CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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October 10, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hensarling and Ranking Member Waters:

The U.S. Chamber of Commerce strongly supports several bills the Committee is scheduled to markup on October 11, 2017. The Chamber appreciates the Committee's ongoing work to enhance capital formation, hold regulators accountable, and reduce red tape burdens upon American businesses and consumers. The Chamber supports the following bills.

H.R. 477, the "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017," would simplify Securities and Exchange Commission (SEC) registration requirements for certain mergers and acquisitions (M&A) brokers who perform services related to the transfer of ownership of smaller private companies. The legislation properly balances regulatory relief for brokers and businesses involved in such transactions with important investor protections to prevent abuse. H.R. 477 would require disclosure of relevant information to investors and would not exempt M&A brokers from existing rules designed to prevent those who violate the law from continuing to work in the securities business.

H.R. 1116, the "Taking Account of Institutions with Low Operation Risk (TAILOR) Act of 2017," would direct federal banking regulators to scale rulemakings in order to properly reflect the various risk profiles of financial institutions. One of the unfortunate developments in recent years has been "one size fits all" regulation in the banking sector. This legislation would ensure that community and regional financial institutions are not forced to comply with regulatory regimes more suited for global, interconnected institutions.

H.R. 1585, the "Fair Investment Opportunities for Professional Experts Act," would expand the definition of "accredited investor" under securities laws by allowing those who can demonstrate relative education or work expertise to invest in certain private offerings, regardless of their income or net worth. In addition to providing Main Street households with greater opportunities to build wealth, H.R. 1585 would expand the pool of capital available to private businesses.

H.R. 1645, the "Fostering Innovation Act of 2017," would extend the Sarbanes-Oxley 404(b) internal controls exemption for certain emerging growth companies (EGCs) from five years to ten. This change would prevent the premature phase out of one of the more popular provisions of

the 2012 Jumpstart our Business Startups ("JOBS") Act, and would provide a further incentive for companies to enter public markets.

H.R. 2201, the "Micro Offering Safe Harbor Act," would provide a means for businesses to solicit and raise limited amounts of capital without running afoul of securities laws. Private businesses would be permitted to seek community-based financing of up to $500,000 per year in order to expand or hire new employees. Importantly, the bill includes a number of robust investor protections that would help prevent fraud and abuse in the market.

H.R. 2396, the "Privacy Notification Technical Clarification Act," would amend the 1999 Gramm-Leach-Bliley Act by clarifying that financial institutions are only required to send customers annual privacy notifications if there have been changes in the institution's privacy policies. It also clarifies that such notices need not be physically provided to a customer if they are made available online at the customer's request. These provisions would save costs for consumers and mitigate confusion related to privacy notices.

H.R. 2706, the "Financial Institution Customer Protection Act of 2017," would help prevent another "Operation Chokepoint" by prohibiting federal agencies from directing a financial institution to terminate an account without a material, documented reason for doing so. This bill would ensure that agencies do not unjustifiably discriminate against certain industries. The bill would also clarify liability under the Financial Institutions Reform, Recovery, and Enforcement Act. A House investigation of Operation Choke Point revealed the Obama administration Department Of Justice had radically and inappropriately reinterpreted the law.

H.R. 3299, the "Protecting Consumers Access to Credit Act of 2017," would codify the "valid-when-made" doctrine, which states that the characteristics of a loan are valid at origination, and are not unenforceable when assigned to another party. The recent Second Circuit decision in the *Madden vs. Midland Funding, LLC* case has undermined this doctrine and threatens to impose a chilling effect on credit markets nationwide. H.R. 3299 would restore the longstanding "valid-when-made" legal principle and protect consumers and businesses that rely on robust credit markets.

H.R. 3312, the "Systemic Risk Designation Improvement Act of 2017," would replace Dodd-Frank's arbitrary asset threshold for labeling a bank "systemically important" with a multi-factor, tailored assessment that considers size, interconnectedness, substitutability, complexity, and cross-jurisdictional. Mid-size and regionals banks do not generate systemic risk and are critical to small business lending. By tailoring regulation and rejecting a one-size-fits-all approach, H.R. 3312 would promote Main Street access to credit and unlock economic growth.

H.R. 3857, the "Protecting Advice for Small Savers (PASS) Act of 2017," would repeal the misguided "fiduciary rule" issued by the Department of Labor (DOL) in 2016. The DOL rule was built upon a fundamentally flawed and theoretical analysis that has been refuted by real life experience. A recent Chamber survey demonstrated the harm that DOL's rule is already inflicting upon investors, and we have long called for the SEC to assert its jurisdiction regarding standards of conduct for broker-dealers and investment advisers. H.R. 3857 would rightly direct SEC to craft a rulemaking under the securities laws to protect investors and preserve access to investment choice.

H.R. 3903, the "Encouraging Public Offerings Act of 2017," would allow any company – regardless of size or EGC status – to take advantage of the popular provisions under Title I of the 2012 JOBS Act, which include allowing investors to submit confidential draft registration statements with the SEC and to "test the waters" before filing an IPO. Title I of the JOBS Act has proven to be a true policy success, and Congress and the SEC should continue to explore how more companies can take advantage of its provisions.

H.R. 3911, the "Risk-Based Credit Examinations Act of 2017," would authorize the SEC to utilize 'risk-based' examinations of Nationally Recognized Statistical Rating Organizations (NRSROs), which would allow the SEC to focus its limited resources and prioritize its examination agenda, while reducing unnecessary compliance burdens on regulated entities.

H.R. 3948, the "Protection of Source Code Act," would amend the Securities Act of 1933 to require that the SEC actually issue a subpoena before requiring a person or entity to produce trading "source code." Source code is the intellectual property of certain market participants, and there is no reason for the SEC to put into place a broad collection mechanism for such sensitive information. This legislation is necessary after past attempts by the Commodity Futures Trading Commission (CFTC) to collect source code without a subpoena.

H.R. 3972, the "Family Office Technical Correction Act of 2017," would provide certainty for "family offices" defined under securities laws by clarifying that such offices are accredited investors. This bill would preserve the ability of family offices to invest in certain private offerings and help them remain an important source of capital for growing businesses.

H.R. 3973, the "Market Data Protection Act of 2017," would delay any reporting to the consolidated audit trail (CAT) until the SEC, Financial Industry Regulatory Authority (FINRA), and CAT operators develop sufficient cybersecurity protocols to protect the information that is set to be collected under the CAT. Recent cyberattacks have demonstrated that vulnerabilities exist within our capital markets, and H.R. 3973 would help safeguard the personal and sensitive information of market participants. The SEC should also explore alternatives to using personally-identifiable information as part of its data collection efforts under the CAT.

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Collectively, these bills would modernize capital markets, preserve consumer choice and access to credit, and require more transparency and accountability of the federal financial regulators. We look forward to working with the Committee and Congress as these bills advance through the legislative process.

Sincerely,

Neil Bradley

cc: Members of the House Committee on Financial Services