting local businesses and the Main Street investors who would be asked to invest in them. Subsequently, Congress enacted a one-size-fits-all federal version of crowdfunding and directed the SEC to promulgate rules to implement yet another path for issuers to circumvent applicable securities laws.[14]

SEC Regulation CF sets forth requirements for raising capital through crowdfunding. By

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[13] *See, e.g.,* SEC Overview for Exemptions to Raise Capital (last updated Apr. 6, 2023).

[14] *See generally* NASAA Enforcement Report: 2014 Report on 2013 Data (Oct. 2014) at 8 ("For the first time, NASAA members identified six investigations where crowdfunding was used. This last development is of high concern, given state efforts to improve and support capital formation opportunities. Legitimate capital formation should not be compromised by unrelated fraudulent activity.").

way of example, Regulation CF requires all transactions under Regulation CF to occur online through an SEC-registered intermediary, which can be either a broker-dealer or a funding portal; permits certain companies to raise a maximum aggregate amount of $5 million through crowdfunding offerings in a 12-month period; limits the amount individual non-accredited investors can invest across all crowdfunding offerings in a 12-month period; and requires disclosure of information in filings with the SEC and to investors and the intermediary facilitating the offering.

Presently, for various investor protection reasons, Regulation CF deems several types of issuers ineligible to rely on Regulation CF to conduct a transaction. These include issuers that must file reports under Exchange Act Section 13(a) or 15(d), investment companies, blank check companies, disqualified 'bad actor' issuers, and issuers that have failed to file the annual reports under Regulation CF during the two years immediately preceding the filing of the offering statement cannot rely on Regulation CF.[15]

Crowdfunding was meant to allow individual investors to invest in small, local businesses and the idea that pooled investments made through a special purpose vehicle ("SPV") or fund organized to invest in, or lend money to, a single company was particularly controversial. According to SEC staff in 2019, many issuers elected not to pursue an offering under Regulation CF due to the inability to conduct a transaction with an SPV as a co-issuer. In short, without an SPV, a large number of investors on an issuer's capitalization table can be unwieldly and potentially impede future financing.[16]

Beginning in 2021, the SEC permitted the use of certain SPVs in Regulation CF transactions. Specifically, following notice and comment, the SEC amended SEC Rule 3a-9 under the Investment Company Act of 1940 ("Investment Company Act") to add a new exclusion for limited-purpose crowdfunding SPVs and to include conditions for crowdfunding SPVs that are designed to ensure that the vehicle acts solely as a conduit for investments in a crowdfunding issuer. In short, when a crowdfunding SPV is used, the crowdfunding issuer and the crowdfunding vehicle are co-issuers under the Securities Act. Both must comply with the requirements of Regulation CF and other applicable securities laws.[17]

Further, Regulation CF presently sets offering limits for individual non-accredited investors whereas no limits exist for accredited investors.[18] Specifically, individual non-accredited investors can be sold either **(i)** the greater of $2,500, or 5 percent of the greater of the investor's annual income or net worth, if either the investor's annual income or net worth is less than $124,000; or **(ii)** ten percent of the greater of the investor's annual income or net worth, not to exceed an amount sold of $124,000, if both the investor's annual income and net worth are

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[15] *See* 17 CFR § 227.100(b).

[16] *See* SEC, Report to the Commission Regulation Crowdfunding (June 18, 2019) at 57-59.

[17] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 156-181.

[18] *See* SEC, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets (last updated Nov. 30, 2022).

equal to or more than $124,000.[19]

For similar reasons to the SPV issue, the investment limits on non-accredited investors have been the subject of much policy debate in recent years. For example, some market participants want to increase the limits and allow more individual investments into the marketplace. In addition, for similar reasons, some market participants want the limits to apply on a per-investment basis rather than across all crowdfunding offerings.[20] These efforts overlook the fact that growth in the market, or the lack thereof, is driven by the quality of the issuers.

Beginning in 2021, the SEC amended the calculation method for the investment limits for non-accredited investors. The purpose of the change was to allow them to use the *greater* of their annual income or net worth rather than the *lesser* of their annual income or net worth. The change conformed Regulation CF with Tier 2 of SEC Regulation A and applied a consistent approach to limited potential losses investors may incur in offerings conducted in reliance on the two exemptions. When making the change, the SEC stated, "[W]e are not aware of evidence since Regulation Crowdfunding's adoption to indicate this market requires a more stringent approach to investment limits than other exemptive regimes."[21]

With respect to required disclosures under Regulation CF transactions, the offering statement must include specified information, including a discussion of the issuer's financial condition and financial statements. The requirements applicable to financial statement disclosures are scaled and based on the amount offered and sold in reliance on Regulation CF within the preceding 12-month period. For example, for issuers offering $124,000 or less, they only need to disclose the financial statements of the issuer and certain information from the issuer's federal income tax returns, both certified by the principal executive officer of the issuers, unless audited financial statements are available.[22]

b. State Securities Laws Related to Crowdfunding

Securities Act Section 18(b), as amended, preempts state securities laws' registration and qualification requirements for crowdfunding offerings made pursuant to Securities Act Section 4(a)(6).[23] Nevertheless, states can require that notice filings be made for offerings conducted under Regulation CF. Also, many states do in fact require such notice filings for offerings conducted in their jurisdictions.[24]

In addition to requiring notice filings of federal crowdfunding offerings, over three dozen

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[19] *See* 17 CFR § 227.100(a)(2).

[20] *See* SEC, Report to the Commission Regulation Crowdfunding (June 18, 2019) at 40.

[21] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 155.

[22] *See* 17 CFR § 227.201(t). *See also* SEC, Fact Sheet: JOBS Act Inflation Adjustments (Sept. 9, 2022).

[23] *See* SEC Final Rule, Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33-10884 and 34-90300 (Nov. 2, 2020) at 147-148.

[24] *See* NASAA, UFT Acceptance Matrix (last updated Aug. 18, 2022).

state governments have enacted rules or other requirements specific to crowdfunding transactions involving investors in their states. These capital raising paths under state laws are tied to federal raising capital paths where the federal government has not preempted state registration or qualification. Specifically, most state crowdfunding laws are linked to the federal "intrastate" offering exemption, namely Securities Act Section 3(a)(11) and its corresponding Rule 147. A few state laws are tied to the federal exemption in Rule 504 of Regulation D.[25]

c. The Consequences of the Improving Crowdfunding Opportunities Act

The Improving Crowdfunding Opportunities Act would water down the minimal investor protections that exist today for crowdfunded offerings and make other significant changes to an already scaled back regulatory framework. Specifically, the legislation would direct the following amendments:

1. Amend Securities Act Section 18(b)(4)(A) to preempt state registration or qualification of secondary transactions by adding "section 4A(b) or any regulation issued under that section" as a type of report filed with the SEC that triggers application of covered security status under Section 18(b)(4)(A). As background, Securities Act Section 4A required among other things that issuers and intermediaries that facilitate transactions between issuers and investors in reliance on Securities Act Section 4(a)(6) provide certain information to investors and potential investors, take other actions, and provide other information to the SEC. Securities Act Section 18(b)(4)(C), as amended, separately preempted state securities laws' registration and qualification requirements for offerings made pursuant to Section 4(a)(6).

2. Amend Securities Act Section 4A(c) to make funding portals liable for fraud or misrepresentation by issuers only if the funding portals participated in the fraud or were negligent in discharging their due diligence obligations. As background, this change would reverse an SEC interpretation of Regulation CF that treats funding portals as issuers for liability purposes.[26]

3. Amend Securities Act Section 4A(a) and the definition of "financial institution" in Section 5312 of Title 31, United States Code, to make clear funding portals are not subject to anti-money laundering, "Know Your Customer," and associated Bank Secrecy Act requirements.

4. Amend Exchange Act Section 3(a) to repeal restrictions on curation by allowing funding portals to offer impersonal investment advice by means of written material, or an oral statement, that does not purport to meet the objectives or needs of a specific individual or account.

5. Amend paragraph (t)(1) of section 227.201 of Title 17, Code of Federal Regulations (which governs the financial statement requirements for offerings that, together with

[25] *See* NASAA, Intrastate Crowdfunding Resources.

[26] *See* 17 CFR § 227.503(a)(3)(ii).

all other amounts of offerings sold within the preceding 12-month period, have, in the aggregate target offering amounts of $124,000), to increase the permitted target offering amount to no more than $250,000 and direct documentation around the unavailability of financial statements that have been reviewed or audited by an independent public accountant.

6. Amend Securities Act Section 4A(f) to permit certain investment companies to rely on the SEC's crowdfunding exemption.

7. Amend Securities Act Section 4(a)(6) to codify and increase the offering limit from $1,000,000 to $10,000,000.[27]

8. Amend Securities Act Section 4(a)(6) to reverse recent SEC changes to the investment limits for individual non-accredited investors and codify a new "does not exceed 10 percent of the annual income or net worth of such investor" standard that omits a cap on the maximum aggregate amount that can be sold to investors.

9. Make technical corrections throughout the Securities Act to fix flawed references to Section 4(a)(6) and Section 4(6)(B).[28]

For several reasons, NASAA strongly opposes the Improving Crowdfunding Opportunities Act. While the SEC's mission includes the facilitation of capital formation and the protection of investors, the SEC does not take the kind of grassroots approach to this work that is typical of state agencies. The SEC was slow to establish a new regime for crowdfunding transactions,[29] has been slow or unwilling to take enforcement actions in crowdfunding-related cases that involve losses under $1 million, and lacks the resources to engage with startups throughout the United States regarding their options for raising capital under state and federal crowdfunding laws.[30] Given the SEC's record of deprioritizing crowdfunding issuers and investors, Congress should understand that further preemption of the states in this area would expand the *de facto* regulatory gap that exists with respect to the regulation of crowdfunding transactions. That gap, coupled with the protections for funding portals contemplated under this proposal, will lead to more aggressive practices by funding portals targeted investors, fewer

[27] The Commission adopted Regulation CF in 2015. Regulation CF initially provided an exemption from registration for certain crowdfunding transactions that raise up to $1,070,000 in a 12-month period. Effective March 2021, the Commission increased Regulation CF's offering limit from $1,070,000 to $5,000,000. As this increase was far in excess of the inflation-based increase that would otherwise have occurred, the SEC has not since increased Regulation CF's offering limit for inflation. *See* SEC, Fact Sheet: JOBS Act Inflation Adjustments (Sept. 9, 2022).

[28] On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2607. As of May 16, the bill had no cosponsors.

[29] The SEC adopted final rules permitting companies to offer and sell securities through crowdfunding in 2015, three years after enactment of the JOBS Act 1.0. *See* Press Release 2015-249, SEC Adopts Rules to Permit Crowdfunding (Oct. 30, 2015).

[30] Roughly two dozen states enacted crowdfunding laws before the SEC implemented Regulation CF. *See* Stacy Cowley, Tired of Waiting for U.S. to Act, States Pass Crowdfunding Laws and Rules (June 3, 2015) ("Twenty-two states and the District of Columbia have enacted such rules, nine of them in the last six months. Eleven states are considering creating such laws and procedures. Three more states — Florida, Illinois and New Mexico — have rules or legislation awaiting the governor's signature.").

remedies for harmed investors, and ultimately damage the credibility of all offerings made under the SEC's Regulation CF.

4. NASAA Strongly Opposes the Restoring the Secondary Trading Market Act.

Division B, Title VIII, the Restoring the Secondary Trading Market Act, would erase oversight in the secondary sales of offerings by state governments, including offerings made under Tier 2 of the SEC's Regulation A.[31] Specifically, this title would make the following changes:

a. Amend Securities Act Section 18(a) to prohibit state governments from regulating the "off-exchange secondary trading (as such term is defined by the Commission) in securities of an issuer that makes current information publicly available". The title does not specify which if any existing SEC definition of "off-exchange secondary trading" to use.

b. Specify that making "current information publicly available" includes "the information required in the periodic and current reports described under paragraph (b) of Section 230.257 of Title 17, Code of Federal Regulations." Section 230.257 refers to periodic and current reporting for Regulation A, Tier 2 offerings of securities such as annual reports on Form 1-K.[32]

c. Specify that making "current information publicly available" also includes "the documents and information required with respect to Tier 2 offerings, as defined in Section 230.251(a) of Title 17, Code of Federal Regulations." Section 230.251(d) of Title 17, Code of Federal Regulations, refers to various offering conditions applicable to Regulation A, Tier 2 offerings, including the filing of an offering statement with the SEC.[33]

Companies that trade on national exchanges must register their securities with the SEC and meet stringent exchange listing requirements. Those that do not meet these requirements must comply with applicable state securities laws that require, for instance, that the company disclose important financial information about the company's operations. Where appropriate, states have adopted disclosure-based "manual exemptions" from state registration requirements for secondary transactions. Generally, these manual exemptions allow for secondary trading of qualifying companies so long as certain financial standards are met and key information about the company is published in a nationally recognized securities manual or its electronic equivalent. In other words, investors would have access to the types of information that the company would have to make to retail investors through the state registration process. Historically, manuals were printed publications that investors could access in their local library

[31] *See* SEC Report to Congress: Access to Capital and Market Liquidity (Aug. 2017) at 53 ("Additionally, a lack of secondary market liquidity may discourage investors from participating in Regulation A offerings at valuations that the issuer finds attractive.").
[32] *See* 17 CFR § 230.257.

[33] On April 6, 2023, Representative Dan Meuser (R-PA) introduced the same or similar legislation as H.R. 2506. As of May 16, the bill had no cosponsors.

or through their investment professionals. Today, manuals generally are easily accessible sources of online information.

NASAA strongly opposes the Restoring the Secondary Trading Act. This legislation is unnecessary. As explained above, a majority of states, including the Commonwealth of Pennsylvania where the introducing lawmaker resides, maintain a manual exemption to facilitate secondary trading.[34] In many states, the SEC's Electronic Data Gathering, Analysis, and Retrieval (or EDGAR) system can be a designated source for purposes of the manual exemption. In addition, NASAA is committed to further reviews of the existing manual exemptions and, if appropriate, promulgating a model rule for states to consider and determine if changes to their existing rules are warranted. In April 2023, NASAA published a concept release to seek comment to inform NASAA's rulemaking on this front. In addition to other input, the request for comment seeks data on the use of the manual exemption and suggestions for how the exemption could be improved from an investor protection standpoint.[35]

Setting aside the concern of necessity, NASAA also strongly opposes this title because it will not solve the longstanding illiquidity problems in the Regulation A market.[36] As a threshold matter, secondary trading does not provide liquidity to the issuer but to the selling security holder. Further, the federal government preempted the states from reviewing primary offerings conducted under Tier 2, Regulation A because it believed such preemption would stimulate use of this pathway for raising capital. Yet, this market still suffers from a lack of demand among other reasons because investors want to avoid high costs, high information asymmetries, and high investment minimums associated with these deals.[37] Similarly, a variety of factors having nothing to do with state regulations, including inefficiencies in share transfer recordkeeping and the fact that the issuer usually has a right of first refusal, still hinder the secondary trading of these securities. Inaction with respect to those factors, coupled with further preemption of state governments, would not spur additional demand for these securities.[38] If Congress wanted to

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[34] *See* Exemptions, Pennsylvania Department of Banking and Securities.

[35] *See* NASAA, Notice of Request for Comment Regarding the Uniform Securities Act Manual Exemption (Apr. 26, 2023).

[36] In August 2020, the SEC issued a report—as mandated by Congress—on the performance of Regulation A and Regulation D. SEC staff examined Regulation A offerings conducted between June 2015 and the end of 2019. During this time period, the total amount raised under Regulation A was $2.4 billion, including $2.2 billion under Tier 2 and $230 million under Tier 1. Issuers sought an average of $30.1 million in Tier 2 offerings but raised on average only $15.4 million. In Tier 1 offerings, issuers sought an average of $7.2 million and raised $5.9 million. Data is not available to show the extent to which retail investors other than accredited investors were participants in these offerings. SEC staff found that the typical issuer does not experience an improvement in profitability, continuing to realize a net loss in the years following an offering that utilizes Regulation A. This was based on available data, which necessarily overstated the success rate because it only included issuers that continued to file periodic reports after the offerings and not those that ceased operations and reporting. Despite the infusion of capital, only 45.8 percent of issuers continued filing periodic reports for three years following the offering. *See* SEC, Report to Congress on Regulation A / Regulation D Performance As Directed by the House Committee on Appropriations in H.R. Rept. No. 116-122 (Aug. 2020) at 88, 89, 91, 94, and 98.

[37] *See* Faith Anderson, Prepared Remarks of Faith Anderson for the SEC Investor Advisory Committee Regarding the Growth of Private Markets (Mar. 2, 2023) at 4.

[38] *See* Andrea Seidt, Prepared Remarks of Andrea Seidt for the SEC SBCFAC Regarding Secondary Market Liquidity (Aug. 2, 2022) at 2.

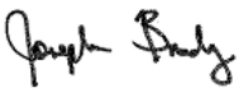
take additional action with respect to the Regulation A market, it would be useful to direct the SEC research and analyze whether it even makes sense to maintain the Regulation A regulatory framework given the persistent lack of demand for these deals and the overall poor performance of many of the companies that have relied on Regulation A

B. NASAA Opposes the Remaining Titles in H.R. 2799.

With the exception of Division A, Title III, NASAA opposes the remaining titles in H.R. 2799 as outlined in Appendices A, B, and C to this letter. As explained in NASAA's recent testimony before the HFSC, NASAA strongly believes that policies aimed at boosting the private markets and weakening the disclosure regime central to the public markets will not result in more public offerings by well-run businesses. To the contrary, the results likely will be larger private securities markets that expose retail and institutional investors and the public alike to the direct and indirect consequences of fraud and scams that have metastasized in the opacity of these markets. Moreover, these larger, dark markets may have systemic consequences for our financial markets and undermine our management of financial markets stability.[39]

Thank you for your time and consideration. Should you have any questions or wish to seek NASAA's technical feedback on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
NASAA Executive Director

Enclosure

[39] *See* 2022-2023 NASAA Past-President Melanie Senter Lubin, Written Testimony before the House Financial Services Committee Subcommittee on Capital Markets Regarding A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans (Apr. 19, 2023).

Appendix A – NASAA Positions on Division A Titles of H.R. 2799[40]

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**REMOVE ABERRATIONS IN THE MARKET CAP TEST FOR TARGET COMPANY FINANCIAL STATEMENTS.** This title would direct the SEC to revise regulations to permit an issuer, when determining its market capitalization for purposes of testing the significance of an acquisition or disposition, to calculate the registrant's aggregate worldwide market value based on the applicable trading value, conversion value, or exchange value of all of the registrant's outstanding classes of stock (including preferred stock and non-traded common shares that are convertible into or exchangeable for traded common shares) and not just the voting and non-voting common equity of the registrant. On April 6, 2023, Representative French Hill (R-AR) introduced the same or similar legislation as H.R. 2497. As of May 16, the bill had no cosponsors.	Oppose
II	**HELPING STARTUPS CONTINUE TO GROW.** This title would make it easier for emerging growth companies ("EGC") to remain EGCs longer. Presently, a company qualifies as an EGC if it has total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year and, as of December 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: (1) its total annual gross revenues are $1.07 billion or more; (2) it has issued more than $1 billion in non-convertible debt in the past three years; or (3) it becomes a "large accelerated filer," as defined in Exchange Act Rule 12b-2. Under this legislation, EGCs would have seven years instead of five years to undertake certain additional	Oppose

[40] H.R. 2799, as amended, removed the following titles from H.R. 2799: **(1)** H.R. 1807, the Improving Disclosure for Investors Act of 2023, which would direct the SEC to promulgate a rule within one year of enactment of the legislation to allow for certain covered entities to satisfy their obligations to deliver regulatory documents required under securities laws to investors using electronic delivery; **(2)** H.R. 2622, to amend the Investment Advisers Act of 1940 to codify certain Securities and Exchange Commission no-action letters that exclude brokers and dealers compensated for certain research services from the definition of investment adviser, and for other purposes; **(3)** H.R. 1553, the Helping Angels Lead Our Startups Act of 2023, which would direct the SEC to revise the SEC's Regulation D to not extend the prohibition on general solicitation or general advertising to events with specified kinds of sponsors, including angel investor groups unconnected to broker-dealers or investment advisers, so long as certain conditions are met; **(4)** H.R. 2627, the Increasing Investor Opportunities Act, which would amend the Investment Company Act to prohibit the SEC from placing a limit, as they currently do, on closed-end companies investing in private funds; and **(5)** H.R. 3063, the Retirement Fairness for Charities and Educational Institutions Act of 2023, which would amend federal securities laws to authorize the use of collective investment trusts within 403(b) plans and for other purposes. In short, NASAA opposes the first four bills (H.R. 1807, H.R. 2622, H.R. 1553, and H.R. 2627) and is reviewing H.R. 3063.

