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Before the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Capital Markets

"A Roadmap for Growth: Reforms to Encourage Capital Formation and Investment Opportunities for All Americans"

April 19, 2023

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Chairman Wagner, Ranking Member Sherman,
and Members of the Subcommittee:

Thank you for inviting me to appear before you today.

Introduction

Based on my experience as part of the IPO Task Force leadership, I am pleased to share my perspectives on reforms to encourage capital formation and investment opportunities. I have been a securities lawyer for nearly thirty years and have advised on hundreds of initial public offering (IPO) transactions in my capacity as co-chair of my law firm's National Office, which is our central resource for clear, pragmatic, and action-oriented U.S. securities law advice. We offer an unparalleled ability to deliver sophisticated advice in real time on the most challenging securities law and IPO issues that clients face. I am speaking to you today in my personal capacity and not on behalf of my law firm or any of our clients.

As a leader of the IPO Task Force, I was involved extensively in 2011 with other members of the Task Force leadership team in preparing and formulating our recommendations to the U.S.

Department of the Treasury, providing specific measures for policymakers to use to increase U.S. job creation and drive overall economic growth by improving access to the public markets for emerging growth companies.[1] The IPO on-ramp refers to our recommendations for streamlining the IPO process. Congress enacted our IPO on-ramp proposal as Title I of the JOBS Act of 2012, which President Obama signed into law in a Rose Garden ceremony. Title I has been called the "most successful title in the JOBS Act," and academic research has concluded that the on-ramp provisions "significantly increased IPO volume overall."[2]

The JOBS Act is a bipartisan success story that provides a model for new initiatives today. The success of the JOBS Act offers important lessons for how to think about a perennial question in the federal securities laws. The question is how to optimize the level of regulation to balance investor protection with market efficiency and capital formation. This goal is consistent with the three-part mission Congress has long assigned to the Securities and Exchange Commission—namely, to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.[3]

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[1] IPO Task Force, "Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth" (Oct. 20, 2011) [hereinafter "Task Force Report"], available at https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf.

[2] Michael S. Piwowar, Testimony, U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets (Mar. 9, 2023) (citing Michael Dambra et al., "The JOBS Act and IPO Volume: Evidence that Disclosure Costs Affect the IPO Decision," 116 J. of Fin. Economics 121 (2015)), available at https://docs.house.gov/meetings/BA/BA16/20230309/115394/HHRG-118-BA16-Wstate-PiwowarM-20230309.pdf.

[3] See, e.g., Securities Act of 1933, 15 U.S.C. § 77b(b) ("Whenever . . . the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."); Securities Exchange Act of 1934, 15 U.S.C. § 77b(f) (same).

The three-part mission is ubiquitous on the SEC's website. See, e.g., About the SEC ("The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation."), available at https://www.sec.gov/about.

This is an especially important topic. First, IPOs have a demonstrable effect in fostering job creation. Easing the path to going public and streamlining the ability to operate as an ongoing public company have important benefits not only to our capital markets but to the job creation that public companies foster. Second, as other jurisdictions consider market reform, it is especially important for securities markets in the United States to encourage capital formation by maintaining their global competitive edge.

My purpose today is to build on, rather than duplicate, the excellent testimony you have already received from other witnesses. Michael S. Piwowar, a former SEC commissioner and trained economist with a Ph.D. in finance, has detailed the connection between capital formation and job creation and the implications for the proposals before you.[4] Anna T. Pinedo, a respected securities law expert with decades of capital markets experience, has provided her recommendations on many of the specific proposals.[5] I would like to add my perspective based on my experience with the IPO Task Force and in helping create Title I of the JOBS Act. As we look back on more than a decade of experience under the JOBS Act, we can learn important lessons from that highly successful bipartisan legislation adopted by an overwhelming majority of both houses of Congress.

Balancing Rather than Increasing or Reducing Regulation

Often the debate is about more regulation or less regulation, with the predictable stalemate that inevitably results. On the one hand, those who want more regulation focus on the costs that fraud imposes. They see more regulation as a way to reduce fraud-related costs and bolster investor confidence. On the other hand, those who want less regulation focus on the costs that regulatory compliance entails. They see less regulation as a way to reduce compliance

[4] Piwowar, *supra* note 2.

[5] Anna T. Pinedo, Testimony, U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets (Mar. 9, 2023), available at https://docs.house.gov/meetings/BA/BA16/20230309/115394/HHRG-118-BA16-Wstate-PinedoA-20230309.pdf.

costs, freeing up capital for companies to hire more employees and invest in research and development.

But the JOBS Act showed a way forward in this debate: Not more versus less regulation, but balanced regulation that scales over time. Companies can be encouraged to enter the public markets through regulatory accommodations that offer an on-ramp to public company status. This approach encourages IPO activity while maintaining the existing—and continuously increasing—level of securities regulation for mature public companies. Using this type of balanced approach to enhance the design of regulatory compliance obligations will prove increasingly important as SEC rules continue to become more expansive and complex.

