



September 25, 2024

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Senator Scott:

The U.S. Chamber of Commerce (“Chamber”) supports S.5139, the “Empowering Main Street in America Act of 2024” (“EMSAA”). Your continued leadership on capital formation and governance issues is critical for the policies necessary to allow businesses to grow from small to large, empower investors, and increase the transparency and accountability of the Securities and Exchange Commission (“SEC”). The Chamber welcomes this opportunity to work with you and all members of Congress on a bipartisan basis to advance these reforms at a critical juncture for the U.S. economy.

Twelve years ago, Congress passed the bi-partisan Jumpstart Our Business Startups (“JOBS”) Act, which helped reinvigorate the IPO market and introduced new methods of raising capital for small and startup businesses. Congress took this action because the SEC had failed to address changing market conditions and investor needs. Accordingly, antiquated regulatory systems were misaligned with statutory obligations to facilitate capital formation. Unfortunately, the current leadership at the SEC has again neglected this mandate: since 2021, not one item on the SEC’s regulatory agenda has intended to directly help expand capital access for small businesses or provide Main Street investors with new opportunities to create wealth. It is time for Congress to act.

The Chamber has submitted dozens of recommendations to Congress – including for the “JOBS Act 4.0” package released by members of the Senate Banking Committee in 2022 – that would increase capital formation and job creation throughout the economy. The Chamber appreciates that several of its proposed ideas are contained within the EMSAA, and is actively supportive of the following provisions:

Section 101 – Helping Startup Companies Continue to Grow

This provision would increase the threshold for emerging growth company (“EGC”) eligibility to \$2 billion in annual revenue. The JOBS Act set an initial threshold for EGCs of \$1 billion in annual revenue, however the threshold today does not accurately reflect inflation or the growth of the markets or broader economy since 2012. Tailoring exemptions for EGCs would provide relief for those companies while keeping strong investor protections in place, providing confidence in the accuracy of public filings. Expanding the number of businesses eligible for EGC status will help incentivize more public offerings, which are essential for long term growth, job creation, and investor opportunities.

Section 102 – Micro-Offering Exemption

This section includes the Small Entrepreneurs’ Empowerment and Development (“SEED”) Act, which would provide an exemption from state and federal registration requirements for “micro-offerings” that do not exceed \$500,000 in the aggregate. This would benefit entrepreneurs who are looking to raise relatively small amounts of capital and who cannot afford costly legal and registration requirements. Importantly, this bill would also prevent bad actors from participating in such offerings.

Section 103 – Qualifying Venture Funds

This provision would promote venture capital investing in all regions of the country. Section 103 amends the requirements for a fund to be able to rely on the qualifying venture capital fund exemption under Section 3(c)(1) of the Investment Company Act. This would help mitigate regulatory burdens that disincentivize fund formation and choke off capital to startup firms. The United States must maintain its global edge in venture capital and early stage investing due to increased global competition for venture capital, including from China.

Section 104 – Smaller Reporting Company Definition

Smaller reporting companies (“SRCs”) are defined by SEC regulation using public float thresholds, and SRCs are eligible for exemptions from certain SEC reporting requirements. Increasing the public float threshold to \$700 million would more accurately reflect the comparative size of smaller public companies in today’s markets and would provide cost-savings for shareholders of these companies while still providing investors with the information and disclosure necessary to make investment decisions.

Section 105 – Crowdfunding Amendments

The JOBS Act established the first legal and regulatory framework for equity crowdfunding offerings. However, many startup businesses have struggled to take advantage of the new rules. These reforms would clarify and exempt small crowdfunding offerings from unduly burdensome reporting requirements and encourage startups to focus more on investor outreach and capital raising.

Section 106 – Definition of VC Fund

The Developing and Empowering our Aspiring Leaders (“DEAL”) Act would refine registered investment adviser (“RIA”) rules promulgated by the SEC that have disincentivized venture capital funds from investing in EGCs. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection (“Dodd-Frank”) Act sought to exempt venture capital funds from the costs and challenges associated with becoming an RIA. However, the definition of “venture capital fund” promulgated by the SEC pursuant to Dodd-Frank was too narrow and did not meet the statutory obligation of a full venture capital exemption. The current definition ignores critical elements and developments related to the venture capital industry, including growth equity firms which can often be investors in EGCs around the time they are considering a public offering. Shares of EGCs, including the purchase of EGC shares on the secondary market, should be considered qualifying investments to encourage growth. Creating a more accurate venture capital exemption definition – which the DEAL Act would do – would expand the pool of possible investors for EGCs.