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	disclosure requirements applicable to more mature public companies. In addition, the triggers for losing EGC status would be relaxed. In particular, the legislation would raise the total annual gross revenue limit for an EGC from $1 billion to $1.5 billion and eliminate the "large accelerated filer" trigger for loss of EGC status. On April 13, 2023, Representative Bryan Steil (R-WI) introduced the same or similar legislation as H.R. 2624. As of May 16, the bill had no cosponsors.	
III	**SEC AND PCAOB AUDITOR REQUIREMENTS FOR NEWLY PUBLIC COMPANIES.** This title would permit the auditor of a private company transitioning to public company status to comply with Public Company Accounting Oversight Board ("PCAOB") and SEC independence rules for only the latest fiscal year as long as the auditor is independent under standards established by the American Institute of Certified Public Accountants or home-country standards for earlier periods. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2606. As of May 16, the bill had no cosponsors.	Support
IV	**EXPAND THE PROTECTION FOR RESEARCH REPORTS TO COVER ALL SECURITIES OF ALL ISSUERS.** This title would extend the protection for research reports about EGCs to research reports about all securities of all issuers. The new text would read as follows: "The publication or distribution by a broker or dealer of a research report ~~about an emerging growth company~~ *an issuer* that is the subject of a proposed public offering of ~~the common equity~~ *any* securities of ~~such emerging growth company~~ *such issuer* pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and Section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term 'research report' means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision." On April 13, 2023, Representative Roger Williams (R-TX) introduced the same or similar legislation as H.R. 2576. As of May 16, the bill had no cosponsors.	Oppose
V	**EXCLUDE QUALIFIED INSTITUTIONAL BUYERS AND INSTITUTIONAL ACCREDITED INVESTORS FROM THE**	Oppose

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	RECORD HOLDER COUNT FOR MANDATORY REGISTRATION. This title would amend Exchange Act Section 12(g) to exclude qualified institutional buyers and institutional accredited investors from calculations of holders of record. In addition, the bill would prohibit the SEC from issuing rules to reverse these changes by amending rules to reduce the number of holders of record or modify related calculations. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2605. As of May 16, the bill had no cosponsors.	
VI	**EXPAND WKSI ELIGIBILITY.** This title would lower the aggregate market value of voting and non-voting common equity necessary for an issuer of securities to qualify as a well-known seasoned issuer ("WKSI") from $700 million to $250 million. The issuer would also be able to qualify as a WKSI if it otherwise satisfies the other requirements of the WKSI definition without reference to any requirement related to minimum worldwide market value of outstanding voting and non-voting common equity held by non-affiliates. On April 13, 2023, Representative Steil introduced the same or similar legislation as H.R. 2625. As of May 16, the bill had no cosponsors.	Oppose
VII	**SMALLER REPORTING COMPANY, ACCELERATED FILER, AND LARGE ACCELERATED FILER THRESHOLDS.** This title essentially would codify a 2020 SEC rule, albeit with modifications in favor of issuers. With this legislation, the SEC would adjust the public float threshold in Section 229.10(f)(1)(i) of Title 17, Code of Federal Regulations, from $250 million to $500 million, the annual revenue threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from $100 million to $250 million, and the public float threshold in Section 229.10(f)(1)(ii) of Title 17, Code of Federal Regulations, from $700 million to $900 million. The SEC would use three-year rolling average revenues instead of annual revenues for "smaller reporting companies." The SEC would also amend the definition of "large accelerated filer" to increase the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates threshold in Section 240.12(b)-2(2)(i) of Title 17, Code of Federal Regulations, from $700 million to $750 million, the accelerated filer exit threshold in Section 240.12(b)-2(3)(ii) of Title 17, Code of Federal Regulations, from $60 million to $75 million, and the large accelerated filer exit threshold in Section 240.12(b)-2(3)(iii) of Title 17, Code of Federal Regulations, from $560 million to $750 million. Last, the SEC would revise the definitions of an "accelerated filer" and a "large	Oppose

NASAA Positions on Division A Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
	accelerated filer" to exclude any issuer that is a "smaller reporting company." On April 13, 2023, Representative Blaine Luetkemeyer (R-MO) introduced the same or similar legislation as H.R. 2603. As of May 16, the bill had no cosponsors.	

Appendix B – NASAA Positions on Division A Titles of H.R. 2799

NASAA Positions on Division B Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**UNLOCKING CAPITAL FOR SMALL BUSINESSES.** Please see Section A of this letter for a description.	Oppose
II	**SMALL BUSINESS INVESTOR CAPITAL ACCESS.** This title would amend the private fund adviser exemption under the Investment Advisers Act of 1940 ("Investment Advisers Act") to adjust the threshold for inflation since the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 and then adjust the threshold thereafter annually to reflect the changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor. On April 13, 2023, Representative Andy Barr (R-KY) introduced the same or similar legislation as H.R. 2578. As of May 16, the bill had no cosponsors.	Oppose
III	**IMPROVING CAPITAL ALLOCATION FOR NEWCOMERS.** This title would modify and expand the Qualifying Venture Capital Fund Exemption under Investment Company Act Section 3(c)(1). Specifically, it would increase the cap on aggregate capital contributions and uncalled capital commitments from $10 million to $150 million and increase the allowable number of beneficial owners from 250 to 600. It also would increase the current beneficial owners limit for funds that rely on the broader exemption in Section 3(c)(1) from 100 to 200 beneficial owners. On April 13, 2023, Representative William Timmons (R-SC) introduced the same or similar legislation as H.R. 2790. As of May 16, the bill had no cosponsors.	Oppose
IV	**SMALL ENTREPRENEUERS' EMPOWERMENT AND DEVELOPMENT.** Please see Section A of this letter for a description.	Oppose
V	**REGULATION A+ IMPROVEMENT.** This title would amend the federal securities laws to increase the dollar limit of certain securities offerings presently exempt from federal registration requirements to $150 million annually, adjusted for inflation every two years. The title contains no state preemption provisions because Congress previously took away the choice of the states to review and register these offerings. Rather than codifying the SEC's decision in 2020 to increase the maximum offering amount under Tier 2, Regulation A from $50 million to $75 million, this legislation would increase the cap to $150 million. On April 17, 2023, Representative Erin Houchin (R-IN) introduced the same or similar legislation as H.R. 2651. As of May 16, the bill had no cosponsors.	Oppose

NASAA Positions on Division B Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
VI	**DEVELOPING AND EMPOWERING OUR ASPIRING LEADERS.** This title would require the SEC to expand the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act. Specifically, the SEC would be required to include equity securities issued by qualifying portfolio companies, as well as investments in other venture capital funds, as qualifying investments. This title would also direct the Comptroller General of the United States to issue a report to Congress on the risks and impacts of concentrated sectoral counterparty risk in the banking sector. In addition, it would require the Advocate for Small Business Capital Formation to issue a report to Congress and the SEC examining access to banking services for venture funds and companies funded by venture capital, especially those outside of California, Massachusetts, and New York, and propose any related policy recommendations. On April 13, 2023, Representative Barr introduced the same or similar legislation as H.R. 2579. As of May 16, the bill had no cosponsors.	Oppose
VII	**IMPROVING CROWDFUNDING OPPORTUNITIES.** Please see Section A of this letter for a description.	Oppose
VIII	**RESTORING THE SECONDARY TRADING MARKET.** Please see Section A of this letter for a description.	Oppose

Appendix C – NASAA Positions on Division C Titles of H.R. 2799

NASAA Positions on Division C Titles of H.R. 2799		
Title	**Description**	**NASAA Position**
I	**GIG WORKER EQUITY COMPENSATION.** This title would extend SEC Rule 701, which exempts certain sales of securities made to compensate employees, consultants, and advisors, to apply to gig workers providing goods for sale, labor, or services for renumeration to either an issuer or customers of an issuer to the same extent as such exemptions apply to the employees of the issuer. This title also would direct the SEC to annually adjust the $10 million disclosure threshold for inflation and preempt state law with respect to wage rates or benefits that creates a presumption that an individual is an employee. Within three years of enactment of this title, the Government Accountability Office would have to produce a report studying the impacts of this title. On April 13, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2612. As of May 16, the bill had no cosponsors.	Oppose
II	**INVESTMENT OPPORTUNITY EXPANSION.** This title would add additional investment thresholds for an individual to qualify as an accredited investor. The legislation would direct the SEC to treat any individual whose aggregate investment, at the completion of such transaction, in securities with respect to which there has not been a public offering is not more than 10 percent of the greater of (i) the net assets of the individual or (ii) the annual income of the individual as an accredited investor. On April 17, 2023, Representative Alexander Mooney (R-WV) introduced the same or similar legislation as H.R. 2652. As of May 16, the bill had no cosponsors.	Oppose
III	**RISK DISCLOSURE AND INVESTOR ATTESTATION.** This title would amend the Securities Act to direct the SEC within one year of enacting the legislation to issue rules that permit individuals to qualify as accredited investors by attesting to the issuer that the individual understands the risks of investment in private issuers, using the form that the Commission adopts by rulemaking, which may not be longer than two pages in length. On March 14, 2023, Representative Warren Davidson (R-OH) introduced the same of similar legislation as H.R. 1574. As of May 16, the bill had no cosponsors.	Oppose
IV	**ACCREDITED INVESTORS INCLUDE INDIVIDUALS RECEIVING ADVICE FROM CERTAIN PROFESSIONALS.** This title would revise the definition of "accredited investor" to include individuals receiving individualized investment advice or individualized investment recommendations from investment adviser professionals. This	Oppose

	title also would direct the SEC to revise 17 CFR § 203.501(a) and any other definition of "accredited investor" in a rule from the Commission to conform to the changes set forth in the title. On April 20, 2023, Chairman McHenry introduced the same or similar legislation as H.R. 2773. As of May 16, the bill had no cosponsors.	

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NASAA

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June 15, 2023

The Honorable Charles Schumer (D-NY)
Majority Leader
U.S. Senate
Washington, D.C. 20515

The Honorable Mitch McConnell (R-KY)
Minority Leader
U.S. Senate
Washington, D.C. 20515

The Honorable Richard Durbin (D-IL)
Majority Whip
U.S. Senate
Washington, D.C. 20515

The Honorable John Thune (R-SD)
Minority Whip
U.S. Senate
Washington, D.C. 20515

The Honorable Sherrod Brown (D-OH)
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Tim Scott (R-SC)
Ranking Member
U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Robert Menendez (D-NJ)
Chairman
Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

The Honorable Mike Rounds (R-SD)
Ranking Member
Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20515

Re: NASAA Urges Senate Leadership to Promote Trust in Our Public Capital Markets

Dear Majority Leader Schumer and Democratic and Republican leaders:

Maintaining robust public capital markets is critical to the financial futures of Americans and the global economy. The regulatory structures established in state and federal securities laws have resulted in the United States having the deepest and most liquid markets in the world. However, efforts are underway to enact legislation that would harm the public capital markets and preempt state investor protection laws to the detriment of entrepreneurs, small businesses, and individual investors. At the end of the day, all this legislation would do is reduce educational and compliance support for the very entrepreneurs and small businesses that state securities regulators presently are helping.

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I write to urge you and your colleagues to only support and advance legislation that helps rather than harms entrepreneurs, small businesses, and individual investors. In support of your work, NASAA has reviewed the 18 bills passed by the U.S. House of Representatives (the "House") as of June 7, 2023 and referred to the U.S. Senate Committee on Banking, Housing, and Urban Affairs (the "Senate Banking Committee"). Below, we set forth and describe the seven (7) bills[2] we support and the six (6) bills[3] we respectfully do not support. At this time, we take no position on five (5) of the House-passed bills.[4]

As you will read, the reason we respectfully oppose several bills is that the weight of the evidence shows they would undermine our common goal of efficient capital formation for entrepreneuers and small businesses in the United States consistent with robust protection for the individual investors who often provide this capital. Investor protection is critical to fostering the trust that will fuel our capital markets for generations to come.

A. NASAA Urges Congress to Help Older Investors.

The House recently passed two (2) bills that specifically call on all of us to better protect older and sometimes vulnerable persons from financial fraud. NASAA supports both of them.

As background, state securities regulators have been at the forefront of crafting state and federal measures aimed at protecting older and vulnerable investors from financial exploitation. During the last decade, NASAA has urged Congress to (i) update and strengthen the authority of the U.S. Securities and Exchange Commission (the "SEC," "agency," or "Commission" as appropriate below) to impose civil penalties on securities law violators, particularly recidivists;[5] (ii) establish a federal senior investor taskforce within the SEC to consult with state securities regulators and law enforcement authorities;[6] (iii) direct the U.S. Government Accountability

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

[2] NASAA supports H.R. 2593, the Senior Security Act of 2023; H.R. 500, the Financial Exploitation Prevention Act of 2023; H.R 2796, the Promoting Opportunities for Non-Traditional Capital Formation Act; H.R. 298, the Expanding Access to Capital for Rural Job Creators Act; H.R. 2792, the Small Entity Update Act; H.R. 2812, the Middle Market IPO Underwriting Cost Act; and H.R. 2795, the Enhancing Multi-Class Share Disclosures Act.

[3] NASAA opposes H.R. 835, the Fair Investment Opportunities for Professional Experts Act; H.R. 1579, the Accredited Investor Definition Review Act; H.R. 2797, the Equal Opportunity for All Investors Act of 2023; H.R. 2608, To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes; H.R. 2610, To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes; and H.R. 2793, the Encouraging Public Offerings Act of 2023.

[4] NASAA takes no position at this time on H.R. 388, Securities and Exchange Commission Real Estate Leasing Authority Revocation Act; H.R. 400, Investing in Main Street Act of 2023; H.R. 582, the Credit Union Modernization Act; H.R. 1076, Preventing the Financing of Illegal Synthetic Drugs Act; and H.R. 1156, China Financial Threat Mitigation Act of 2023.

[5] *See* S. 837, Stronger Enforcement of Civil Penalties Act of 2023, 118th Congress, 1st Session.

[6] *See* H.R. 2593, Senior Security Act of 2023, 118th Congress, 1st Session.

Office ("GAO") to study the costs, causes, and barriers to reporting the financial exploitation of seniors;[7] (iv) amend the Victims of Crime Act of 1984 to establish eligibility for seniors victimized by financial exploitation to be reimbursed from state victim compensation programs;[8] and (v) enact the Empowering States to Protect Seniors from Bad Actors Act, which would fund a federal grant program that state securities regulators can access to protect senior investors through education, rulemaking, and enforcement.[9]

As presently written, NASAA supports H.R. 2593, the Senior Security Act of 2023, as amended ("H.R. 2593"), and H.R. 500, the Financial Exploitation Prevention Act of 2023, as amended ("H.R. 500"). They both enjoy bipartisan, bicameral support. On June 5, 2023, the House passed H.R. 2593 by voice vote. Representative Josh Gottheimer (D-NJ) introduced the legislation. Representatives Ann Wagner (R-MO) and Michael Lawler (R-NY) are cosponsors. On January 30, 2023, the House passed H.R. 500 by a vote of 419 to zero (0). Representative Ann Wagner (R-MO) introduced the legislation. Four (4) Democrats and nine (9) Republicans are cosponsors. Further, both bills have Senate companion bills with the same or similar text and bipartisan cosponsors. On March 23, 2023, Senator Kyrsten Sinema (I-AZ), joined by Senator Susan Collins (R-ME), introduced S. 955, the Senior Security Act of 2023. On May 9, 2023, Senator Bill Hagerty (R-TN) introduced S. 1481, the Financial Exploitation Prevention Act of 2023. Senators Jon Tester (D-MT) and Susan Collins (R-ME) are cosponsors.

Importantly, H.R. 2593 would solve two (2) longstanding problems—information gathering and sharing. Specifically, the bill would establish a "Senior Investor Taskforce" (the "Taskforce") at the SEC for 10 years. The Taskforce would "(A) identify challenges that senior investors encounter, including problems associated with financial exploitation and cognitive decline; (B) identify areas in which senior investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations; (C) coordinate, as appropriate with other offices within the Commission, other taskforces that may be established within the Commission, self-regulatory organizations, and the Elder Justice Coordinating Council; and (D) consult, as appropriate, with State securities and law enforcement authoritys, State insurance regulators, and other Federal agencies." Every two (2) years, the Taskforce would submit a report to Congress outlining trends and innovations that negatively affect this population. The bill would require the SEC to use existing funds to complete this work.

Moreover, H.R. 2593 would require the GAO to submit to Congress and the Taskforce the results of its study of financial exploitation of senior citizens. The study would cover (i) the economic costs of the financial exploitation of senior citizens; (ii) the frequency of senior financial exploitation and correlated or contributing factors; and (iii) policy responses and reporting of senior financial exploitation.

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[7] *See* H.R. 2593, Senior Security Act of 2023, 118th Congress, 1st Session.

[8] *See* S. 3487, Edith Shorougian Senior Victims of Fraud Compensation Act, 116th Congress, 2nd Session.

[9] *See* H.R. 5914, Empowering States to Protect Seniors from Bad Actors Act, 117th Congress, 2nd Session. Representative Josh Gottheimer (D-NJ) has committed to introducing the same or similar legislation during the 118th Congress. *See* Gottheimer Release: Gottheimer Announces New Steps for Seniro Security Strategy to Combat Financial Scams (Feb. 3, 2023).

Similarly, H.R. 500 would support information gathering and sharing, all to the end of better protection of older Americans. First, it would require registered open-end investment companies and the transfer agents who serve those companies, including mutual funds, to contact customers who hold non-institutional accounts directly with the company to request information for a trusted contact who can be notified if the company or transfer agent identifies possible financial exploitation.[10] Second, it would allow the company or transfer agent in limited circumstances to postpone the date of payment upon redemption of any redeemable security. Among other requirements, the company or transfer agent must reasonably believe the redemption was requested through the financial exploitation of a security holder. Also, the security holder must be (i) an individual age 65 or older or (ii) an adult who the company or agent reasonably believes cannot protect their own interests due to the adult's mental or physical impairment ("Specified Adults").[11] Third, H.R. 500 would require the SEC, in consultation with NASAA and other policymakers, to submit a report to Congress that includes recommendations regarding the regulatory and legislative changes necessary to address the financial exploitation of security holders who are Specified Adults.[12]

To be clear, NASAA sees opportunities for improvements in both bills. With respect to H.R. 2593, state securities regulators appreciate that it can be costly for regulators to organize taskforces and prepare reports to Congress. It may or may not be realistic for the SEC to undertake this additional work without additional funding. With respect to H.R. 500, NASAA strongly encourages Congress to clarify the relationship between this legislation and state law so that nothing in this legislation can be construed to preempt or limit any provisions of state law unless the legislation provides a greater level of protection to investors. Lawmakers should consider using the 'no preemption provision' in the 2018 Senior Safe Act as a model.[13] In addition, NASAA strongly encourages Congress to incorporate a requirement that, if a company or transfer agent reasonably believes that financial exploitation of a Specified Adult may have occurred, may have been attempted, or is being attempted, it must promptly notify the SEC, the relevant state securities regulator, and the relevant adult protective services agency. Lawmakers

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[10] Open-end investment companies offer securities in pooled investment vehicles such as mutual funds.

[11] These provisions in H.R. 500 are broadly consistent with the SEC staff's 2018 no-action letter and the 2016 NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation, which is now the basis for law and regulation in at least 35 states. *See* Jennifer Palmer, Senior Counsel in the SEC's Division of Investment Management, Investment Company Act of 1940 – Section 22(e), Investment Company Institute No Action Letter (June 1, 2018); NASAA, NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (adopted Jan. 22, 2016); NASAA's list of jurisdictions that have enacted legislation or regulations based on the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation (last updated May 2023). *See generally* FINRA, SEC Approves Rules Relating to Financial Exploitation of Seniors, Reg. Notice 17-11 (Mar. 30, 2017).

[12] This requirement recognizes the longstanding efforts of state and federal policymakers to provide Congress with recommendations and information regarding senior financial exploitation. *See, e.g.*, Stephen Deane, Engagement Adviser in the SEC's Office of the Investor Advocate, Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead (June 2018).