Template for Success: What the JOBS Act Did Not Do

Three key features of the JOBS Act warrant special emphasis. They are often overlooked because these features do not appear in the statute. They are, instead, elements that the statute did not contain. In my view, they are fundamental aspects of the legislation that allowed it to gain overwhelming bipartisan support in both houses of Congress.

First, the JOBS Act did not repeal any of the new securities laws and regulations that Congress and the SEC had adopted in the prior decade. Instead, the innovations in the IPO on-ramp provisions provided a limited group of companies with a limited number of regulatory accommodations for a limited period of time. Eventually, the full panoply of regulatory obligations would apply to those public companies when they would cease to qualify as emerging growth companies.

Second, the JOBS Act did not alter any of the robust antifraud provisions of the federal securities laws. The demanding liability matrix of both the Securities Act of 1933 and the Securities Exchange Act of 1934 remained completely unchanged. This is of paramount importance in understanding the limited nature of the changes embodied in the JOBS Act. In Appendix A to these remarks, I have summarized some of the compliance obligations that apply to all U.S. domestic public companies, including emerging growth companies. They are extensive and rigorous.

Third, the JOBS Act did not limit the IPO on-ramp accommodations to a junior-varsity category of favored companies. Instead, the definition of emerging growth company was designed to include nearly all IPOs. Had the statute limited the IPO on-ramp's availability only to a narrow category of small-revenue companies, it would have created a second-class IPO that would have failed to garner the immediate and widespread market acceptance that the IPO on-ramp regime experienced. Practitioners who are familiar with some of the SEC's small business initiatives understand this phenomenon.[6]

Template for Success:
What the JOBS Act Did

Three additional features of the IPO on-ramp contributed to its decisive success. These are affirmative design elements that do appear in the statutory framework, and they are similarly instructive for future legislative solutions.

First, the IPO on-ramp concept allowed the regulatory burden to scale to the size of the affected company. This is a simple but powerful concept borrowed from SEC rules in other areas. For example, the first annual report of all newly public companies, regardless of the company's size, need not comply with the requirement to include an external audit of internal controls. This is a pre-existing transition period that the SEC adopted in implementing its rules under the Sarbanes-Oxley Act of 2002. This transition period inspired the IPO Task Force's recommendation to provide a meaningful on-ramp transition period for newly public emerging growth companies. The approach also resolves an otherwise intractable debate over repealing recent regulatory enactments versus adopting increased levels of regulation in response to recent events. An on-ramp allows new regulations to stay in place while offering smaller companies a finite time in which they benefit from regulatory accommodation.

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[6] For example, the SEC's annual report on Form 10-KSB for small business issuers offered the advantage of scaled disclosure through abbreviated reporting but failed to achieve widespread market acceptance due to the stigma of the SB designation.

Second, the IPO on-ramp comprised multiple small changes that would have an outsized impact in streamlining the IPO process. Examples include modernizing the IPO communications restrictions, permitting the SEC review process to begin confidentially, and allowing scaled disclosure. In each instance, a small change made a big difference in how IPOs are conducted. The JOBS Act fundamentally changed the IPO playbook, offering more flexibility in the offering process and an easier path to compliance as a newly public company.

Third, the IPO on-ramp's statutory text was wisely self-executing rather than relying on rulemaking mandates that require agency action. In this regard, the JOBS Act is itself a study in contrasts: the IPO on-ramp provisions in Title I were immediately effective the moment that President Obama signed the bill into law on April 5, 2012, whereas other parts of the statute required SEC rulemaking by specified deadlines, none of which were met. The Dodd-Frank Act of 2010 presents a similar dichotomy: its self-executing provision exempting non-accelerated filers from the requirement to provide an external audit of internal controls became effective immediately, whereas the clawback rulemaking mandate will not be implemented until later this year, thirteen years after Congress mandated that rulemaking.[7]

JOBS Act History

The first decade of the new millennium saw an unprecedented number of new SEC rulemakings, and public companies faced an equally unprecedented level of securities regulatory compliance obligations. Congress enacted the Sarbanes-Oxley Act of 2002 in response to a wave of corporate scandals involving meltdowns of major public companies with huge market capitalizations. Less than a decade later, Congress enacted the Dodd-Frank Act of 2010 in response to the global financial crisis and the seemingly overnight meltdown of some of the largest financial institutions in the world. Together, these two statutes and the SEC rules that followed

[7] *Compare* Section 989G of the Dodd-Frank Act (providing a self-executing provision that, in 2010, immediately exempted non-accelerated filers from Section 404(b) of the Sarbanes-Oxley Act) *with* Section 954 of the Dodd-Frank Act (mandating SEC rulemaking to implement clawback requirements that, as of April 19, 2023, have not yet become effective).

introduced major levels of new corporate governance requirements and securities regulation. Public companies now faced much higher compliance obligations.