Section 108 – Rural Job Creators

This section would expand the focus of the Office of the Advocate for Small Business Capital Formation at the SEC to include finding ways to increase capital access for rural small businesses. Impacts of regulations to rural areas should receive due consideration during any future SEC rulemaking process. This is an incremental but important step that would focus the SEC on the needs of businesses in rural communities and help to deploy capital across the entire country.

Section 109 – Small Entity Definition

Small and startup businesses typically bear a disproportionate cost of regulation, and the Chamber has long held concerns that many SEC rules are not properly calibrated in a way that balances investor protection with the SEC’s mandate to facilitate capital formation. This bill would direct the SEC to modernize the criteria for defining a “small entity” to reflect the growth of the U.S. economy and the evolution of the capital markets since the last time the small entity definition was adjusted. At the same time, the Chamber believes that requiring the SEC to issue a report every five years on the definition of “small entity” is duplicative.

Section 201 – Accredited Investor

The SEC's accredited investor rules – which largely rely on income and net worth thresholds to determine the “sophistication” of an individual investor – effectively prohibit millions of Americans from diversifying their portfolios and investing in private offerings. Allowing individuals to demonstrate, through an examination, that they understand basic concepts and inherent risks in investing will allow investors to access a substantial asset class and mitigate risk in their portfolios. It will also expand the pool of potential capital for businesses that raise funds through private channels.

Section 204 – Closed End Funds

This provision would create a more competitive investment environment by allowing publicly offered closed-end funds (“CEFs”) to invest any or all of their assets in private securities. This change would boost capital formation for startup businesses while allowing retail investors more exposure and the potential for a greater return on investment.

Section 205 – Enhancing 403(b) Plans

The Retirement Fairness for Charities and Educational Institutions Act, which has bipartisan support, would authorize 403(b) retirement plans to invest in collective investment trusts (“CITs”). CITs are subject to the Employee Retirement Income Security Act (“ERISA”) and invest the funds of tax-exempt retirement plans in various asset classes, thus diversifying the investments of these plans and improving long-term performance for beneficiaries. CITs are becoming increasingly popular amongst plan sponsors due to the investment choices they offer and the cost advantages they provide versus other investment vehicles. However, 403(b) plans – which invest the retirement savings of nonprofit and education workers – are restricted when it comes to investing in CITs. This legislation would level the playing field between 403(b) plans and 401(k) plans by permitting 403(b) plans to invest some of their assets in CITs.

Section 305 – Shareholder Proposals

Section 305 would correct the damage that has been wrought by the ill-advised SEC Staff Legal Bulletin 14L (“SLB 14L”) and the SEC's general approach toward administration of Exchange Act Rule 14a-8 since 2021. The SEC's decisions have directly led to a proliferation of costly and frivolous shareholder proposals dealing with subjects that have negligible or nonexistent relation to the long-term performance of

public companies. Main Street shareholders pay for the costs and distractions that come with such proposals, and allowing special interests to hijack the securities laws presents another roadblock for companies that are considering going public. This provision would make a simple change to allow public companies to exclude shareholder proposals that deal with immaterial topics.

Title IV – SEC Transparency and Accountability

The Chamber strongly supports the oversight mechanisms contained in Title IV, including a requirement that the SEC testify regularly before Congress and provide semiannual reports regarding regulatory and enforcement actions. The Chamber has also long supported the cost-benefit requirements included in Section 403 which would allow the public to better understand the true purposes and consequences of SEC rulemakings.

The Chamber commends you for your leadership on these critical issues and looks forward to working with all members of Congress to advance these reforms.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK', with a long, sweeping horizontal stroke extending to the right.

Tom Quaadman
Senior Vice President
Economic Policy
U.S. Chamber of Commerce