[13] *See* 12 U.S.C. § 3423(c) ("Relationship to State law. Nothing in this section shall be construed to preempt or limit any provision of State law, except only to the extent that subsection (a) provides a greater level of protection against liability to an individual described in subsection (a)(2)(A) or to a covered financial institution described in subsection (a)(2)(B) than is provided under State law.").

may wish to use language from the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation to write an equivalent notification requirement for this legislation.[14]

In sum, we urge the Senate to act swiftly. We believe these bills even as presently written would go a long way to increasing protection for older investors.

B. NASAA Urges Congress to Expand Access to Capital for Entrepreneurs and Small Businesses in Rural Areas and Other Underserved Communities.

Also pending are two (2) House-passed bills that expressly call on all of us to better serve entrepreneuers and small businesses in rural areas and other underserved communities. NASAA is pleased to support both bills.

As background, state securities regulators regularly witness firsthand the value that comes from having entrepreneurs and small businesses engage directly with state regulators about capital raising generally and the securities offerings they will make or have made to investors in their states. This engagement helps issuers better understand their options for raising capital and avoid or mitigate compliance mistakes. It also deters fraud and other misconduct that can harm business owners and investors alike. For example, state securities regulators facilitate networking opportunities for businesses to raise capital, attend venture capital or entrepreneurs fairs (*e.g.*, the MIT Entrepreneur Forum), collaborate on outreach efforts with other regulators, and support the trainings conducted by nonprofit organizations (*e.g.*, venturecapital.org). The engagement similarly helps state securities regulators better understand the educational and compliance needs of the business community in their states, including rural and other hard-to-reach community members. State securities regulators use this information to enhance their education and outreach programming for entrepreneurs and small businesses.

As presently written, NASAA supports H.R. 2796, the Promoting Opportunities for Non-Traditional Capital Formation Act, as amended ("H.R. 2796"), and H.R. 298, the Expanding Access to Capital for Rural Job Creators Act, as amended ("H.R. 298"). On May 20, 2023, the House passed H.R. 2796 by a strong bipartisan vote of 309 to 67. Ranking Member Maxine Waters (D-CA) introduced the legislation. No Senator has introduced a companion bill for H.R. 2796. On January 30, 2023, the House passed H.R. 298 by voice vote. Representative Alexander Mooney (R-WV) introduced the legislation. Four (4) Democrats and eight (8) Republicans are cosponsors. H.R. 298 has a Senate companion bill, S. 294. On February 7, 2023, Senator John Kennedy (R-LA) introduced S. 294. Four (4) Democrats and one (1) Republican are cosponsors.

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[14] *See* NASAA Model Act to Protect Vulenable Adults from Financial Exploiation, Section 7 and its associated legislative commentary. The NASAA Model Act to Protect Vulenable Adults from Financial Exploiation provides broker-dealers and investment advisers with the authority to delay disbursing funds from an eligible adult's account for up to 15 business days if the broker-dealer or investment adviser reasonably believes that a disbursement would result in the financial exploitation of the eligible adult. If the broker-dealer or investment adviser delays a disbursement, it must notify people authorized to transact business on the account (unless these individuals are suspected of the financial exploitation), notify the state securities regulator and the adult protective services agency, and undertake an internal review of the suspected exploitation. The state securities regulator or adult protective services agency may request an extension of the delay for an additional 10 business days. Extensions beyond that could be ordered by a court.

Importantly, H.R. 2796 and H.R. 298 are complementary. To begin, H.R. 2796 would amend Section 4 of the Securities Exchange Act of 1934 ("Exchange Act") to require the SEC's Advocate for Small Business Capital Formation (the "Advocate") to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses and businesses located in rural areas.[15] In addition, it would require the Advocate to meet at least annually with representatives of state securities commissions to discuss opportunities for collaboration and coordination with respect to these efforts.[16] In support of this coordinated education and outreach, H.R. 298 would amend Section 4 of the Exchange Act to require the Advocate to identify any unique challenges that "rural-area small businesses" have with securing access to capital and report annually to Congress on the most serious issues encountered by "rural-area small businesses" and their investors.

In sum, we urge the Senate to act without delay. Both bills would strengthen our common goal of tailoring governmental efforts to support hard-to-reach entrepreneurs and small businesses throughout the United States. As then-SEC Commissioner Michael Piwowar said in 2017, "For a capital formation agenda to succeed, it is essential that state and federal regulators work together to support the businesses that seek to engage in these offerings while also protecting investors."[17]

C. NASAA Urges Congress to Level the Playing Field.

This Congress, the House has passed two (2) bills that aspire to level the playing field for smaller participants in our capital markets. NASAA commends lawmakers for acting on longstanding competition concerns. We are pleased to support both bills.

The bills are H.R. 2792, the Small Entity Update Act, as amended ("H.R. 2792"), and H.R. 2812, the Middle Market IPO Underwriting Cost Act, as amended ("H.R. 2812"). On May 30, 2023, the House passed H.R. 2792 by a vote of 367 to eight (8). Representative Ann Wagner (R-MO) introduced the legislation. Four (4) Democrats, as well as one (1) Republican, are cosponsors. On June 5, 2023, the House passed H.R. 2812 by a vote of 390 to 10. Representative Jim Himes (D-CT), joined by Representative Michael Lawler (R-NY), introduced the legislation. No Senator has introduced a companion bill for either H.R. 2792 or H.R. 2812.

H.R. 2792 would move the needle on an important recurring issue—specifically, legislators and regulators assign different meanings to the term "small entity" in ways that create confusion and undermine our collective efforts. For state securities regulators, "small" typically means America's smallest businesses found on Main Street. It does not mean an emerging growth company ("EGC") or a similarly large business. Specifically, the bill would direct the

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[15] As context, Section 19(d) of the Securities Act of 1933 ("Securities Act") requires the Commission to "conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate."

[16] While we appreciate the efforts of the prior Advocate to engage state regulators, we believe an annual meeting requirement would ensure such engagement occurs on a more regular basis.

[17] *See* SEC Commissioner Michael Piwowar, Opening Remarks at 2017 SEC/NASAA Annual Section 19(d) Conference (May 9, 2017).

SEC to conduct a study of the definition of the term "small entity" and publish a report to Congress with its findings and recommendations. The bill also would direct the SEC to engage in rulemaking to implement the recommendation, repeat the study in five (5) years, and adjust all dollar figures under the definition of small entity for inflation every five (5) years.

In a similar vein, H.R. 2812 would help to address a longstanding disadvantage faced by middle market businesses—specifically, in the United States, middle market businesses typically pay what effectively is a seven (7) percent tax before they can access our public capital markets. Meanwhile, larger businesses do not pay this tax.[18] In support of maintaining fair markets, which is an element of the SEC's present mission, this legislation would direct the Comptroller General of the United States, in consultation with the SEC and the Financial Industry Regulatory Authority ("FINRA"), to study the costs associated with underwriting initial public offerings ("IPOs") and Regulation A, Tier 2 offerings for small- and medium-sized companies. The bill also would direct the SEC to issue a report to Congress with findings and recommendations.

As stated, NASAA is pleased to support both bills. At the same time, we urge Congress to consider requiring the SEC to prepare a comprehensive study on private and public markets, including without limitation the SEC's latest data and research on the performance of offerings under Regulation A, Regulation D, and Regulation Crowdfunding, as well as the effect of recent changes to the SEC's "accredited investor" definition. It has been 60 years since the SEC led the preparation of a comprehensive report on the state of our capital markets.[19] Though Congress requests many studies from the SEC and the GAO, members of Congress rarely coordinate these requests. Among other benefits, a comprehensive study of the private and public capital markets would help regulators and legislators, as well as other stakeholders, better understand issues within their greater context for purposes of advancing helpful laws and rules. Moreover, we urge Congress to improve H.R. 2792 and H.R. 2812 by amending the legislation to direct the SEC to invite a representative of state securities commissions to consult on the SEC's research and reports to Congress.

D. NASAA Urges Congress to Strengthen the Ability of Individual Investors to Protect Themselves.

Last month, the House passed H.R. 2795, the Enhancing Multi-Class Share Disclosures Act, as amended ("H.R. 2795"), by a vote of 347 to 30. In short, NASAA supports the legislation as presently written because it would enhance transparency by requiring issuers with multi-class share structures to make certain disclosures regarding certain shareholders' voting power.

As background, a multi-class share structure occurs when a company issues two (2) or more classes of shares that have different voting rights. For example, a company may issue one (1) class of shares with no or few voting rights for the public and another class with more voting rights for company founders and executives.

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[18] *See* Robert Jackson, The Middle-Market IPO Tax (Apr. 25, 2018).

[19] *See* SEC, Report of Special Study of Securities Markets of the Securities and Exchange Commission (Apr. 3, 1963).

Multi-class share structures have existed in the United States since the late 1800s. The original intent of these structures was to allow companies, particularly family-run businesses, to maintain voting control without having to own the majority of equity in their company. Stated differently, insiders could control the company while owning a smaller number of shares than would be necessary in a traditional one-share, one-vote structure. For example, in 1925, the owners of the Dodge Brothers, an auto maker, had total voting control while holding only 1.7 percent of equity.[20]

In recent decades, the use of multi-class shares has risen in popularity. Since 1980, nearly 10 percent of all new initial public offerings ("IPOs") have used the structure. In addition, the percentage of IPOs using this structure has trended upward.[21]

As further background, in 2018, the SEC's Investor Advisory Committee ("IAC") and others determined that these structures may pose significant risks for investors, including limiting investors' abilities to influence management, direct strategy, and hold misaligned boards accountable. In their view, the current disclosure regime around such arrangements is simply inadequate given the significant risks associated with multi-class governance structures.[22]

In short, H.R. 2795 responds to this trend and associated concerns with a focus on closing well-documented disclosure gaps involving multi-class governance structures. Specifically, the bill would require issuers of securities with multi-class share structures to disclose certain information in any proxy solicitation or consent solicitation material for an annual meeting of the shareholders of the issuer or any other filing as the Commission determines appropriate. The disclosure would include (i) the number of shares of all classes of securities entitled to vote in the election of directors beneficially owned by specified persons and (ii) the amount of voting power held by specified persons. The specified persons would be each person who is a director, director nominee, or named executive officer of the issuer, or who is the beneficial owner of securities with five (5) percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors.

Introduced by Gregory Meeks (D-NY), this legislation presently has no cosponsors or a Senate companion bill. However, bipartisan support for this legislation is evident in the decision of the House Financial Services Committee ("HFSC") decision on May 24, 2023 to report the bill favorably by a vote of 48 to one (1). Further, the legislation received bipartisan support during prior Congresses.[23]

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[20] *See* House Report 115-879, Enhancing Multi-Class Share Disclosures Act, 115th Congress, 2nd Session. *See also* Congressional Research Service, Dual Class Stock: Background and Policy Debate (Dec. 8, 2021) (describing the public outcry that ensued after a stock issuance by the Dodge Brothers and the New York Stock Exchange's response thereto).

[21] *See* Jay Ritter, Initial Public Offerings: Dual Class Structure of IPOs Through 2022 (Apr. 24, 2023).

[22] See Recommendation of the SEC Investor Advisory Committee regarding Dual Class and Other Entrenching Governance Structures in Public Companies (approved Mar. 8, 2018).

[23] *See* H.R. 6322, Enhancing Multi-Class Share Disclosures Act, 115th Congress, 2nd Session. On July 11, 2018, H.R. 6322 was reported favorably out of the HFSC by a voice vote.

In conclusion, Congress should move quickly to enact this bill into law. This legislation would provide important disclosures for shareholders.

E. NASAA Urges Congress to Keep Investor Protection Top of Mind When Expanding the SEC's Definition of an "Accredited Investor."

Recently, the House passed three (3) measures intended to expand the number of investors qualified to purchase private securities by amending the SEC's definition of an "accredited investor." The proposals are H.R. 835, the Fair Investment Opportunities for Professional Experts Act, as amended ("H.R. 835"), H.R. 1579, the Accredited Investor Definition Review Act, as amended ("H.R. 1579"), and H.R. 2797, the Equal Opportunity for All Investors Act of 2023, as amended ("H.R. 2797").

As a threshold matter, NASAA supports well-designed efforts to expand access to and participation in our securities markets by investors of all ages and backgrounds. We agree that in many cases wealth measures are an inadequate screening criterion for measuring the type of sophistication necessary to invest in private markets, especially with respect to natural persons who meet the current thresholds simply by accumulating retirement savings over time.

That said, implicit in these proposals is a notion that individual investors are clamoring to invest in private offerings, individual investors are locked out of participating in the most promising startups, and legitimate private companies with bona fide products or services are eager to sell securities to individual investors. The weight of the evidence supports none of these ideas.[24] On the contrary, the promising or successful private companies generally attract capital from a small number of wealthy backers such as venture capital funds. For these companies, this is the simplest, easiest, and cheapest way to raise money.[25]

A question must therefore be asked as to what sort of companies are eager to raise capital from a new population of individual accredited investors. Evidence suggests that it will be the private companies that first fail to attract interest from angel investors, venture capital firms, investment banks, or hedge funds.[26] For example, we already know that, even though the law already allows private companies using certain pathways to raise capital to accept investments from non-accredited investors, the vast majority of such offerings fail to seek capital from non-

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[24] *See* Letter from Rick A. Fleming, SEC Office of the Investor Advocate, to Vanessa Countryman, Re: Concept Release on Harmonization of Securities Offerings (July 11, 2019) (summarizing data from the U.S. Federal Reserve and private researchers to show that companies will be unlikely to want to seek out investments from individual investors who do not already qualify as accredited and that "small-dollar investors may be driven into investment structures in which they bear the downside risk of losing their entire principal while their potential for profits is severely restricted").

[25] *See* Dana Olsen, The State of U.S. Venture Capital in 15 Charts, Pitchbook.com (Oct. 29, 2018); Bain & Co., Global Private Equity Report 2020 (2020) at 11 (stating that private equity uncalled capital "has been rising since 2012" and "hit a record high of $2.5 trillion in December 2019 across all fund types").

[26] *See* SEC Division of Economic and Risk Analysis, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009- 2017 (Aug. 2018) at 34 ("2018 DERA Report") (stating that "[t]he mean number of investors per offering (14) is significantly larger than the median (4), indicating the presence of a small number of a small number of offerings with a large number of investors. Offerings by pooled investment funds and REITs have the largest average number of investors (both accredited and non-accredited) per offering, while those by non-financial issuers have the smallest.").

accredited investors.[27] As succinctly explained by Professor Elisabeth de Fontenay, "[r]etail investors are not needed to provide capital to emerging companies, and promising companies do not appear to want them."[28] Furthermore, in the realm of the private markets, retail investors are pitted against well-heeled institutional investors who have the means and resources to extract the best deals from the most promising opportunities, thus leaving retail investors with the riskiest of the risky deals.

In addition, a separate but related question must be asked as to which individual investors actually have the types of financial resources that companies need. Consider the amount of financial assets—which include all bank accounts, certificates of deposit, cash value life insurance, stocks, bonds, and pooled investment funds (including retirement accounts)—held by American households. For the households in the bottom quartile of household net worth, the median value of financial assets held is a mere $1,380.72. For the next quartile of households (those between the 25th and 50th percentiles of net worth), the median value of financial assets held is $11,220. The next quartile up (between the 50th to 75th percentiles) is a bit better off, but the median value of financial assets held is still only $61,000. For three-fourths of American households, then, it is hard to imagine that there would be a significant demand for securities sold in the private markets. Indeed, their investments in high risk, illiquid, unregistered offerings are more likely to be the result of unscrupulous sales tactics rather than sound financial judgment.

Of course, the portion of the population lying just below the current accredited investor thresholds—which would likely include households between the 75th and 90th percentiles in terms of net worth—is more likely to have the financial wherewithal to invest in private offerings. For these households, the median value of financial assets held is $301,000. Consider, however, the investment portfolios of these households. For this segment of the population, the median value of retirement accounts is $192,000, which means that most of these households' financial assets are in retirement accounts. Moreover, barely one (1) in four (4) of these households hold stocks directly, and for those that do, the median value of the holdings is $30,000.[29]

Understanding this, Congress should appreciate that expanding the SEC's "accredited investor" definition as proposed probably would serve as a conduit, at best, for lackluster companies to waste the hard-earned savings of Americans. At worst, these proposals could become an engine for even more fraudulent exploitation of vulnerable investors.

Respectfully, we urge Congress to pause further consideration of H.R. 835, H.R. 1579, and H.R. 2797 until the SEC's Division of Corporation Finance has determined whether to recommend to the Commission that the agency amends the definition of an "accredited

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[27] *See* 2018 DERA Report at 34-35 (stating that between 2009-2017, only seven (7) percent of Rule 506(b) offerings had at least one non-accredited investor). It may be that private issuers do not exercise this option because of the enhanced disclosure obligations that must be met for sophisticated, but not non-accredited investors.

[28] *See* Elisabeth de Fontenay, Examining Private Market Exemptions as a Barrier to IPOs and Retail Investment, Written Testimony Before the U.S. House Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship and Capital Markets (Sep. 11, 2019).

[29] *See* Board of Governors of the Federal Reserve System, Survey of Consumer Finances, 1989-2019.

investor."[30] We understand that, pursuant to the SEC's Unified Agenda of Regulatory and Deregulatory Actions (also commonly referred to as the "Reg Flex Agenda"), the SEC's Director of the Division of Corporation Finance is considering whether to recommend such changes to the Commission. The forthcoming proposed rulemaking may incorporate one (1) or more of the ideas set forth in these bills and have the benefit of the SEC staff's review of the effects of the changes the SEC made in 2020.

Should Congress disagree with our call for delay and oversight rather than premature legislation, NASAA offers the background and comments below regarding H.R. 835, H.R. 1579, and H.R. 2797. In addition, we highlight two (2) specific changes that we believe would have the greatest impacts on investor protection and ultimately the efficient allocation of capital.

To begin, H.R. 835 would amend the Securities Act to modify the definition of an "accredited investor" to codify the SEC's existing definition, incorporate new requirements to adjust net worth and income standards for inflation, and make it possible to qualify as an accredited investor based on education or job experience. The amended definition under H.R. 835 would include (i) an individual whose net worth or joint net worth with their spouse exceeds $1 million (adjusted for inflation), excluding from the calculation of their net worth their primary residence and a mortgage secured by that residence in certain circumstances; (ii) an individual whose income over the last two (2) years exceeded $200,000 (adjusted for inflation) or joint spousal income exceeded $300,000 (adjusted for inflation) and who has a reasonable expectation of reaching the same income level in the current year; (iii) an individual who is licensed or registered with the appropriate authorities to serve as a broker or investment adviser; and (iv) an individual determined by the SEC to have qualifying education or job experience and whose education or job experience is verified by FINRA. The bill also would direct the SEC to revise the definition of "accredited investor" in Regulation D of the Securities Act, which exempts certain offerings from SEC registration requirements, to conform to the changes in H.R. 835.

H.R. 835 had limited bipartisan support in the House. Representative French Hill (R-AR) introduced the legislation. The bill has one (1) Democratic cosponsor and six (6) Republican cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably by voice vote. No Senator has introduced a companion bill.

In a similar vein, H.R. 1579 would amend the law to codify the SEC's 2020 rulemaking with respect to the decision to permit qualification based on certain certifications, designations, or credentials and to direct the SEC to review and adjust or modify the list of certifications, designations, and credentials accepted with respect to meeting the requirements of the definition of "accredited investor" within 18 months of the date of the bill's enactment and then not less frequently than once every five (5) years thereafter.[31]

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[30] The SEC Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, and Form D. *See* SEC, Regulation D and Form D Improvements (Fall 2022).

[31] *See* SEC Final Rule, Accredited Investor Definition, Rel. No. 33-10824 (Aug. 26, 2020).

H.R. 1579 had limited bipartisan support in the House. Representative Bill Huizenga (R-MI) introduced the legislation. Representative Michael Lawler (R-NY) is a cosponsor. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably by a recorded vote of 41 yeas to two (2) nays. No Senator has introduced a companion bill.

Last, H.R. 2797 would amend the Securities Act to add a new way for individuals to qualify as an accredited investor. Specifically, individuals of any net worth or income level could qualify by passing an examination designed to ensure the individual understands and appreciates the risks of investing in private companies, as well as ensure the individual "with financial sophistication or training would be unlikely to fail." The SEC would have two (2) years from the date the legislation becomes law to establish this examination. A registered national securities association such as FINRA could administer the examination.

H.R. 2797 had bipartisan support in the House. Representative Mike Flood (R-NE) introduced the legislation. Two (2) Democrats and one (1) Republican are cosponsors. On May 31, 2023, the House passed the legislation by a vote of 383 to 18. On April 26, 2023, the HFSC reported the bill favorably by a recorded vote of 42 yeas to one (1) nay. No Senator has introduced a companion bill.

To begin with, these three bills would require the SEC to amend or expand the SEC's definition of an "accredited investor" in ways that the SEC decided not to during its 2020 rulemaking.[32] In 2020, the SEC opted to permit qualification for a small set of professional certifications. The SEC considered but ultimately did not approve (i) qualification by additional professional certifications; (ii) qualification by education or job experience; or (iii) qualification by examination.[33] As a related aside, the SEC staff also considered these ideas when the agency issued a report in 2015 on the definition of an "accredited investor."[34]

Respectfully, NASAA cannot support any of these bills at this time. However, we may be able to support some of these ideas upon review of the SEC's findings from its ongoing review of the SEC's "accredited investor" definition. As a general matter, NASAA agrees that certain certifications can be one (1) aspect in assessing an investor's financial sophistication. However, such standards should be coupled with demonstrable experience.[35] NASAA also generally agrees

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[32] When the SEC took up these ideas through rulemaking in 2020, only three (3) of the five (5) Commissioners voted to approve the final rule. *See* SEC, Final Commission Votes for Agency Proceedings, Calendar Year 2020 (last updated Aug. 18, 2021).

[33] *See*, *e.g.*, SEC Final Rule, Accredited Investor Definition, Rel. No. 33-10824 (Aug. 26, 2020)("Although other professional certifications, designations, and credentials, such as other FINRA exams, a specific accredited investor exam, other educational credentials, or professional experience received broad commenter support, we are taking a measured approach to the expansion of the definition and including only the Series 7, 65, and 82 in the initial order. While we recognize that there may be other professional certifications, designations, and credentials that indicate a similar level of sophistication in the areas of securities and investing, we believe it is appropriate to consider these other credentials after first gaining experience with the revised rules.").

[34] *See* SEC, Report on the Review of the Definition of "Accredited Investor" (Dec. 18, 2015).

[35] *See* Letter from Christopher Gerold to Vanessa Countryman re: Amending the "Accredited Investor" Definition (Mar. 16, 2020).

that rigorous examinations, coupled with continuing education or retesting requirements, can be one (1) aspect in assessing an investor's financial sophistication.

At this time, NASAA can support two (2) specific changes to the SEC's "accredited investor" definition. First, we believe the SEC's definition should exclude assets accumulated or held in retirement accounts from inclusion in natural person accredited investor net worth calculations. Around the same time the natural person accredited investor thresholds were established in 1982, there was a marked shift in the benefits employers offered to employees. The increased use of defined contribution plans over defined benefit plans now leaves most workers responsible for providing the bulk of their own retirement savings. It should be a priority for Congress and the Commission to guard these assets from exposure to the riskiest offerings in our markets. The retirement accounts with the largest balances are generally held by older investors who are especially vulnerable to losses that they cannot recoup over time. Further, this population can ill-afford to invest in the types of illiquid securities offered in many private deals. Like a primary residence, which Congress excluded in 2010 from the SEC's accredited investor net worth calculations, these are assets that as a class and given their defining purpose are not appropriate for speculative private investing.

Second, we believe the SEC should adjust the income and net worth thresholds to account for inflation since 1982 and then index those thresholds going forward. The natural person accredited investor thresholds—specifically, $1 million in net worth, an individual annual income of $200,000, or a combined income of $300,000—have not changed since 1982, except for the exclusion of primary residences from net worth calculations. In 1982, these thresholds applied to 1.6 percent of American households. Although a poor proxy for sophistication and the ability to bear losses, the number of qualifying households in 1982 kept the risks of private market investing within a rung of investors most likely to be able to bear speculative losses. That is no longer true; today, these thresholds qualify approximately 13 percent of American households to engage in private market investments.

Any adjustment to the income and net worth thresholds must take into account the role inflation has played in eroding their protective aims. The Commission previously acknowledged that in failing to adjust the "dollar-amount thresholds upward for inflation, we've effectively lowered the thresholds in term of real purchasing power."[36] Without adjustment, the protective barrier that these thresholds are meant to represent will become further eroded, exposing more vulnerable investors to unnecessary risks.

In sum, we urge Congress to delay further action until the SEC staff have concluded their inquiry of possible changes to the SEC's definition. We further urge Congress to keep the protection of investors top of mind when making any changes to the SEC's definition. NASAA remains open to discussions with Congress, the SEC, and other stakeholders about additional reforms to the SEC's definition that take into account the ability of investors to bear losses.

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[36] *See* SEC Proposed Rules, Revisions to Limited Offering Exemption in Regulation D, Rel. No. 33-8828 at 42 (Aug. 3, 2007).

F. NASAA Urges Congress to Reject Proposals That Would Relax Obligations for EGC Issuers and Extend EGC Privileges to All Issuers.

The remaining three (3) bills passed by the House are intended to reduce disclosure requirements for issuers, particularly EGCs, to increase IPOs and improve the quality of public offerings. These proposals are H.R. 2608, To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes, as amended ("H.R. 2608"); H.R. 2610, To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes, as amended ("H.R. 2610"); and H.R. 2793, the Encouraging Public Offerings Act of 2023 ("H.R. 2793").

NASAA appreciates efforts by lawmakers to increase IPOs, add useful clarity to the securities regulatory framework, and improve the quality of public offerings. We agree that our public markets have deteriorated over the last several decades and that reforms are needed to reinvigorate them. However, these proposals are premised on deregulatory approaches that degrade the quality and quantity of publicly information about issuers, an approach that we know does not work.

To begin, H.R. 2608 would make clear that EGCs would not have to present acquired company financial statements for any period prior to the earliest audited period of the EGC presented in connection with its IPO. Also, in no event would an EGC that loses its EGC status be required to present financial statements of the issuer or the acquired company for any period prior to the earliest audited period of the EGC presented in connection with the IPO.

H.R. 2608 had bipartisan support in the House. Representative Patrick McHenry (R-NC) introduced the legislation. The bill has no cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably on a 41 to zero (0) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2608, as presently written, on the basis that any ambiguity should be resolved in favor of investors and the SEC. There very well may be circumstances where it does make sense to have the EGC provide audited financial statements for a period earlier than two (2) years, including in the case of acquired company financial statements and for follow-on offerings involving an EGC that lost its EGC status during the IPO registration. This legislation would prohibit the SEC from exercising judgment where needed to require this additional information.

In a similar vein, H.R. 2610 would make clear that the registration statement of the EGCs need not include profit and loss statements for more than the preceding two (2) years rather than the three (3) preceding fiscal years. This bill also would amend the law to permit any issuer to submit to the Commission a draft registration statement for confidential nonpublic review by SEC staff prior to public filing, provided that the initial confidential submission and all amendments thereto are publicly filed with the Commission no later than 10 days before the issuer's requested date of effectiveness of the registration statement. The SEC presently accepts

voluntary draft registration statement submissions from all issuers for nonpublic review provided certain procedures are followed.[37]

H.R. 2610 had bipartisan support in the House. Representative Patrick McHenry (R-NC) introduced the legislation. The bill has no cosponsors. On June 5, 2023, the House passed the legislation by voice vote. On April 26, 2023, the HFSC reported the bill favorably on a 42 to zero (0) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2610 as presently written. NASAA has no concerns currently with the idea of reducing the amount of time that EGCs have between seeking registration on a confidential basis and the first road show. Presently, an EGC is permitted to begin registration on a confidential basis if the EGC publicly files its previously confidential registration statement at least 15 days before conducting a road show. This provision is intended to facilitate public review of the registration statement between the first public filing and IPO pricing. The proposed change to 10 days would appear to enhance efficiency and transparency, all to the benefit of our markets. However, the proposed legislation also contemplates that lawmakers would codify, with modifications, the SEC's present practice of accepting voluntary draft registration statement submissions from all issuers for nonpublic review provided certain procedures are followed. When Congress established the mechanism for EGCs to obtain confidential SEC review of registration documents under the Jumpstart Our Business Startups Act ("JOBS Act"), its expressed purpose was to encourage companies to go public. It is not clear why the privilege should now be extended statutorily to companies that, by definition, have already successfully completed an IPO.

Last, H.R. 2793 would extend certain EGC privileges to all issuers and require the SEC to submit a report to Congress before it conducts a rulemaking. Specifically, H.R. 2793 would make clear that the SEC has authority to issue rules that would extend the testing-the-waters provisions for EGCs to all issuers. As background, in 2012, Congress created Section 5(d) of the Securities Act.[38] Section 5(d) permits an EGC and any person acting on its behalf to engage in oral or written communications with potential investors that are qualified institutional buyers ("QIBs") and institutional accredited investors ("IAIs") before or after filing a registration statement to gauge such investors' interest in a contemplated securities offering. In 2019, the SEC approved a new rule that extended this testing-the-waters accommodation to non-EGCs.[39] Under Securities Act Rule 163B, any issuer, or any person authorized to act on its behalf, can engage in oral or written communications with potential investors that are, or are reasonably believed to be, QIBs or IAIs, either prior to or following the filing of a registration statement, to determine whether such investors might have an interest in a contemplated registered securities offering.[40] In addition, H.R. 2793 would extend the confidential review of draft registration statements to all issuers. Subject to a public notice and comment period and, prior to any rulemaking, the submission of a report to Congress containing a list of the findings supporting

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[37] *See* SEC, Draft Registration Statement Processing Procedures Expanded (last updated June 24, 2020).

[38] *See* JOBS Act 1.0 at § 105.

[39] *See* SEC Final Rule, Solicitations of Interest Prior to a Registered Public Offering, Rel. No. 33-10699 (Sept. 25, 2019).

[40] *See* 17 CFR § 230.163(b).

the basis of the rulemaking, the legislation would permit the SEC to impose other terms, conditions, or requirements on testing-the-water communications and the confidential review of draft registration statements with respect to non-EGC issuers.

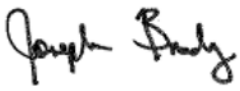
H.R. 2793 had bipartisan support in the House. Representative Ann Wagner (R-MO) introduced the legislation. The bill has three (3) Democratic and one (1) Republican cosponsors. On June 5, 2023, the House passed the legislation on a 384 to 13 vote. On April 26, 2023, the HFSC reported the bill favorably on a 38 to one (1) vote. No Senator has introduced a companion bill.

NASAA opposes H.R. 2793 as presently written. Respectfully, this legislation would reinforce the sort of deregulatory creep that NASAA submits would be a step in the wrong direction if we in fact want to maintain the reputational primacy of the public markets in the United States. In addition to our concerns regarding confidential reviews of registration materials outlined above, NASAA strongly encourages Congress to reconsider and abandon the idea of directing an independent federal agency to submit a report to Congress before it conducts a rulemaking. While we encourage Congress to use its robust oversight tools and submit letters when the SEC issues proposals for public comment, we believe it would interfere with existing administrative procedures to insert Congress in between a federal agency and the public from whom the agency will seek data and other information, as well as opinions, that can inform the agency's decisions. Moreover, there are legitimate concerns regarding testing-the-waters campaigns. Issuers that test the waters without any regulatory oversight willingly or unwittingly may engage in fraud and precondition the market based on fraudulent statements. Prior regulatory review of testing-the-waters materials serves to mitigate or eliminate such risks.

In sum, we urge Congress to reject these bills. Rather than passing legislation that would only make our markets more opaque, we should focus on pro-investor measures like the ones outlined earlier in this letter and previous NASAA communications to Congress, including our 2023 Report and Recommendations on Reinvigorating Our Capital Markets.[41]

Thank you for your time and consideration. Should you have any questions or wish to seek NASAA's technical feedback on any legislative proposals, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Joseph Brady
NASAA Executive Director

[41] Please visit NASAA's Policy Center at nasaa.org to find our recent letters to Congress and testimony, as well as our Federal Policy Agenda.

Questions for the Record

Subcommittee on Capital Markets Hearing, entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"
February 26, 2025

Chairman Wagner:

1. **Ms. Kacaba, are the current offering limits for Regulation Crowdfunding (Reg CF) too low for growing businesses? What would be a reasonable increase in the Reg CF raise cap to support startups while maintaining investor protections?**

Response: Thank-you for the question Chairwoman Wagner.

Yes, the current offering limits for Reg CF are too low for growing businesses. Companies need to raise more capital at an early stage without the additional administrative and cost burdens that accompany Regulation A or Regulation D offerings.

Raising the Reg CF cap from $5M to $10M is reasonable for the following reasons:

- **More Capital Generated.** History has demonstrated that increasing the Reg CF cap provides a stimulus and boosts the amount of capital available for businesses: the 2020 increase in the Regulation CF cap from $1.25 million to $5 million demonstrably stimulated market activity, jumping by approximately 250% between 2020 and 2021 with only $209.4 M invested through Regulation CF in 2020 as compared to $496.1M invested through Regulation CF 2021.[1]

- **The $5M Cap Is Creating A Bottleneck For Early Stage Companies.** Companies are regularly reaching the $5M cap on Regulation CF offerings indicating both the efficacy of the offering mechanism and strong investor interest. When companies hit this maximum, they face two suboptimal choices: either

  (a) discontinue retail investment and return to traditional funding sources (which undermines the objective of democratizing capital formation); or

  (b) prematurely transition to a Regulation A offering, incurring substantial fixed expenses that outweigh the benefits of incrementally raised capital. This generates a high volume of refunds, which are costly to companies, unnecessarily confusing to retail investors, and complicated for market intermediaries to manage.

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[1] See Kingscrowd Report "2024 Investment Crowdfunding: Trends, Stats and Platform Rankings" available at https://kingscrowd.com/2024-investment-crowdfunding-trends-stats-and-platform-rankings/#section-state-private-markets

Industry data indicates that 80% of Regulation A offerings raise $10M or less.[2] With a higher Regulation CF cap, this volume of activity could be accommodated through the Regulation CF framework, which reduces the regulatory burden on businesses. A higher Regulation CF cap would enable companies to raise a greater amount of capital annually, reducing the burden on companies to transition to a full Regulation A offering too early.

- **Investor Protection Retained.** The proposed increase will allow early stage small businesses without access to venture capital and private equity funding to raise capital from their communities. Caps on individual investment amounts remain scaled, ensuring that investors remain protected. In addition, as the Regulation CF ecosystem has matured, there is now a growing prevalence of broker-dealer participation (as opposed to only funding portals) which brings with it a robust standard for investor protection.

2. **Ms. Kacaba, Reg A enables companies to sell securities to the public with limited disclosure requirements, compared to public companies. Why is it necessary to raise the Reg A cap? Do you believe that the current cap is resulting in Reg A being under-utilized?**

Response: Thank-you for the question Chairwoman Wagner.

Yes, the current cap is resulting in Reg A being under-utilized. To encourage broader use of the exemption, the Reg A cap should be **removed altogether, or, at a minimum, doubled to $150M,** for these reasons:

1. **Growing Companies Outgrow Seed Status But Need To Raise More Capital Before They IPO.** The current $75 million cap renders Regulation A impractical for many larger, rapidly scaling private companies seeking to raise capital, particularly in emerging sectors such as (a) biotech, where capital expenses can often dramatically exceed $75M; and (b) cutting edge innovation or sports investing, where stadium development costs can reach billions. The current cap effectively excludes these companies from participation in the Regulation A framework because the maximum funds raised will not sufficiently advance growth.

2. **Participation By Larger Companies Encourages Reg A Adoption.** Removing the Reg A cap will enable its maturation. The current cap artificially constrains the growth of online capital formation. To grow the space, we need to change the perception that only small companies can use the exemption. The current caps restrict this growth because the space cannot attract larger, more established companies. This also impacts the overall perception of online capital: both with younger companies and service providers who innovate new services to support the space (such as law firms, VCs and broker dealers).

3. **The Capital Raising Activity Will Otherwise Occur In An Unregulation Space.** With the re-emergence of tokenized offerings, the cap on Regulation A will also cause many businesses to seek other, unregistered mechanisms to raise capital because they

[2] Id.

need to access capital that far exceeds the current $75M cap. These offerings are not subject to the same regulatory purview and investor protection requirements as Reg A or Reg CF.

4. **Democratizing Investment Cannot Occur With Stationary Caps The Don't Reflect Growing Company Needs.** The current structure perpetuates inequality by preventing premier investment opportunities and larger rapidly scaling private companies from accessing retail investors through Regulation A. This forces these companies to remain limited to accredited investors and excludes millions of everyday Americans and communities throughout the U.S. (not just the coasts) from investment opportunities. Since 2016, Reg A and Reg CF have raised, combined, over $7 billion dollars[3] for American companies, with ample protection for investors. Some of these companies have now IPO'd, but frankly, not enough. We urge Congress to build on the success of these exemptions, by raising the Reg A cap and helping more American businesses continue to raise the capital they need to thrive and grow on the road to IPO.

Alexandra Thornton

Responses to

Questions for the Record

March 31, 2025

House Financial Services Committee, Subcommittee on Capital Markets Hearing, entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation" held on February 26, 2025

These responses are respectfully submitted for the record as requested by Representative Sherman and Ranking Member Waters.

Rep. Sherman:

Question 1: In public securities, companies provide significant disclosures about their operations and finances when they go public, as well as ongoing information through quarterly and annual filings with the SEC. On the other hand, private placements are typically not registered with the SEC or reviewed by any regulator, and no specific disclosures about a company's prospects for success are required. However, right now, placement agents for private placements are required to be registered broker-dealers, and those registered broker-dealers are required to perform the diligence on every offering and issuer. This diligence protects investors from schemes and frauds. Without the registered broker-dealers involved, who will perform this diligence and protect investors?

Response:

Broker-dealers play a key role in promoting market integrity and investor protection, thus dispensing with them would fundamentally weaken both market integrity and investor protections. But the impacts would be uneven across investors.

Brokers are typically experts in securities. They must pass substantive examinations and meet ethical standards. They have rules to follow, including requirements to perform due diligence on the products they sell, policies and procedures to follow, compliance staffs to help them follow the rules, and federal and state regulators with experienced, dedicated staffs to oversee their compliance. When frauds arise, it is often these policies and procedures and dedicated professionals that identify and stop them.

All investors benefit from these protections. Without these protections, not all investors would be affected equally. Professional investors, or those with significant expertise or resources to pay for expertise, may be able to ask the right questions. That said, they also may not have enough information to know what they don't know. And, even if they do ask the right questions, they may not have the market power to compel fulsome and accurate answers. So, the bottom line is that all investors would be much more likely to make significantly less-informed investment decisions without broker-dealers and would be subject to much greater risks.

Questions 2: There is no central database of individuals who have been disqualified and barred from working as a registered representative of a broker-dealer, and there is no central database of bad actors. What would keep these individuals who are now excluded from the securities industry from acting as private placement brokers and finders?

Response:

Without engagement of brokers in private offerings, there will be no reasonable way of protecting investors from bad actors. In fact, there are already widespread concerns with the roles of so-called "finders" in private offerings of securities. Expanding that tole—or abandoning brokers entirely—would be extremely risky.

Even if one were to assume there were relevant state laws in all states, there are simply too many places to check. Investors who may make a handful of private investments in their lifetimes are extremely unlikely even to know there are these databases, much less be capable of checking them all and fully grasping the implications. There is an incredibly useful regulatory system established by FINRA that, if anything, should be made more transparent and expanded—not ignored.

FRENCH HILL, AR
CHAIRMAN

MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Questions for the Record
Subcommittee on Capital Markets Hearing, entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"
February 26, 2025

Ranking Member Waters:

Mr. Andrew Barnell

1. Which of the following options best describes your self-identified race? (you may choose more than one)

   a. White or Caucasian
   b. Black or African American
   c. Hispanic/Latinx
   d. Asian
   e. Middle Eastern/North African
   f. Choose not to answer
   g. Prefer to self-describe (please specify)

2. Which of the following options best describes your gender identity?

   a. Woman
   b. Man
   c. Non-binary
   d. Transgender Man
   e. Transgender Woman
   f. Choose not to answer
   g. Prefer to self-describe (please specify)

3. Over the years, Congress and the SEC have built up strong data protection and firewalls so SEC's critical data does not fall in the wrong hands. Pretend for a minute that one of the companies that you are invested in or are advising is preparing an IPO, and has submitted confidential registration statements with the SEC, and Elon Musk or his DOGE people gain access to it. Are you comfortable with Musk and his DOGE minions reviewing this information, or worse, leaking it?

Answer: When Geneoscopy shares information in a confidential manner, we expect that information to be kept confidential and we expect any organization to take the appropriate measures within its organization to keep that information confidential. We would be concerned if any individual accessed our confidential information without being bound by or without the intention to keep that information confidential.

Questions for the Record

Subcommittee on Capital Markets Hearing, entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"
February 26, 2025

Ranking Member Waters:
Ms. Rebecca Kacaba

1. **Which of the following options best describes your self-identified race? (you may choose more than one.)**
    a. **White or Caucasian**
    b. **Black or African American**
    c. **Hispanic/Latinx**
    d. **Asian**
    e. **Middle Eastern/North African**
    f. **Choose not to answer**
    g. **Prefer to self-describe (please specify)**

Response: Thank-you for the question Ranking Member Waters. My self-identified race is best described as caucasian.

2. **Which of the following options best describes your gender identity?**
    a. **Woman**
    b. **Man**
    c. **Non-binary**
    d. **Transgender Man**
    e. **Transgender Woman**
    f. **Choose not to answer**
    g. **Prefer to self-describe (please specify)**

Response: Thank-you for the question Ranking Member Waters. My gender identity is best described as a Woman.

3. Over the years, Congress and the SEC have built up strong data protection and firewalls so SEC's critical data does not fall in the wrong hands. Pretend for a minute that one of the companies that you are invested in or are advising is preparing an IPO, and has submitted confidential registration statements with the SEC, and Elon Musk or his DOGE people gain access to it. Are you comfortable with Musk and his DOGE minions reviewing this information, or worse, leaking it?

Response: Thank-you for the question Ranking Member Waters. Confidential registration statements, filed in accordance with the applicable SEC rules, could comfortably be reviewed by Senior Advisors To The President such as Mr. Musk with guardrails in place requiring the information to remain confidential in accordance with the SEC rules.

As a technology company, we are not comfortable with any information being leaked, whether intentionally or inadvertently. Guardrails should be adopted to ensure that information reviewed remains confidential as required under the applicable SEC regulations.

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[3] Id. See also: SEC Office Of The Advocate For Small Business Capital Formation, Annual Report, Fiscal year 2024, available at https://www.sec.gov/files/2024-oasb-annual-report-print.pdf; SEC Report To Congress On Regulation A, August 2020, available at https://www.sec.gov/files/report-congress-regulation.pdf?utm_source=chatgpt.com; and Turner, R. "These 107 Companies Raised $1.5B Via Regulation a+", available at: https://iamrodturner.medium.com/these-107-companies-raised-1-5-b-via-regulation-a-new-metrics-7b60ec41958b

FRENCH HILL, AR
CHAIRMAN

MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Nineteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Questions for the Record
Subcommittee on Capital Markets Hearing, entitled "The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation"
February 26, 2025

Ranking Member Waters:

Ms. Anna Pinedo

1. Which of the following options best describes your self-identified race? (you may choose more than one)

a. White or Caucasian
b. Black or African American
c. Hispanic/Latinx
d. Asian
e. Middle Eastern/North African
f. Choose not to answer
g. Prefer to self-describe (please specify)

2. Which of the following options best describes your gender identity?

a. Woman
b. Man
c. Non-binary
d. Transgender Man
e. Transgender Woman
f. Choose not to answer
g. Prefer to self-describe (please specify)

3. Over the years, Congress and the SEC have built up strong data protection and firewalls so SEC's critical data does not fall in the wrong hands. Pretend for a minute that one of the companies that you are invested in or are advising is preparing an IPO, and has submitted confidential registration statements with the SEC, and Elon Musk or his DOGE people gain access to it. Are you comfortable with Musk and his DOGE minions reviewing this information, or worse, leaking it?

Ranking Member Waters:

Ms. Alexandra Thornton

Question 1: Which of the following options best describes your self-identified race?

a. **White or Caucasian**
b. **Black or African American**
c. **Hispanic/Latinx**
d. **Asian**
e. **Middle Eastern/North African**
f. **Choose not to answer**
g. **Prefer to self-describe**

Response: a. White or Caucasian

Question 2: Which of the following options best describes your gender identity?

a. **Woman**
b. **Man**
c. **Non-binary**
d. **Transgender Man**
e. **Transgender Woman**
f. **Choose not to answer**
g. **Prefer to self-describe**

Response: a. Woman

Question 3: As we all know, there is a persistent attack on any and all eHorts to increase diversity, equity, and inclusion and mitigate barriers in the financial services industry. Last year, the Fearless Fund, a Black woman owned venture capital firm, was forced to shut down its grant program for Black women business owners after battling lawsuits for alleged violations of the Civil Rights Act. They were sued by the same organization that had killed the aHirmative action programs at our universities. We now see the Trump Administration and unelected co-President Musk have increased these attacks by naming and shaming businesses that hire and invest in diverse workforces, even as doing so not only helps businesses serve their communities but is also good for the bottom line. How are these attacks harming businesses and curtailing investment opportunities for emerging funds backing startups led by Black, Hispanic, or women founders?

Response:

There is extensive research that diversity of gender and race and perspectives improves companies. Business executives understand that, and many have adopted policies to

ensure that their businesses are able to benefit from diversity in their executive ranks and among their workers. So-called DEI policies—whether in operations or as part of hiring and outsourcing initiatives—are not about altruism, but rather about the bottom line.

More broadly, the idea that we're all equal is a first principle that this country has been perfecting for centuries. It's a first principle for companies, too. We've seen how equality makes our companies, our economy, and our country stronger. Black-, Hispanic-, and women-owned companies, including financial services companies, are essential to a healthy economy.

It is deeply troubling that the federal government would artificially distort this reality to promote an agenda that's bad for business and the country.

Question 4: Given that women and people of color make up more than a majority of the country, what will happen to our economic growth if these businesses are denied capital access just because they are not White and Male owned?

Response:

It's no secret that venture capital from places like Silicon Valley, New York, and Boston disproportionately favor white, male-founded and run firms.[1] And that often crowds out other investments. Moreover, the majority of venture capital is highly concentrated in a relatively small number of companies with valuations of $1 billion or more, known as "unicorns."[2] Thus, looking at all venture capital invested over the course of a given year, the majority flows to a small number of firms. Given these statistics, it's all the more disappointing when some of those lucky unicorns abuse their investors' trust through frauds, depriving other companies of billions of dollars.

There are millions of women- and minority-owned businesses outside of the venture capital ecosystem that are struggling to raise the capital they need to launch and grow. They may become victims of predatory business lending solutions. The Consumer

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[1] Jenny Yang, "The Statistics: Racial and Gender Disparities within Venture Capitalist Space," W&L Business Law Blog, June 7, 2023, available at https://business.wlulaw.wlu.edu/2023/06/07/the-statistics-racial-and-gender-disparities-within-venture-capitalist-space/#:~:text=White%20men%20represent%20about%2039,to%20either%20Harvard%20or%20Sandford..

[2] Jordan Rubio, "Unicorn companies tracker," Pitchbook, March 3, 2025, available at https://business.wlulaw.wlu.edu/2023/06/07/the-statistics-racial-and-gender-disparities-within-venture-capitalist-space/#:~:text=White%20men%20represent%20about%2039,to%20either%20Harvard%20or%20Sandford.,

Financial Protection Bureau is needed to protect those borrowers, just as they do individual consumers.

Finally, diversity, equity, and inclusion programs are how smart companies and funds identify skills and talent to fill positions across the company and at all levels of employment and ensure that unconscious bias does not lead to missed opportunities. If women and people of color are excluded, companies may miss out on people who would have made the next discovery or broken ground on the next innovation that would make all of our lives better. A more diverse workforce fosters innovation, as a wider pool of people ensures a wider range of ideas and perspectives are integrated into a company's operations and management. Without diversity, companies risk devolving into groupthink.

Question 5: As you know, Elon Musk and his DOGE people are at the SEC. He and DOGE have already demonstrated their utter disregard for data privacy, including gaining access to the data of Musk's competitors at the CFPB. And also alarming is that DOGE can't even secure its own website, which was hacked last week. You know SEC has critical, market moving information. It also has access to the Consolidated Audit Trail which has information from our stock exchanges and investors. SEC also examines and enforces the securities laws against some of Elon's own commercial competitors. And importantly, the SEC has won a $40 million settlement against Musk and is currently suing him in another case for having swindled over $150 million from Twitter's investors. All of the confidential information about these cases would be available for Musk to review, and if he gets the same privileges as at CFPB, he could even edit documents. Could you discuss the dangers of handing the keys of the SEC to Musk, who has time and again declared his disdain for the agency?

Response:

The SEC has access to a lot of sensitive information, some of which is made public and some of which is not. It reviews confidential filings from companies for IPOs. It has investigations and enforcement files. It also has confidential regulatory reports, such as Form PF, position reports, and confidential trading data (including the Consolidated Audit Trail).

All of this information is likely to be commercially valuable. And much of it could be misused for personal gain or financial gain for companies. It could be used to make trading profits, undermine corporate competitors, or damage reputations.

Questions 6: Over the years, Congress and the SEC have built up strong data protection and firewalls so SEC's critical data does not fall in the wrong hands.

Pretend for a minute that one of the companies that you are invested in or are advising is preparing an IPO, and has submitted confidential registration statements with the SEC, and Elon Musk or his DOGE people gain access to it. Are you comfortable with Musk and his DOGE minions reviewing this information, or worse, leaking it?

Response:

I am not an expert on whether and what can legally be shared with Mr. Musk and DOGE staS, nor whether they are government employees or have appropriate clearances or needs to know sensitive information. I cannot comment on any of that.

Generally speaking, the nature of the information at the SEC presents a real risk that the information could be misused in ways that are not just about trading securities. Thus, the SEC, like other agencies, has strict processes and procedures to protect against employees misusing information they learn as part of performing their jobs.

Question 7: Today large private equity firms and multi-billion-dollar tech companies exploit exemptions originally meant for small businesses. For instance, according to SEC's Small Business Advocate's data, in 2023 alone, private funds raised nearly $2.5 trillion dollars using exemptions meant for small businesses, while operating businesses only raised about $240 billion using Regulation D. What are your views on how these exemptions are misused, and should multi-billion-dollar private firms and private equity funds be allowed to use them?

Response:

The foundational securities laws, which were enacted in the years following the Great Crash of 1929, called for companies to make detailed public disclosures of information that reasonable investors need to make their investment decisions. For decades after that, the courts found that most securities oSerings were public and had to comply with the SEC's public disclosure rules. Securities oSerings to 25 investors or fewer were deemed public oSerings.

That didn't change much until the late 1970s and early 1980s as the neoliberal era swept in. Tiny exemptions from public disclosure were expanded and new exemptions were added over the following decades. Today, a private company of any size can use one or more exemptions to raise all the revenue it needs in the private markets without going public, and there are now more than 600 billion-dollar private "start-up" companies in the U.S.

So private markets are no longer the exclusive place where small businesses can obtain quiet capital from wealthy investors who can aSord to lose everything. Now those small businesses must compete in the private markets with giant companies—companies whose

competitors are often large public companies that adhere to the public disclosure and reporting framework. It's unfair to small businesses, and, by the way, it's creating hidden risks to the financial system as huge multi-billion dollar private companies with hundreds of employees are not required to make basic disclosures about their operations, management, risks, and financials. These companies, along with private equity funds and private credit funds, are increasingly connected to the traditional banking system, yet the latter may not have critical information needed to assess risk. A financial crisis can be particularly devastating for small businesses.

Question 8: In your written testimony, you talk about a particular loophole that has permitted companies that have tens of thousands of investors and billions in revenue to stay private indefinitely. You discuss how, under our securities laws, companies are SUPPOSED to report to the SEC certain information once they have more than 2,000 quote shareholders of record unquote. This information includes the amount and rationale for executive compensation, financial statements, description of material risk factors, and other information to help investors decide whether to invest or divest. But because of the so-called "12-G loophole," a broker-dealer or investment adviser could count as a single "shareholder of record" even if they are investing on behalf of hundreds of even thousands of investors. Don't these companies, that otherwise would need to file publicly, skirt the original intention of the law, which was meant to protect investors and increase transparency of companies that have significant number of investors and revenue? How do you suggest Congress fix this issue?

Response:

Yes, as I mentioned in response to the previous question, Congress did not envision private securities oSerings by extremely large companies when it enacted the securities laws, and the courts fairly consistently upheld that interpretation of those laws for many decades. Section 12(g) of the Securities Exchange Act of 1934 required companies to publicly register once they had 500 shareholders, a threshold that was later increased to 2,000. It was intended to push private companies to go public, but "holder of record" has since been interpreted to mean that an investment manager holding thousands of shares of a company counts as one holder. Although the SEC originally could have fixed the problem, it didn't. Worse, congress expanded this interpretation in the JOBS Act. So, the most durable way to fix this is to clarify the language of Section 12(g) through legislation to simply say that "holder of record" means actual or beneficial owner—along the lines of what Senator Jack Reed (D-RI) has proposed.

[~118H835]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to codify certain qualifications of individuals as accredited investors for purposes of the securities laws.

IN THE HOUSE OF REPRESENTATIVES

Mr. HILL of Arkansas introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to codify certain qualifications of individuals as accredited investors for purposes of the securities laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Investment Opportunities for Professional Experts Act".

SEC. 2. DEFINITION OF ACCREDITED INVESTOR.

(a) IN GENERAL.—Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by redesignating subparagraphs (i) and (ii) as subparagraphs (A) and (F), respectively; and

(2) in subparagraph (A) (as so redesignated), by striking "; or" and inserting a semicolon, and inserting after such subparagraph the following:

"(B) with respect to a proposed transaction, any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds $1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every 5 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—

"(i) the person's primary residence shall not be included as an asset;

"(ii) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the transaction, shall not be included as a liability (except that if the amount of such indebtedness

outstanding at the time of the transaction exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

"(iii) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the transaction shall be included as a liability;

"(C) any natural person who had an individual income in excess of $200,000 in each of the 2 most recent years or joint income with that person's spouse or spousal equivalent in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

"(D) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State, the District of Columbia, or a territory of the United States or the

equivalent division responsible for licensing or registration of individuals in connection with securities activities;

"(E) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or".

(b) RULEMAKING.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise the definition of accredited investor under Regulation D (17 CFR 230.501 et seq.) to conform with the amendments made by subsection (a).

[118H1579]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 and the Dodd-Frank Wall Street Reform and Consumer Protection Act with respect to the definition of accredited investor, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. HUIZENGA introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 and the Dodd-Frank Wall Street Reform and Consumer Protection Act with respect to the definition of accredited investor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Accredited Investor Definition Review Act".

SEC. 2. CERTIFICATIONS, DESIGNATIONS, AND CREDENTIALS UNDER THE DEFINITION OF ACCREDITED INVESTOR.

Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(2) in subparagraph (A), as so redesignated, by striking "adviser; or" and inserting "adviser;";

(3) in subparagraph (B), as so redesignated, by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

"(C) an individual holding such certifications, designations, or credentials as the Commission determines necessary or appropriate in the public interest or for the protection of investors, where such list of certifications, designations, or credentials shall be no less broad than those certifications, designations, or credentials described in the amendments made to section 230.501 of title 17, Code of Federal Regulations, by the final rule of the Commission titled 'Accredited Investor Definition' (85 Fed. Reg. 64234; published October 9, 2020).".

SEC. 3. PERIODIC REVIEW OF CERTIFICATIONS, DESIGNATIONS, AND CREDENTIALS.

Section 413(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77b note) is amended by adding at the end the following:

"(3) PERIODIC REVIEW OF CERTIFICATIONS, DESIGNATIONS, AND CREDENTIALS.—Not later than 18 months after the date of the enactment of this paragraph and not less frequently than once every 5 years thereafter, the Commission shall—

"(A) review the list of certifications, designations, and credentials accepted with respect to meeting the requirements of the definition of 'accredited investor' under section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) and rules issued pursuant to such section;

"(B) add such certifications, designations, and credentials to such list as the Commission determines are substantially similar in measuring the financial sophistication, knowledge, and experience in financial matters of an individual to the certifications, designations, and credentials included on such list at the time of such review; and

"(C) adjust or modify such list as the Commission determines necessary or appropriate in the public interest or for the protection of investors.".

[118H1548]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to specify that actions of the Advocate for Small Business Capital Formation are not a collection of information under the Paperwork Reduction Act.

IN THE HOUSE OF REPRESENTATIVES

Mrs. KIM introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to specify that actions of the Advocate for Small Business Capital Formation are not a collection of information under the Paperwork Reduction Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving Access to Small Business Information Act".

SEC. 2. EXCLUSION FROM THE PAPERWORK REDUCTION ACT.

Section 4(j) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(j)) is amended by adding at the end the following:

"(10) EXCLUSION FROM THE PAPERWORK REDUCTION ACT.—

"(A) IN GENERAL.—Actions taken by the Advocate for Small Business Capital Formation under this subsection shall not be a 'collection of information' for purposes of subchapter I of chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act').

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to the requirements under subsections (c)(1), (c)(4), and (i) of section 3506 of such title and section 3507(a)(1)(A) of such title, except that the Commission shall not be required—

"(i) to submit a collection of information by the Advocate to the Director of the Office of Management and Budget, as described under section 3506(c)(1)(A) of such title;

"(ii) to display a control number on a collection of information by the Advocate, as described under section 3506(c)(1)(B)(i) of such title (or to inform a person receiving a collection of information from the Advocate that the collection of information needs to display a control number, as described under section 3506(c)(1)(B)(iii)(V) of such title); or

"(iii) to indicate a collection of information by the Advocate is in accordance with the clearance requirements of section 3507 of such title, as described under section 3506(c)(1)(B)(ii) of such title.".

[118H2792]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require the Securities and Exchange Commission to carry out a study and rulemaking on the definition of the term "small entity" for purposes of the securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to carry out a study and rulemaking on the definition of the term "small entity" for purposes of the securities laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Entity Update Act".

SEC. 2. STUDIES, REPORTS, AND RULES REGARDING SMALL ENTITIES.

(a) DEFINITIONS.—In this section—

(1) the term "Commission" means the Securities and Exchange Commission; and

(2) the term "small entity"—

(A) has the meaning given the term in section 601 of title 5, United States Code, with respect to the activities of the Commission; and

(B) includes any definition established by the Commission of the term "small business", "small organization", or "small governmental jurisdiction" under paragraph (3), (4), or (5), respectively, of section 601 of title 5, United States Code, with respect to the activities of the Commission.

(b) STUDIES AND REPORTS.—Not later than 1 year after the date of enactment of this Act, and again 5 years thereafter, the Commission shall—

(1) conduct a study of the definition of the term "small entity" with respect to the activities of the Commission for the purposes of chapter 6 of title 5, United States Code, which shall consider—

(A) the extent to which the definition of the term "small entity", as in effect during the period in which the study is conducted, aligns

with the findings and declarations made under section 2(a) of the Regulatory Flexibility Act (5 U.S.C. 601 note);

(B) the amount by which financial markets in the United States have grown since the last time the Commission amended the definition of the term "small entity", if applicable; and

(C) how the Commission should define the term "small entity" to ensure that a meaningful number of entities would fall under that definition; and

(2) submit to Congress a report that includes—

(A) the results of the applicable study conducted under paragraph (1); and

(B) specific and detailed recommendations on the ways in which the Commission could amend the definition of the term "small entity" to—

(i) be consistent with the results described in subparagraph (A); and

(ii) expand the number of entities covered by such definition.

(c) RULEMAKING.—After the completion of each study required under subsection (b), the Commission shall,

subject to public notice and comment, revise the rules of the Commission consistent with the results of such study.

(d) INFLATION ADJUSTMENTS.—As soon as practicable following the date of enactment of this Act, and every 5 years thereafter, the Commission shall adjust all dollar figures under the definition of small entity established by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

[~118H2797]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require certification examinations for accredited investors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. FLOOD introduced the following bill; which was referred to the Committee on _____

A BILL

To require certification examinations for accredited investors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Equal Opportunity for All Investors Act of 2025".

SEC. 2. CERTIFICATION EXAMINATIONS FOR ACCREDITED INVESTORS.

(a) IN GENERAL.—The Commission shall revise the definition of "accredited investor" under Regulation D

(section 230.501 of title 15, Code of Federal Regulations) to include any natural person who is certified through the examination required under subsection (b).

(b) ESTABLISHMENT OF EXAMINATION.—Not later than 1 year after the date of the enactment of this Act, the Commission shall establish an examination (including a test, certification, or examination program)—

(1) to certify an individual as an accredited investor; and

(2) that—

(A) is designed with an appropriate level of difficulty such that an individual with financial sophistication would be unlikely to fail; and

(B) includes methods to determine whether an individual seeking to be certified as an accredited investor demonstrates competency with respect to—

(i) the different types of securities;

(ii) the disclosure requirements under the securities laws applicable to issuers and private companies as compared to public companies;

(iii) corporate governance;

(iv) financial statements and the components of such statements;

(v) aspects of unregistered securities, securities issued by private companies, and investments into private funds, including risks associated with—

(I) limited liquidity;

(II) limited disclosures;

(III) variance in valuation methods;

(IV) information asymmetry;

(V) leverage risks;

(VI) concentration risk; and

(VII) longer investment horizons;

(vi) potential conflicts of interest, when the interests of the financial professionals and their clients are misaligned or when their professional responsibilities are compromised by financial motivations; and

(vii) other criteria the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(c) ADMINISTRATION.—Beginning not later than 180 days after the date the examination is established under subsection (b), such examination shall be administered and offered free of charge to the public by a registered

national securities association under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3).

(d) COMMISSION DEFINED.—In this section, the term "Commission" means the Securities and Exchange Commission.

[~118H2793]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration submissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration submissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Encouraging Public Offerings Act of 2025".

SEC. 2. EXPANDING TESTING THE WATERS.

Section 5(d) of the Securities Act of 1933 (15 U.S.C. 77e(d)) is amended—

(1) by striking "Notwithstanding" and inserting the following:

"(1) IN GENERAL.—Notwithstanding";

(2) by striking "an emerging growth company or any person authorized to act on behalf of an emerging growth company" and inserting "an issuer or any person authorized to act on behalf of an issuer"; and

(3) by adding at the end the following:

"(2) ADDITIONAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may promulgate regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the engaging in oral or written communications described under paragraph (1) by an issuer other than an emerging growth company as the Commission determines appropriate.

"(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall submit to Congress a report containing a list of the findings supporting the basis of the rulemaking.".

SEC. 3. CONFIDENTIAL REVIEW OF DRAFT REGISTRATION STATEMENTS.

Section 6(e) of the Securities Act of 1933 (15 U.S.C. 77f(e)) is amended—

(1) in the heading, by striking "EMERGING GROWTH COMPANIES" and inserting "CONFIDENTIAL REVIEW OF DRAFT REGISTRATION STATEMENTS";

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—Any issuer may, with respect to an initial public offering, initial registration of a security of the issuer under section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)), or follow-on offering, confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than—

"(A) in the case of an initial public offering, 10 days before the effective date of such registration statement;

"(B) in the case of an initial registration of a security of the issuer under such section 12(b), 10 days before listing on an exchange; or

"(C) in the case of a follow-on offering, 48 hours before the effective date of such registration statement.

"(2) FOLLOW-ON OFFERING DEFINED.—In this subsection, the term 'follow-on offering' means an offering by an issuer during the 12-month period beginning on the effective date of the initial public offering of the issuer or the initial registration of a security of the issuer under section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)).

"(3) ADDITIONAL REQUIREMENTS.—

"(A) IN GENERAL.—The Commission may promulgate regulations, subject to public notice and comment, to impose such other terms, conditions, or requirements on the submission of draft registration statements described under this subsection by an issuer other than an emerging growth company as the Commission determines appropriate.

"(B) REPORT TO CONGRESS.—Prior to any rulemaking described under subparagraph (A), the Commission shall submit to Congress a re-

port containing a list of the findings supporting the basis of the rulemaking.".

[118H2610]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NUNN of Iowa introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REGISTRATION STATEMENTS.

Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)) is amended—

(1) in paragraph (1)(K), by striking "years," and inserting "years (or, in the case of an emerging growth company, not more than the two preceding years),"; and

(2) by adding at the end the following:

"Any issuer may confidentially submit to the Commission a draft registration statement for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 10 days before listing on a national securities exchange. Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24.".

[118H2608]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINANCIAL STATEMENT REPORTING REQUIREMENTS FOR EMERGING GROWTH COMPANIES.

(a) SECURITIES ACT OF 1933.—Section 7(a)(2) of the Securities Act of 1933 (15 U.S.C. 77g(a)(2)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following:

"(B) need not present acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-

05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering; and".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 12(b)(1)(K) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)(1)(K)) is amended by striking "firm;" and inserting "firm, provided that the application of an emerging growth company need not present acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its application and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with any application under subsection (b) of this section;".

[118H2795]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MEEKS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enhancing Multi-Class Share Disclosures Act".

SEC. 2. DISCLOSURE RELATING TO MULTI-CLASS SHARE STRUCTURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

"(l) DISCLOSURE RELATING TO MULTI-CLASS SHARE STRUCTURES.—

"(1) DISCLOSURE.—The Commission shall, by rule, require each issuer with a multi-class share structure to disclose the information described in paragraph (2) in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer, or any other filing as the Commission determines appropriate.

"(2) CONTENT.—A disclosure made under paragraph (1) shall include, with respect to each person who is a director, director nominee, or named executive officer of the issuer, or who is the beneficial owner of securities with 5 percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors—

"(A) the number of shares of all classes of securities entitled to vote in the election of directors beneficially owned by such person, expressed as a percentage of the total number of

the outstanding securities of the issuer entitled to vote in the election of directors; and

"(B) the amount of voting power held by such person, expressed as a percentage of the total combined voting power of all classes of the securities of the issuer entitled to vote in the election of directors.

"(3) MULTI-CLASS SHARE STRUCTURE.—In this subsection, the term 'multi-class share structure' means a capitalization structure that contains 2 or more classes of securities that have differing amounts of voting rights in the election of directors.".

[118H2593EH]

.....

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To create an interdivisional taskforce at the Securities and Exchange Commission for senior investors.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOTTHEIMER introduced the following bill; which was referred to the Committee on _____

A BILL

To create an interdivisional taskforce at the Securities and Exchange Commission for senior investors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Senior Investor Initiative Act of 2025" or the "Senior Security Act of 2025".

SEC. 2. SENIOR INVESTOR TASKFORCE.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(l) SENIOR INVESTOR TASKFORCE.—

"(1) ESTABLISHMENT.—There is established within the Commission the Senior Investor Taskforce (in this subsection referred to as the 'Taskforce').

"(2) DIRECTOR OF THE TASKFORCE.—The head of the Taskforce shall be the Director, who shall—

"(A) report directly to the Chairman; and

"(B) be appointed by the Chairman, in consultation with the Commission, from among individuals—

"(i) currently employed by the Commission or from outside of the Commission; and

"(ii) having experience in advocating for the interests of senior investors.

"(3) STAFFING.—The Chairman shall ensure that—

"(A) the Taskforce is staffed sufficiently to carry out fully the requirements of this subsection; and

"(B) such staff shall include individuals from the Division of Enforcement, Office of Compliance Inspections and Examinations, and Office of Investor Education and Advocacy.

"(4) NO COMPENSATION FOR MEMBERS OF TASKFORCE.—All members of the Taskforce appointed under paragraph (2) or (3) shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(5) MINIMIZING DUPLICATION OF EFFORTS.—In organizing and staffing the Taskforce, the Chairman shall take such actions as may be necessary to minimize the duplication of efforts within the divisions and offices described under paragraph (3)(B) and any other divisions, offices, or taskforces of the Commission.

"(6) FUNCTIONS OF THE TASKFORCE.—The Taskforce shall—

"(A) identify challenges that senior investors encounter, including problems associated with financial exploitation and cognitive decline;

"(B) identify areas in which senior investors would benefit from changes in the regula-

tions of the Commission or the rules of self-regulatory organizations;

"(C) coordinate, as appropriate, with other offices within the Commission, other taskforces that may be established within the Commission, self-regulatory organizations, and the Elder Justice Coordinating Council; and

"(D) consult, as appropriate, with State securities and law enforcement authorities, State insurance regulators, and other Federal agencies.

"(7) REPORT.—The Taskforce, in coordination, as appropriate, with the Office of the Investor Advocate and self-regulatory organizations, and in consultation, as appropriate, with State securities and law enforcement authorities, State insurance regulators, and Federal agencies, shall issue a report every 2 years to the Committee on Banking, Housing, and Urban Affairs and the Special Committee on Aging of the Senate and the Committee on Financial Services of the House of Representatives, the first of which shall not be issued until after the report described in section 3 of the National Senior Investor Initiative Act of 2025 has been issued and considered by the Taskforce, containing—

"(A) appropriate statistical information and full and substantive analysis;

"(B) a summary of recent trends and innovations that have impacted the investment landscape for senior investors;

"(C) a summary of regulatory initiatives that have concentrated on senior investors and industry practices related to senior investors;

"(D) key observations, best practices, and areas needing improvement, involving senior investors identified during examinations, enforcement actions, and investor education outreach;

"(E) a summary of the most serious issues encountered by senior investors, including issues involving financial products and services;

"(F) an analysis with regard to existing policies and procedures of brokers, dealers, investment advisers, and other market participants related to senior investors and senior investor-related topics and whether these policies and procedures need to be further developed or refined;

"(G) recommendations for such changes to the regulations, guidance, and orders of the Commission and self-regulatory organizations

and such legislative actions as may be appropriate to resolve problems encountered by senior investors; and

"(H) any other information, as determined appropriate by the Director of the Taskforce.

"(8) REQUEST FOR REPORTS.—The Taskforce shall make any report issued under paragraph (7) available to a Member of Congress who requests such a report.

"(9) SUNSET.—The Taskforce shall terminate after the end of the 10-year period beginning on the date of the enactment of this subsection.

"(10) SENIOR INVESTOR DEFINED.—For purposes of this subsection, the term 'senior investor' means an investor over the age of 65.

"(11) USE OF EXISTING FUNDS.—The Commission shall use existing funds to carry out this subsection.".

SEC. 3. GAO STUDY.

(a) STUDY.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress and the Senior Investor Taskforce the results of a study of financial exploitation of senior citizens.

(b) CONTENTS.—The study required under subsection (a) shall include information with respect to—

(1) economic costs of the financial exploitation of senior citizens—

(A) associated with losses by victims that were incurred as a result of the financial exploitation of senior citizens;

(B) incurred by State and Federal agencies, law enforcement and investigatory agencies, public benefit programs, public health programs, and other public programs as a result of the financial exploitation of senior citizens;

(C) incurred by the private sector as a result of the financial exploitation of senior citizens; and

(D) any other relevant costs that—

(i) result from the financial exploitation of senior citizens; and

(ii) the Comptroller General determines are necessary and appropriate to include in order to provide Congress and the public with a full and accurate understanding of the economic costs resulting from the financial exploitation of senior citizens in the United States;

(2) frequency of senior financial exploitation and correlated or contributing factors—

(A) information about percentage of senior citizens financially exploited each year; and

(B) information about factors contributing to increased risk of exploitation, including such factors as race, social isolation, income, net worth, religion, region, occupation, education, home-ownership, illness, and loss of spouse; and

(3) policy responses and reporting of senior financial exploitation—

(A) the degree to which financial exploitation of senior citizens unreported to authorities;

(B) the reasons that financial exploitation may be unreported to authorities;

(C) to the extent that suspected elder financial exploitation is currently being reported—

(i) information regarding which Federal, State, and local agencies are receiving reports, including adult protective services, law enforcement, industry, regulators, and professional licensing boards;

(ii) information regarding what information is being collected by such agencies; and

(iii) information regarding the actions that are taken by such agencies upon receipt of the report and any limits on the agencies' ability to prevent exploitation, such as jurisdictional limits, a lack of expertise, resource challenges, or limiting criteria with regard to the types of victims they are permitted to serve;

(D) an analysis of gaps that may exist in empowering Federal, State, and local agencies to prevent senior exploitation or respond effectively to suspected senior financial exploitation; and

(E) an analysis of the legal hurdles that prevent Federal, State, and local agencies from effectively partnering with each other and private professionals to effectively respond to senior financial exploitation.

(c) SENIOR CITIZEN DEFINED.—For purposes of this section, the term "senior citizen" means an individual over the age of 65.

[118H2812]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require the Comptroller General of the United States to carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings.

IN THE HOUSE OF REPRESENTATIVES

Mr. HIMES introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Comptroller General of the United States to carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Middle Market IPO Underwriting Cost Act".

SEC. 2. STUDY ON IPO FEES.

(a) STUDY.—The Comptroller General of the United States, in consultation with the Securities and Exchange Commission and the Financial Industry Regulatory Authority, shall carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings ("IPOs"). In carrying out such study, the Comptroller General shall—

(1) consider the direct and indirect costs of an IPO, including—

(A) fees of accountants, underwriters, and any other outside advisors with respect to the IPO;

(B) compliance with Federal and State securities laws at the time of the IPO; and

(C) such other IPO-related costs as the Comptroller General may consider;

(2) compare and analyze the costs of an IPO with the costs of obtaining alternative sources of financing and of liquidity;

(3) consider the impact of such costs on capital formation;

(4) analyze the impact of these costs on the availability of public securities of small- and medium-sized companies to retail investors; and

(5) analyze trends in IPOs over a time period the Comptroller General determines is appropriate to analyze IPO pricing practices, considering—

(A) the number of IPOs;

(B) how costs for IPOs have evolved over time for underwriters, investment advisory firms, and other professions for services in connection with an IPO;

(C) the number of brokers and dealers active in underwriting IPOs;

(D) the different types of services that underwriters and related persons provide before and after a small- or medium-sized company IPO and the factors impacting IPOs costs;

(E) changes in the costs and availability of investment research for small- and medium-sized companies; and

(F) the impacts of litigation and its costs on being a public company.

(b) REPORT.—Not later than the end of the 360-day period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress containing all findings and determinations made in carrying out the study required under subsection (a) and

any administrative or legislative recommendations the Comptroller General may have.

[118H2796]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. WATERS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital raising options for traditionally underrepresented small businesses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Promoting Opportunities for Non-Traditional Capital Formation Act".

SEC. 2. PROMOTING CAPITAL RAISING OPTIONS FOR TRADITIONALLY UNDERREPRESENTED SMALL BUSINESSES.

Section 4(j)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(j)(4)) is amended—

(1) in subparagraph (G), by striking "and" at the end;

(2) in subparagraph (H), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(I) provide educational resources and host events to raise awareness of capital raising options for—

"(i) underrepresented small businesses, including women-owned and minority-owned small businesses;

"(ii) businesses located in rural areas; and

"(iii) small businesses affected by hurricanes or other natural disasters; and

"(J) at least annually, meet with representatives of State securities commissions to discuss opportunities for collaboration and coordination with respect to efforts to assist small businesses and small business investors.".

[~118H1807]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To provide for the electronic delivery of certain regulatory document required under the securities laws.

IN THE HOUSE OF REPRESENTATIVES

Mr. HUIZENGA introduced the following bill; which was referred to the Committee on _____

A BILL

To provide for the electronic delivery of certain regulatory document required under the securities laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving Disclosure for Investors Act of 2025".

SEC. 2. ELECTRONIC DELIVERY.

(a) PROMULGATION OF RULES.—Not later than 180 days after the date of the enactment of this section, the Securities and Exchange Commission shall propose and,

not later than 1 year after the date of the enactment of this section, the Commission shall finalize, rules, regulations, amendments, or interpretations, as appropriate, to allow a covered entity to satisfy the entity's obligation to deliver regulatory documents required under the securities laws to investors using electronic delivery.

(b) REQUIRED PROVISIONS.—Rules, regulations, amendments, or interpretations the Commission promulgates pursuant to subsection (a) shall:

(1) With respect to investors that do not receive all regulatory documents by electronic delivery, provide for—

(A) delivery of an initial communication in paper form regarding electronic delivery;

(B) a transition period not to exceed 180 days until such regulatory documents are delivered to such investors by electronic delivery; and

(C) during a period not to exceed 2 years following the transition period set forth in subparagraph (B), delivery of an annual notice in paper form solely reminding such investors of the ability to opt out of electronic delivery at any time and receive paper versions of regulatory documents.

(2) Set forth requirements for the content of the initial communication described in paragraph (1)(A).

(3) Set forth requirements for the timing of delivery of a notice of website availability of regulatory documents and the content of the appropriate notice described in subsection (f)(3)(B).

(4) Provide a mechanism for investors to opt out of electronic delivery at any time and receive paper versions of regulatory documents.

(5) Require measures reasonably designed to identify and remediate failed electronic deliveries of regulatory documents.

(6) Set forth minimum requirements regarding readability and retainability for regulatory documents that are delivered electronically.

(7) For covered entities other than brokers, dealers, investment advisers registered with the Commission, and investment companies, require measures reasonably designed to ensure the confidentiality of personal information in regulatory documents that are delivered to investors electronically.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as altering the substance or timing

of any regulatory document obligation under the securities laws or regulations of a self-regulatory organization.

(d) TREATMENT OF REVISIONS NOT COMPLETED IN A TIMELY MANNER.—If the Commission fails to finalize the rules, regulations, amendments, or interpretations required under subsection (a) before the date specified in such subsection—

(1) a covered entity may deliver regulatory documents using electronic delivery in accordance with subsections (b) and (c); and

(2) such electronic delivery shall be deemed to satisfy the obligation of the covered entity to deliver regulatory documents required under the securities laws.

(e) OTHER REQUIRED ACTIONS.—

(1) REVIEW OF RULES.—The Commission shall—

(A) within 180 days of the date of enactment of this Act, conduct a review of the rules and regulations of the Commission to determine whether any such rules or regulations require delivery of written documents to investors; and

(B) within 1 year of the date of enactment of this Act, promulgate amendments to such rules or regulations to provide that any require-

ment to deliver a regulatory document "in writing" may be satisfied by electronic delivery.

(2) ACTIONS BY SELF-REGULATORY ORGANIZATIONS.—Each self-regulatory organization shall adopt rules and regulations, or amend the rules and regulations of the self-regulatory organization, consistent with this Act and consistent with rules, regulations, amendments, or interpretations finalized by the Commission pursuant to subsection (a).

(3) RULE OF APPLICATION.—This subsection shall not apply to a rule or regulation issued pursuant to a Federal statute if that Federal statute specifically requires delivery of written documents to investors.

(f) DEFINITIONS.—In this section:

(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(2) COVERED ENTITY.—The term "covered entity" means—

(A) an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)(1))) that is registered under such Act;

(B) a business development company (as defined in section 2(a) of the Investment Com-

pany Act of 1940 (15 U.S.C. 80a-2(a))) that has elected to be regulated as such under such Act;

(C) a registered broker or dealer (as such terms are defined, respectively, in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)));

(D) a registered municipal securities dealer (as defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)));

(E) a registered government securities broker or government securities dealer (as such terms are defined, respectively, in paragraphs (43) and (44) of section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)));

(F) a registered investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1(a)(11)));

(G) a registered transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25))); or

(H) a registered funding portal (as defined in the second paragraph (80) of section 3(a) of

the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

(3) ELECTRONIC DELIVERY.—The term "electronic delivery", with respect to regulatory documents, includes—

(A) the direct delivery of such regulatory document to an electronic address of an investor;

(B) the posting of such regulatory document to a website and direct electronic delivery of an appropriate notice of the availability of the regulatory document to the investor; and

(C) an electronic method reasonably designed to ensure receipt of such regulatory document by the investor.

(4) REGULATORY DOCUMENTS.—The term "regulatory documents" includes—

(A) prospectuses meeting the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a));

(B) summary prospectuses meeting the requirements of—

(i) section 230.498 of title 17, Code of Federal Regulations; or

(ii) section 230.498A of title 17, Code of Federal Regulations;

(C) statements of additional information, as described under section 270.30e-3(h)(2) of title 17, Code of Federal Regulations;

(D) annual and semi-annual reports to investors meeting the requirements of section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(e));

(E) notices meeting the requirements under section 270.19a-1 of title 17, Code of Federal Regulations;

(F) confirmations and account statements meeting the requirements under section 240.10b of title 17, Code of Federal Regulations;

(G) proxy statements meeting the requirements under section 240.14a-3 of title 17, Code of Federal Regulations;

(H) privacy notices meeting the requirements of Regulation S-P under subpart A of part 248 of title 17, Code of Federal Regulations;

(I) affiliate marketing notices meeting the requirements of Regulation S-AM under sub-

part B of part 248 of title 17, Code of Federal Regulations; and

(J) all other regulatory documents required to be delivered by covered entities to investors under the securities laws and the rules and regulations of the Commission and the self-regulatory organizations.

(5) SECURITIES LAWS.—The term "securities laws" has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(6) SELF-REGULATORY ORGANIZATION.—The term "self- regulatory organization" means—

(A) a self-regulatory organization, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(B) the Municipal Securities Rulemaking Board.

(7) WEBSITE.—The term "website" means an internet website or other digital, internet, or electronic-based information repository, such as a mobile application, to which an investor of a covered entity has been provided reasonable access.

[~118H1553]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require the Securities and Exchange Commission to revise rules relating to general solicitation or general advertising to allow for presentations or other communication made by or on behalf of an issuer at certain events, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LAWLER introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to revise rules relating to general solicitation or general advertising to allow for presentations or other communication made by or on behalf of an issuer at certain events, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Helping Angels Lead Our Startups Act of 2025" or the "HALOS Act of 2025".

SEC. 2. CLARIFICATION OF GENERAL SOLICITATION.

(a) DEFINITIONS.—For purposes of this section and the revision of rules required under this section:

(1) ANGEL INVESTOR GROUP.—The term "angel investor group" means any group that—

(A) is composed of accredited investors interested in investing personal capital in early-stage companies;

(B) holds regular meetings and has defined processes and procedures for making investment decisions, either individually or among the membership of the group as a whole; and

(C) is neither associated nor affiliated with brokers, dealers, or investment advisers.

(2) ISSUER.—The term "issuer" means an issuer that is a business, is not in bankruptcy or receivership, is not an investment company, and is not a blank check, blind pool, or shell company.

(b) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Securities and Exchange Commission shall revise Regulation D (17 CFR 230.500 et seq.) to require that in carrying out the prohibition against general solicitation or general advertising contained in section 230.502(c) of title 17, Code of Federal Regulations, the prohibition shall not apply to a pres-

entation or other communication made by or on behalf of an issuer which is made at an event—

(1) sponsored by—

(A) the United States or any territory thereof, the District of Columbia, any State, a political subdivision of any State or territory, or any agency or public instrumentality of any of the foregoing;

(B) a college, university, or other institution of higher education;

(C) a nonprofit organization;

(D) an angel investor group;

(E) a venture forum, venture capital association, or trade association; or

(F) any other group, person, or entity as the Securities and Exchange Commission may determine by rule;

(2) where any advertising for the event does not reference any specific offering of securities by the issuer;

(3) the sponsor of which—

(A) does not make investment recommendations or provide investment advice to event attendees;

(B) does not engage in an active role in any investment negotiations between the issuer and investors attending the event;

(C) does not charge event attendees any fees other than reasonable administrative fees;

(D) does not receive any compensation for making introductions between investors attending the event and issuers, or for investment negotiations between such parties;

(E) makes readily available to attendees a disclosure not longer than one page in length, as prescribed by the Securities and Exchange Commission, describing the nature of the event and the risks of investing in the issuers presenting at the event; and

(F) does not receive any compensation with respect to such event that would require registration of the sponsor as a broker or a dealer under the Securities Exchange Act of 1934, or as an investment advisor under the Investment Advisers Act of 1940; and

(4) where no specific information regarding an offering of securities by the issuer is communicated or distributed by or on behalf of the issuer, other than—

(A) that the issuer is in the process of offering securities or planning to offer securities;

(B) the type and amount of securities being offered;

(C) the amount of securities being offered that have already been subscribed for; and

(D) the intended use of proceeds of the offering.

(c) RULE OF CONSTRUCTION.—Subsection (b) may only be construed as requiring the Securities and Exchange Commission to amend the requirements of Regulation D with respect to presentations and communications, and not with respect to purchases or sales.

(d) NO PRE-EXISTING SUBSTANTIVE RELATIONSHIP BY REASON OF EVENT.—Attendance at an event described under subsection (b) shall not qualify, by itself, as establishing a pre-existing substantive relationship between an issuer and a purchaser, for purposes of Rule 506(b).

[~118H2627]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Company Act of 1940 with respect to the authority of closed-end companies to invest in private funds.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Investment Company Act of 1940 with respect to the authority of closed-end companies to invest in private funds.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Increasing Investor Opportunities Act".

SEC. 2. CLOSED-END COMPANY AUTHORITY TO INVEST IN PRIVATE FUNDS.

(a) IN GENERAL.—Section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) is amended by adding at the end the following:

"(d) CLOSED-END COMPANY AUTHORITY TO INVEST IN PRIVATE FUNDS.—

"(1) IN GENERAL.—Except as otherwise prohibited or restricted by this Act (or any rule issued under this Act), the Commission may not prohibit or otherwise limit a closed-end company from investing any or all of the assets of the closed-end company in securities issued by private funds.

"(2) OTHER RESTRICTIONS ON COMMISSION AUTHORITY.—

"(A) IN GENERAL.—Except as otherwise prohibited or restricted by this Act (or any rule issued under this Act) or to the extent permitted by subparagraph (B), the Commission may not impose any condition on, restrict, or otherwise limit—

"(i) the offer to sell, or the sale of, securities issued by a closed-end company that invests, or proposes to invest, in securities issued by private funds; or

"(ii) the listing of the securities of a closed-end company described in clause (i) on a national securities exchange.

"(B) UNRELATED RESTRICTIONS.—The Commission may impose a condition on, restrict, or otherwise limit an activity described in clause (i) or (ii) of subparagraph (A) if that condition, restriction, or limitation is unrelated to the underlying characteristics of a private fund or the status of a private fund as a private fund.

"(3) APPLICATION.—Notwithstanding section 6(f), this subsection shall also apply to a closed-end company that elects to be treated as a business development company pursuant to section 54.".

(b) DEFINITION OF PRIVATE FUND.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

"(55) The term 'private fund' has the meaning given in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)).".

(c) TREATMENT BY NATIONAL SECURITIES EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(m)(1) Except as otherwise prohibited or restricted by rules of the exchange that are consistent with section 5(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(d)), an exchange may not prohibit, condition, restrict, or impose any other limitation on the listing or trading of the securities of a closed-end company when the closed-end company invests, or may invest, some or all of the assets of the closed-end company in securities issued by private funds.

"(2) In this subsection—

"(A) the term 'closed-end company'—

"(i) has the meaning given the term in section 5(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)); and

"(ii) includes a closed-end company that elects to be treated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53); and

"(B) the term 'private fund' has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).".

(d) INVESTMENT LIMITATION.—Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), in the second sentence, by striking "subparagraphs (A)(i) and (B)(i)" and inserting "subparagraphs (A)(i), (B)(i), and (C)"; and

(2) in paragraph (7)(D), by striking "subparagraphs (A)(i) and (B)(i)" and inserting "subparagraphs (A)(i), (B)(i), and (C)".

(e) RULES OF CONSTRUCTION.—

(1) Nothing in this section or the amendments made by this section may be construed to limit or amend any fiduciary duty owed to a closed-end company (as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(2))) or by an investment adviser (as defined under section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a))) to a closed-end company.

(2) Nothing in this section or the amendments made by this section may be construed to limit or amend the valuation, liquidity, or redemption requirements or obligations of a closed-end company (as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(2))) as required by the Investment Company Act of 1940.

.....

(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Federal securities laws to enhance 403(b) plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LUCAS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal securities laws to enhance 403(b) plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement Fairness for Charities and Educational Institutions Act of 2025".

SEC. 4102. ENHANCEMENT OF 403(b) PLANS.

(a) AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(11) of the Investment Com-

pany Act of 1940 (15 U.S.C. 80a–3(c)(11)) is amended to read as follows:

"(11) Any—

"(A) employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986;

"(B) custodial account meeting the requirements of section 403(b)(7) of such Code;

"(C) governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933;

"(D) collective trust fund maintained by a bank consisting solely of assets of one or more—

"(i) trusts described in subparagraph (A);

"(ii) government plans described in subparagraph (C);

"(iii) church plans, companies, or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection; or

"(iv) plans which meet the requirements of section 403(b) of the Internal Revenue Code of 1986—

"(I) if—

"(aa) such plan is subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

"(bb) any employer making such plan available agrees to serve as a fiduciary for the plan with respect to the selection of the plan's investments among which participants can choose; or

"(cc) such plan is a governmental plan (as defined in section 414(d) of such Code); and

"(II) if the employer, a fiduciary of the plan, or another person acting on behalf of the employer reviews and approves each investment alternative offered under such plan described under subclause (I)(cc) prior to the investment being offered to participants in the plan; or

"(E) separate account the assets of which are derived solely from—

"(i) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code;

"(ii) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act;

"(iii) advances made by an insurance company in connection with the operation of such separate account; and

"(iv) contributions to a plan described in clause (iii) or (iv) of subparagraph (D).".

(b) AMENDMENTS TO THE SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended—

(1) by striking "beneficiaries, or (D)" and inserting "beneficiaries, (D) a plan which meets the requirements of section 403(b) of such Code (i) if (I) such plan is subject to title I of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), (II) any employer making such plan available agrees to serve as a fiduciary for the plan with respect to the selection of the plan's investments among which participants can choose, or (III) such plan is a governmental plan (as defined in section 414(d) of such Code), and (ii) if the employer, a fiduciary of the plan, or another person acting on behalf of the employer reviews and approves each investment alternative offered under any plan described under clause (i)(III) prior to the investment being offered to participants in the plan, or (E)";

(2) by striking "(C), or (D)" and inserting "(C), (D), or (E)"; and

(3) by striking "(iii) which is a plan funded" and all that follows through "retirement income account)." and inserting "(iii) in the case of a plan not described in subparagraph (D) or (E), which is a plan funded by an annuity contract described in section 403(b) of such Code".

(c) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(C)) is amended—

(1) by striking "or (iv)" and inserting "(iv) a plan which meets the requirements of section 403(b) of such Code (I) if (aa) such plan is subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), (bb) any employer making such plan available agrees to serve as a fiduciary for the plan with respect to the selection of the plan's investments among which participants can choose, or (cc) such plan is a governmental plan (as defined in section 414(d) of such Code), and (II) if the employer, a fiduciary of the plan, or another person acting on behalf of the employer reviews and approves each investment alternative offered under any plan described under subclause (I)(cc) prior to the investment being offered to participants in the plan, or (v)";

(2) by striking "(ii), or (iii)" and inserting "(ii), (iii), or (iv)"; and

(3) by striking "(II) is a plan funded" and inserting "(II) in the case of a plan not described in clause (iv), is a plan funded".

(d) CONFORMING AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 12(g)(2)(H) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(2)(H))

is amended by striking "or (iii)" and inserting "(iii) a plan described in section 3(a)(12)(C)(iv) of this Act, or (iv)".

[~118H2497]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To permit an issuer, when determining the market capitalization of the issuer for purposes of testing the significance of an acquisition or disposition, to include the value of all shares of the issuer.

IN THE HOUSE OF REPRESENTATIVES

Ms. SALAZAR introduced the following bill; which was referred to the Committee on _____

A BILL

To permit an issuer, when determining the market capitalization of the issuer for purposes of testing the significance of an acquisition or disposition, to include the value of all shares of the issuer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AVOIDING ABERRATIONAL RESULTS IN REQUIREMENTS FOR ACQUISITION AND DISPOSITION FINANCIAL STATEMENTS.

The Securities and Exchange Commission shall revise section 210.1–02(w)(1)(i)(A) of title 17, Code of Federal

Regulations, to permit a registrant, in determining the significance of an acquisition or disposition described in such section 210.1–02(w)(1)(i)(A), to calculate the registrant's aggregate worldwide market value based on the applicable trading value, conversion value, or exchange value of all of the registrant's outstanding classes of stock (including preferred stock and non-traded common shares that are convertible into or exchangeable for traded common shares) and not just the voting and non-voting common equity of the registrant.

[~118H2624]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To update the definition of an emerging growth company, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

To update the definition of an emerging growth company, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Helping Startups Continue To Grow Act".

SEC. 2. EMERGING GROWTH COMPANY CRITERIA.

(a) SECURITIES ACT OF 1933.—Section 2(a)(19) of the Securities Act of 1933 (15 U.S.C. 77b(a)(19)) is amended—

(1) by striking "$1,000,000,000" each place such term appears and inserting "$3,000,000,000";

(2) in subparagraph (B)—

(A) by striking "fifth" and inserting "10-year"; and

(B) by adding "or" at the end;

(3) in subparagraph (C), by striking "; or" and inserting a period; and

(4) by striking subparagraph (D).

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended, in the first paragraph (80)—

(1) by striking "$1,000,000,000" each place such term appears and inserting "$3,000,000,000";

(2) in subparagraph (B)—

(A) by striking "fifth" and inserting "10-year"; and

(B) by adding "or" at the end;

(3) in subparagraph (C), by striking "; or" and inserting a period; and

(4) by striking subparagraph (D).

[~118H2606]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require auditor independence standards of the Public Company Accounting Oversight Board and the Securities and Exchange Commission applicable to past audits of a company occurring before it was a public company to treat an auditor as independent if the auditor meets established professional standards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MCCLAIN introduced the following bill; which was referred to the Committee on _____

A BILL

To require auditor independence standards of the Public Company Accounting Oversight Board and the Securities and Exchange Commission applicable to past audits of a company occurring before it was a public company to treat an auditor as independent if the auditor meets established professional standards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUDITOR INDEPENDENCE FOR CERTAIN PAST AUDITS OCCURRING BEFORE AN ISSUER IS A PUBLIC COMPANY.

(a) AUDITOR INDEPENDENCE STANDARDS OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 103 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213) is amended by adding at the end the following:

"(e) AUDITOR INDEPENDENCE FOR CERTAIN PAST AUDITS OCCURRING BEFORE AN ISSUER IS A PUBLIC COMPANY.—With respect to an issuer that is a public company or an issuer that has filed a registration statement to become a public company, the auditor independence rules established by the Board with respect to audits occurring before the last fiscal year of the issuer completed before the issuer filed a registration statement to become a public company shall treat an auditor as independent if—

"(1) the auditor is independent under standards established by the American Institute of Certified Public Accountants applicable to certified public accountants in United States; or

"(2) with respect to a foreign issuer, the auditor is independent under comparable standards applicable to certified public accountants in the issuer's home country.".

(b) AUDITOR INDEPENDENCE STANDARDS OF THE SECURITIES AND EXCHANGE COMMISSION.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

"(n) AUDITOR INDEPENDENCE FOR CERTAIN PAST AUDITS OCCURRING BEFORE AN ISSUER IS A PUBLIC COMPANY.—With respect to an issuer that is a public company or an issuer that has filed a registration statement to become a public company, the auditor independence rules established by the Commission under the securities laws with respect to audits occurring before the last fiscal year of the issuer completed before the issuer filed a registration statement to become a public company shall treat an auditor as independent if—

"(1) the auditor is independent under standards established by the American Institute of Certified Public Accountants applicable to certified public accountants in United States; or

"(2) with respect to a foreign issuer, the auditor is independent under comparable standards applicable to certified public accountants in the issuer's home country.".

[~118H2576]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to expand the research report exception to include reports about any issuer that undertakes a proposed offering of public securities.

IN THE HOUSE OF REPRESENTATIVES

Mr. WILLIAMS of Texas introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to expand the research report exception to include reports about any issuer that undertakes a proposed offering of public securities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROVISION OF RESEARCH.

Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended—

(a) by striking "an emerging growth company" and inserting "an issuer";

(b) by striking "the common equity" and inserting "any"; and

(c) by striking "such emerging growth company" and inserting "such issuer".

[~118H2605]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to exclude qualified institutional buyers and institutional accredited investors when calculating holders of a security for purposes of the mandatory registration threshold under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARBARINO introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to exclude qualified institutional buyers and institutional accredited investors when calculating holders of a security for purposes of the mandatory registration threshold under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSIONS FROM MANDATORY REGISTRATION THRESHOLD.

(a) IN GENERAL.—Section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)) is amended—

(1) in paragraph (A)(i), by inserting after "persons" the following: "(that are not a qualified institutional buyer or an institutional accredited investor)"; and

(2) in paragraph (B), by inserting after "persons" the following: "(that are not a qualified institutional buyer or an institutional accredited investor)".

(b) NONAPPLICABILITY OF GENERAL EXEMPTIVE AUTHORITY.—Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) shall not apply to the matter inserted by the amendments made by subsection (a).

[~118H2625]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To lower the aggregate market value of voting and non-voting common equity necessary for an issuer to qualify as a well-known seasoned issuer.

IN THE HOUSE OF REPRESENTATIVES

Mr. STEIL introduced the following bill; which was referred to the Committee on _____

A BILL

To lower the aggregate market value of voting and non-voting common equity necessary for an issuer to qualify as a well-known seasoned issuer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF WELL-KNOWN SEASONED ISSUER.

For purposes of the Federal securities laws, and regulations issued thereunder, an issuer shall be a "well-known seasoned issuer" if—

(1) the aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer is $75,000,000 or more (as determined under Form S–3 general instruction I.B.1. as in effect on the date of enactment of this Act); and

(2) the issuer otherwise satisfies the requirements of the definition of "well-known seasoned issuer" contained in section 230.405 of title 17, Code of Federal Regulations (as in effect on the date of enactment of this Act) without reference to any requirement in such definition relating to minimum worldwide market value of outstanding voting and non-voting common equity held by non-affiliates.

[~118H2603]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require the Securities and Exchange Commission to revise certain thresholds related to smaller reporting companies, accelerated filers, and large accelerated filers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to revise certain thresholds related to smaller reporting companies, accelerated filers, and large accelerated filers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SMALLER REPORTING COMPANY, ACCELERATED FILER, AND LARGE ACCELERATED FILER THRESHOLDS.

(a) SMALLER REPORTING COMPANIES.—

(1) IN GENERAL.—The Securities and Exchange Commission shall revise the definition of a "smaller reporting company" under section 229.10(f)(1) of title 17, Code of Federal Regulations—

(A) in paragraph (i), by adjusting the public float threshold from $250,000,000 to $500,000,000; and

(B) in paragraph (ii)—

(i) by adjusting the annual revenue threshold from $100,000,000 to $250,000,000; and

(ii) in paragraph (B), by adjusting the public float threshold from $700,000,000 to $900,000,000.

(2) USE OF THREE-YEAR ROLLING AVERAGE REVENUES.—The Securities and Exchange Commission shall revise paragraphs (1)(ii) and (2)(iii)(B) under the definition of "smaller reporting company" under section 229.10(f)(1) of title 17, Code of Federal Regulations, by substituting "three-year rolling average revenues" for "annual revenues".

(3) CONFORMING CHANGES.—The Securities and Exchange Commission shall revise the definition of a "smaller reporting company" under sections

230.405 and 240.12b–2 of title 17, Code of Federal Regulations, and any other rule of the Commission in the same manner as such definition is revised under paragraphs (1) and (2).

(b) ACCELERATED FILERS AND LARGE ACCELERATED FILERS.—

(1) LARGE ACCELERATED FILER.—The Securities and Exchange Commission shall revise the definition of a "large accelerated filer" under section 240.12b–2(2) of title 17, Code of Federal Regulations, to increase the threshold amount (for the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of an issuer) from $700,000,000 to $750,000,000.

(2) THRESHOLD TO EXIT ACCELERATED FILER STATUS.—The Securities and Exchange Commission shall revise section 240.12b–2(3)(ii) of title 17, Code of Federal Regulations, to increase the threshold amount (for the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of an issuer) at which an issuer is no longer an accelerated filer from $60,000,000 to $75,000,000.

(3) THRESHOLD TO EXIT LARGE ACCELERATED FILER STATUS.—The Securities and Exchange Com-

mission shall revise section 240.12b–2(3)(iii) of title 17, Code of Federal Regulations, to increase the threshold amount (for the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of an issuer) at which an issuer is no longer a large accelerated filer from $560,000,000 to $750,000,000.

(4) EXCLUSION OF SMALLER REPORTING COMPANIES.—The Securities and Exchange Commission shall revise the definitions of an "accelerated filer" and a "large accelerated filer" under paragraphs (1) and (2) of section 240.12b–2 of title 17, Code of Federal Regulations, respectively, to exclude any issuer that is a smaller reporting company, as defined under section 229.10(f)(1) of title 17, Code of Federal Regulations.

[~118H2590]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. SALAZAR introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unlocking Capital for Small Businesses Act of 2025".

SEC. 2. SAFE HARBORS FOR PRIVATE PLACEMENT BROKERS AND FINDERS.

(a) IN GENERAL.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

"(p) PRIVATE PLACEMENT BROKER SAFE HARBOR.—

"(1) REGISTRATION REQUIREMENTS.—Not later than 180 days after the date of the enactment of this subsection the Commission shall promulgate regulations with respect to private placement brokers that are no more stringent than those imposed on funding portals.

"(2) NATIONAL SECURITIES ASSOCIATIONS.—Not later than 180 days after the date of the enactment of this subsection the Commission shall promulgate regulations that require the rules of any national securities association to allow a private placement broker to become a member of such national securities association subject to reduced membership requirements consistent with this subsection.

"(3) DISCLOSURES REQUIRED.—Before effecting a transaction, a private placement broker shall disclose clearly and conspicuously, in writing, to all parties to the transaction as a result of the broker's activities—

"(A) that the broker is acting as a private placement broker;

"(B) the amount of any payment or anticipated payment for services rendered as a private placement broker in connection with such transaction;

"(C) the person to whom any such payment is made; and

"(D) any beneficial interest in the issuer, direct or indirect, of the private placement broker, of a member of the immediate family of the private placement broker, of an associated person of the private placement broker, or of a member of the immediate family of such associated person.

"(4) PRIVATE PLACEMENT BROKER DEFINED.—In this subsection, the term 'private placement broker' means a person that—

"(A) receives transaction-based compensation—

"(i) for effecting a transaction by—

"(I) introducing an issuer of securities and a buyer of such securities in connection with the sale of a busi-

ness effected as the sale of securities; or

"(II) introducing an issuer of securities and a buyer of such securities in connection with the placement of securities in transactions that are exempt from registration requirements under the Securities Act of 1933; and

"(ii) that is not with respect to—

"(I) a class of publicly traded securities;

"(II) the securities of an investment company (as defined in section 3 of the Investment Company Act of 1940); or

"(III) a variable or equity-indexed annuity or other variable or equity-indexed life insurance product;

"(B) with respect to a transaction for which such transaction-based compensation is received—

"(i) does not handle or take possession of the funds or securities; and

"(ii) does not engage in an activity that requires registration as an investment adviser under State or Federal law; and

"(C) is not a finder as defined under subsection (q).

"(q) FINDER SAFE HARBOR.—

"(1) NONREGISTRATION.—A finder is exempt from the registration requirements of this Act.

"(2) NATIONAL SECURITIES ASSOCIATIONS.—A finder shall not be required to become a member of any national securities association.

"(3) FINDER DEFINED.—In this subsection, the term 'finder' means a person described in paragraphs (A) and (B) of subsection (p)(4) that—

"(A) receives transaction-based compensation of equal to or less than $500,000 in any calendar year;

"(B) receives transaction-based compensation in connection with transactions that result in a single issuer selling securities valued at equal to or less than $15,000,000 in any calendar year;

"(C) receives transaction-based compensation in connection with transactions that result in any combination of issuers selling securities

valued at equal to or less than $30,000,000 in any calendar year; or

"(D) receives transaction-based compensation in connection with fewer than 16 transactions that are not part of the same offering or are otherwise unrelated in any calendar year.".

(b) VALIDITY OF CONTRACTS WITH REGISTERED PRIVATE PLACEMENT BROKERS AND FINDERS.—Section 29 of the Securities Exchange Act (15 U.S.C. 78cc) is amended by adding at the end the following:

"(d) Subsection (b) shall not apply to a contract made for a transaction if—

"(1) the transaction is one in which the issuer engaged the services of a broker or dealer that is not registered under this Act with respect to such transaction;

"(2) such issuer received a self-certification from such broker or dealer certifying that such broker or dealer is a registered private placement broker under section 15(p) or a finder under section 15(q); and

"(3) the issuer either did not know that such self-certification was false or did not have a reason-

able basis to believe that such self-certification was false.".

(c) REMOVAL OF PRIVATE PLACEMENT BROKERS FROM DEFINITIONS OF BROKER.—

(1) RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS.—Section 5312 of title 31, United States Code, is amended in subsection (a)(2)(G) by inserting "with the exception of a private placement broker as defined in section 15(p)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(p)(4))" before the semicolon at the end.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended by adding at the end the following:

"(G) PRIVATE PLACEMENT BROKERS.—A private placement broker as defined in section 15(p)(4) is not a broker for the purposes of this Act.".

SEC. 3. LIMITATIONS ON STATE LAW.

Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(2) by inserting after paragraph (2) the following:

"(3) PRIVATE PLACEMENT BROKERS AND FINDERS.—

"(A) IN GENERAL.—No State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action that imposes greater registration, audit, financial recordkeeping, or reporting requirements on a private placement broker or finder than those that are required under subsections (p) and (q), respectively.

"(B) DEFINITION OF STATE.—For purposes of this paragraph, the term 'State' includes the District of Columbia and each territory of the United States."; and

(3) in paragraph (4), as so redesignated, by striking "paragraph (3)" and inserting "paragraph (5)".

[~118H2578]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for certain investment advisers of private funds to reflect the change in inflation.

IN THE HOUSE OF REPRESENTATIVES

Mr. BARR introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for certain investment advisers of private funds to reflect the change in inflation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Investor Capital Access Act".

SEC. 2. INFLATION ADJUSTMENT FOR THE EXEMPTION THRESHOLD FOR CERTAIN INVESTMENT ADVISERS OF PRIVATE FUNDS.

Section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(m)) is amended by adding at the end the following:

"(5) INFLATION ADJUSTMENT.—The Commission shall adjust the dollar amount described under paragraph (1)—

"(A) upon enactment of this paragraph, to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor between the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 and the date of enactment of this paragraph; and

"(B) annually thereafter, to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.".

[~118H2790]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Company Act of 1940 with respect to the definition of qualifying venture capital funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. TIMMONS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Investment Company Act of 1940 with respect to the definition of qualifying venture capital funds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving Capital Allocation for Newcomers Act of 2025".

SEC. 2. QUALIFYING VENTURE CAPITAL FUNDS.

Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)) is amended—

(1) in the matter preceding subparagraph (A), by striking "250 persons" and inserting "2,000 persons"; and

(2) in subparagraph (C)(i), by striking "$10,000,000" and inserting "$150,000,000".

[~118H2609]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to provide small issuers with a micro-offering exemption free of mandated disclosures or offering filings, but subject to the antifraud provisions of the Federal securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARBARINO introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to provide small issuers with a micro-offering exemption free of mandated disclosures or offering filings, but subject to the antifraud provisions of the Federal securities laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Entrepreneurs' Empowerment and Development Act of 2025" or the "SEED Act of 2025".

SEC. 2. MICRO-OFFERING EXEMPTION.

(a) IN GENERAL.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) in subsection (a), by adding at the end the following:

"(8) transactions meeting the requirements of subsection (f).''; and

(2) by adding at the end the following:

"(f) MICRO-OFFERINGS.—The transactions referred to in subsection (a)(8) are transactions involving the sale of securities by an issuer (including all entities controlled by or under common control with the issuer) where the aggregate amount of all securities sold by the issuer, including any amount sold in reliance on the exemption provided under subsection (a)(8), during the 12-month period preceding such transaction, does not exceed $250,000.''.

(b) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule, establish disqualification provisions under which an issuer shall not be eligible to offer securities pursuant to section 4(a)(8) of the Securities Act of 1933, as added by this section.

(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

(A) be substantially similar to the provisions of section 230.506(d) of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a covered regulator that—

(I) bars the person from—

(aa) association with an entity regulated by the covered regulator;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, if such final order was issued within the previous 10-year period; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

(3) COVERED REGULATOR DEFINED.—In this subsection, the term "covered regulator" means—

(A) a State securities commission (or an agency or officer of a State performing like functions);

(B) a State authority that supervises or examines banks, savings associations, or credit unions;

(C) a State insurance commission (or an agency or officer of a State performing like functions);

(D) a Federal banking agency (as defined under section 3 of the Federal Deposit Insurance Act); and

(E) the National Credit Union Administration.

(c) EXEMPTION UNDER STATE REGULATIONS.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in subparagraph (F), by striking "or" at the end;

(2) in subparagraph (G), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(H) section 4(a)(8).".

[~118H2651]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 with respect to small company capital formation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STUTZMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 with respect to small company capital formation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulation A+ Improvement Act of 2025".

SEC. 2. JOBS ACT-RELATED EXEMPTION.

Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) in paragraph (2)(A), by striking "$50,000,000" and inserting "$150,000,000, adjusted for inflation by the Commission every 2 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics"; and

(2) in paragraph (5)—

(A) by striking "such amount as" and inserting: "such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), as"; and

(B) by striking "such amount, it" and inserting "such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), it".

[~118H2579]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To require the Securities and Exchange Commission to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940, to include an equity security issued by a qualifying portfolio company and to include an investment in another venture capital fund, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

To require the Securities and Exchange Commission to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940, to include an equity security issued by a qualifying portfolio company and to include an investment in another venture capital fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Developing and Empowering our Aspiring Leaders Act of 2025".

SEC. 2. DEFINITIONS.

Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall—

(1) revise the definition of a qualifying investment under paragraph (c) of section 275.203(l)–1 of title 17, Code of Federal Regulations—

(A) to include an equity security issued by a qualifying portfolio company, whether acquired directly from the company or in a secondary acquisition; and

(B) to specify that an investment in another venture capital fund is a qualifying investment under such definition; and

(2) revise paragraph (a) of such section to require, as a condition of a private fund qualifying as a venture capital fund under such paragraph, that the qualifying investments of the private fund are either—

(A) predominantly qualifying investments that were acquired directly from a qualifying portfolio company; or

(B) predominantly qualifying investments in another venture capital fund or other venture capital funds.

[~118H2607]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to preempt State securities law requiring registration for secondary transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to preempt State securities law requiring registration for secondary transactions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This title may be cited as the "Improving Crowdfunding Opportunities Act".

SEC. 2. CROWDFUNDING REVISIONS.

(a) EXEMPTION FROM STATE REGULATION.—Section 18(b)(4)(A) of the Securities Act of 1933 (15 U.S.C.

77r(b)(4)(A)) is amended by striking "pursuant to section" and all that follows through the semicolon at the end and inserting the following: "pursuant to—

"(i) section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

"(ii) section 4A(b) or any regulation issued under that section;".

(b) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—Section 4A(c) of the Securities Act of 1933 (15 U.S.C. 77d–1(c)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) LIABILITY OF FUNDING PORTALS.—For the purposes of this subsection, a funding portal, as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), shall not be considered to be an issuer unless, in connection with the offer or sale of a security, the funding portal knowingly—

"(A) makes any untrue statement of a material fact or omits to state a material fact in order to make the statements made, in light of

the circumstances under which they are made, not misleading; or

"(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.".

(c) APPLICABILITY OF BANK SECRECY ACT REQUIREMENTS.—

(1) SECURITIES ACT OF 1933.—Section 4A(a) of the Securities Act of 1933 (15 U.S.C. 77d–1(a)) is amended—

(A) in paragraph (11), by striking "and" at the end;

(B) in paragraph (12), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(13) not be subject to the recordkeeping and reporting requirements relating to monetary instruments under subchapter II of chapter 53 of title 31, United States Code.".

(2) TITLE 31, UNITED STATES CODE.—Section 5312 of title 31, United States Code, is amended by striking subsection (c) and inserting the following:

"(c) ADDITIONAL CLARIFICATION.—The term 'financial institution' (as defined in subsection (a))—

"(1) includes any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

"(2) does not include a funding portal, as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))."

(d) PROVISION OF IMPERSONAL INVESTMENT ADVICE AND RECOMMENDATIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating the second paragraph (80) (relating to funding portals) as paragraph (81); and

(2) in paragraph (81)(A), as so redesignated, by inserting after "recommendations" the following: "(other than by providing impersonal investment advice by means of written material, or an oral statement, that does not purport to meet the objectives or needs of a specific individual or account)".

(e) TARGET AMOUNTS OF CERTAIN EXEMPTED OFFERINGS.—The Securities and Exchange Commission shall amend paragraph (t)(1) of section 227.201 of title 17, Code of Federal Regulations so that such paragraph applies with respect to an issuer offering or selling securi-

ties in reliance on section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)) if—

(1) the offerings of such issuer, together with all other amounts sold under such section 4(a)(6) within the preceding 12-month period, have, in the aggregate, a target amount of more than $124,000 but not more than $250,000;

(2) the financial statements of such issuer that have either been reviewed or audited by a public accountant that is independent of the issuer are unavailable at the time of filing; and

(3) such issuer provides a statement that financial information certified by the principal executive officer of the issuer has been provided instead of financial statements reviewed by a public accountant that is independent of the issuer.

(f) EXEMPTION AVAILABLE TO INVESTMENT COMPANIES.—Section 4A(f) of the Securities Act of 1933 (15 U.S.C. 77d–1(f)) is amended—

(1) in paragraph (2), by inserting "or" after the semicolon;

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(g) NON-ACCREDITED INVESTOR REQUIREMENTS.—Section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6))) is amended—

(1) in subparagraph (A), by striking "$1,000,000" and inserting "$10,000,000"; and

(2) in subparagraph (B), by striking "does not exceed" and all that follows through "more than $100,000" and inserting "does not exceed 10 percent of the annual income or net worth of such investor".

(h) TECHNICAL CORRECTION.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) by striking the term "section 4(6)" each place such term appears and inserting "section 4(a)(6)";

(2) by striking the term "section 4(6)(B)" each place such term appears and inserting "section 4(a)(6)(B)";

(3) in section 4A(f), by striking "Section 4(6)" and inserting "Section 4(a)(6)"; and

(4) in section 18(b)(4)(A), by striking "section 4" and inserting "section 4(a)".

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to raise the offering amount threshold for when issuers using the crowdfunding exemption are required to file financial statements reviewed by a public accountant who is independent of the issuer, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MEUSER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to raise the offering amount threshold for when issuers using the crowdfunding exemption are required to file financial statements reviewed by a public accountant who is independent of the issuer, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Amendment for Crowdfunding Capital Enhancement and Small-business Support Act of 2025" or the "ACCESS Act of 2025".

SEC. 2. OFFERING THRESHOLD FOR REVIEWS BY PUBLIC ACCOUNTANT.

(a) IN GENERAL.—Section 4A(b)(1)(D) of the Securities Act of 1933 (15 U.S.C. 77d–1(b)(1)(D)) is amended by striking "$100,000" each place such term appears and inserting "$250,000".

(b) TECHNICAL CORRECTION.—Section 4A of the Securities Act of 1933 (15 U.S.C. 77d–1) is amended—

(1) by striking "section 4(6)" each place such term appears and inserting "section 4(a)(6)"; and

(2) by striking "section 4(6)(B)" each place such term appears and inserting "section 4(a)(6)(B)".

[~118H2506]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to exempt off-exchange secondary trading from State regulation where such trading is with respect to securities of an issuer that makes publicly available certain current information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MEUSER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to exempt off-exchange secondary trading from State regulation where such trading is with respect to securities of an issuer that makes publicly available certain current information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Restoring the Secondary Trading Market Act".

SEC. 2. EXEMPTION FROM STATE REGULATION.

Section 18(a) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) shall directly or indirectly prohibit, limit, or impose any conditions upon the off-exchange secondary trading in securities of an issuer that makes current information publicly available, including—

"(A) the information required in the periodic and current reports described under paragraph (b) of section 230.257 of title 17, Code of Federal Regulations; or

"(B) the documents and information specified in paragraph (b) of section 240.15c2–11 of title 17, Code of Federal Regulations.".

[~118H1574]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to permit an individual to invest in private issuers upon acknowledging the investment risks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. DAVIDSON introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to permit an individual to invest in private issuers upon acknowledging the investment risks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Disclosure and Investor Attestation Act".

SEC. 2. INVESTOR ATTESTATION.

(a) IN GENERAL.—Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by redesignating clause (i) as subparagraph (A);

(2) in subparagraph (A), as so redesignated, by striking "or" at the end;

(3) by redesignating clause (ii) as subparagraph (B);

(4) in subparagraph (B), as so redesignated, by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following:

"(C) with respect to an issuer, any individual that has attested to the issuer that the individual understands the risks of investment in private issuers, using such form as the Commission shall establish, by rule, but which form may not be longer than 2 pages in length.".

(b) RULEMAKING.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall issue rules to carry out the amendments made by subsection (a), including establishing the form required under such amendments.

[~118H2652]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to add additional investment thresholds for an individual to qualify as an accredited investor, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STUTZMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to add additional investment thresholds for an individual to qualify as an accredited investor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Investment Opportunity Expansion Act".

SEC. 2. INVESTMENT THRESHOLDS TO QUALIFY AS AN ACCREDITED INVESTOR.

Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by redesignating subparagraphs (i) and (ii) as subparagraphs (A) and (B), respectively;

(2) in subparagraph (A), as so redesignated, by striking "adviser; or" and inserting "adviser;";

(3) in subparagraph (B), as so redesignated, by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

"(C) with respect to a proposed transaction, any individual whose aggregate investment, at the completion of such transaction, in securities with respect to which there has not been a public offering is not more than 10 percent of the greater of—

"(i) the net assets of the individual; or

"(ii) the annual income of the individual.".

[~118H2773]

[DISCUSSION DRAFT]

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the definition of an accredited investor to include individuals receiving advice from certain professionals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the definition of an accredited investor to include individuals receiving advice from certain professionals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCREDITED INVESTORS INCLUDE INDIVIDUALS RECEIVING ADVICE FROM CERTAIN PROFESSIONALS.

(a) SECURITIES ACT OF 1933.—Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15)) is amended—

(1) by striking "(15) The term 'accredited investor' shall mean—" and inserting the following:

"(15) ACCREDITED INVESTOR.—

"(A) IN GENERAL.—The term 'accredited investor' means—";

(2) in clause (i), by striking "or" at the end;

(3) in clause (ii), by striking the period at the end and inserting "; or";

(4) by adjusting the indentation of clauses (i) and (ii) by moving such clauses 2 ems to the right; and

(5) by adding at the end the following:

"(iii) any individual receiving individualized investment advice or individualized investment recommendations with respect to the applicable transaction from an individual described under section 230.501(a)(10) of title 17, Code of Federal Regulations.

"(B) DEFINITIONS.—In subparagraph (A)(iii):

"(i) INVESTMENT ADVICE.—The term 'investment advice' shall be interpreted consistently with the interpretation of the phrase 'engages in the business of advising

others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities' under section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

"(ii) INVESTMENT RECOMMENDATION.—The term 'investment recommendation' shall be interpreted consistently with the interpretation of the term 'recommendation' under section 240.15l–1 of title 17, Code of Federal Regulations.".

(b) CONFORMING CHANGES TO REGULATIONS.—The Securities and Exchange Commission shall revise section 230.501(a) of title 17, Code of Federal Regulations, and any other definition of "accredited investor" in a rule of the Commission in the same manner as such definition is revised under subsection (a).

[118H5273]

.....
(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To permit a registered investment company to omit certain fees from the calculation of Acquired Fund Fees and Expenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To permit a registered investment company to omit certain fees from the calculation of Acquired Fund Fees and Expenses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ACQUIRED FUND FEES AND EXPENSES REPORTING ON INVESTMENT COMPANY REGISTRATION STATEMENTS.

(a) DEFINITIONS.—In this section:

(1) ACQUIRED FUND.—The term "Acquired Fund" has the meaning given the term in Forms N–1A, N–2, and N–3.

(2) ACQUIRED FUND FEES AND EXPENSES.—The term "Acquired Fund Fees and Expenses" means the Acquired Fund Fees and Expenses subcaption in the Fee Table Disclosure.

(3) BUSINESS DEVELOPMENT COMPANY.—The term "business development company" has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)).

(4) FEE TABLE DISCLOSURE.—The term "Fee Table Disclosure" means the fee table described in Item 3 of Form N–1A, Item 3 of Form N–2, or Item 4 of Form N–3 (as applicable, and with respect to each, in any successor fee table disclosure that the Securities and Exchange Commission adopts).

(5) FORM N–1A.—The term "Form N–1A" means the form described in section 274.11A of title 17, Code of Federal Regulations, or any successor regulation.

(6) FORM N–2.—The term "Form N–2" means the form described in section 274.11a–1 of title 17, Code of Federal Regulations, or any successor regulation.

(7) FORM N–3.—The term "Form N–3" means the form described in section 274.11b of title 17, Code of Federal Regulations, or any successor regulation.

(8) REGISTERED INVESTMENT COMPANY.—The term "registered investment company" means an investment company, as defined under section 2(a) of the Investment Company Act of 1940, registered with the Securities and Exchange Commission under such Act.

(b) EXCLUDING BUSINESS DEVELOPMENT COMPANIES FROM ACQUIRED FUND FEES AND EXPENSES.—A registered investment company may, on any investment company registration statement filed pursuant to section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)), omit from the calculation of Acquired Fund Fees and Expenses those fees and expenses that the investment company incurred indirectly as a result of investment in shares of one or more Acquired Funds that is a business development company.

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