Not only had the compliance burden increased, but it was sometimes wildly underestimated. The SEC correctly anticipated in 2003 that its rules implementing Section 404 of the Sarbanes-Oxley Act would "discourage some companies from seeking capital from the public markets" because those "rules increase the cost of being a public company."[8] However, the SEC's cost-benefit analysis supporting its adoption of the rules underestimated by orders of magnitude the true annual cost of compliance implementation. Specifically, the SEC estimated Section 404(a) compliance costs at a mere $91,000 per company.[9] But, in fact, a survey of large public companies complying with the new rules under Section 404 during the first year indicated that compliance costs averaged $4.36 million and 27,000 hours.[10] These and other compliance obligations, over the course of a decade, "significantly and continuously increased the compliance burden associated with public company status and made IPOs more costly and difficult."[11]

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[8] Release No. 33-8238 (June 5, 2003) at text accompanying n.174 (implementing Sarbanes-Oxley Section 404).

[9] Id. The $91,000 estimate excluded "the costs associated with the auditor's attestation report, which many commenters have suggested *might* be substantial." Id. (emphasis added).

[10] See Financial Executives International, FEI Special Survey on SOX 404 Implementation (March 2005).

[11] Task Force Report at 21; see also Release Nos. 33-9136 & 33-9259 (implementing Section 404 of the Sarbanes-Oxley Act through rules expected to "discourage some companies from seeking capital from the public markets" because those "rules increase the cost of being a public company"); Release No. 33-7881 (adopting Regulation FD); Release No. 33-8048 (requiring additional disclosures regarding equity awards); Release No. 34-42266 (requiring specific disclosures regarding audit committees); Release No. 34-46421 (requiring accelerated reporting of insider beneficial ownership); Release No. 33-8124 (requiring officer certifications under Sarbanes-Oxley Section 302); Release Nos. 33-8128 & 33-8128A (requiring accelerated filing of periodic reports and disclosure regarding website access to such reports); Release No. 33-8176 (adopting disclosure requirements regarding non-GAAP financial measures); Release No. 34-47225 (restricting officer and director transfers of equity securities during pension fund blackout periods); Release Nos. 33-8177 & 33-

In October 2010, President Obama met with Steve Jobs. Walter Isaacson's biography of the legendary founder and CEO of Apple Inc. recounts the 45-minute meeting:

> Jobs did not hold back. "You're headed for a one-term presidency," Jobs told Obama at the outset. To prevent that, he said, the administration needed to be a lot more business-friendly. He described how easy it was to build a factory in China, and said that it was almost impossible to do so these days in America, largely because of regulations and unnecessary costs.[12]

8177A (requiring disclosure regarding code of ethics and audit committee financial experts); Release No. 33-8180 (requiring seven-year retention of audit work papers under Sarbanes-Oxley Section 802); Release No. 33-8182 (requiring disclosure regarding off-balance sheet arrangements); Release No. 33-8183 & 33-8183A (requiring audit committee pre-approval of audit and non-audit services, audit partner rotation, auditor reports to audit committees, enhanced disclosure regarding audit and non-audit fees and adopting additional requirements for auditor independence); Release No. 33-8185) (requiring attorneys to report evidence of a material violation of securities laws); Release No. 33-8220 (adopting heightened independent requirements for listed company audit committees); (Release No. 33-8230) (requiring electronic filing and website posting of reports under Exchange Act Section 16); Release No. 33-8238 (implementing Sarbanes-Oxley Section 404 requiring an annual management's report and auditor attestation on internal control over financial reporting); Release No. 33-8340 (requiring disclosures regarding nominating committee functions and security-holder communications); Release No. 33-8350 (adopting guidance regarding management's discussion and analysis of financial condition and results of operations); Release Nos. 33-8400 & 33-8400A (increasing the events reportable on Form 8-K and accelerating the reporting deadline); Release No. 33-8565 (interpreting Regulation M to prohibit certain conduct in connection with IPO allocations); Release No. 33-8644 (adopting accelerated deadlines for periodic reporting); Release Nos. 33-8732 & 33-8732A (adopting additional requirements for disclosures relating to executive compensation, including compensation discussion and analysis); Release Nos. 33-9002 and 33-9002A (requiring financial statement data in an interactive data format using XBRL technology); Release No. 33-9089 (requiring additional disclosures regarding corporate governance matters in proxy statements); Release No. 33-9106 (providing interpretive guidance regarding disclosure required in respect of climate change issues).

[12] Walter Isaacson, *Steve Jobs* 544 (2011).

Three months after Jobs implored President Obama to fix burdensome regulations and unnecessary costs, the President took up that task, highlighting a new priority in his State of the Union Address of January 2011. His administration would review government regulations to address "rules that put an unnecessary burden on businesses":

> To reduce barriers to growth and investment, I've ordered a review of government regulations. When we find rules that put an unnecessary burden on businesses, we will fix them.[13]

Two months later, the Obama Administration convened its Access to Capital Conference led by Treasury Secretary Tim Geithner. The March 2011 conference at the Department of the Treasury brought together policymakers, entrepreneurs, investors, academics, and other market participants to explore how to promote access to capital at each stage of growth from seed capital to accessing the public markets. Secretary Geithner convened the conference in part to "examine the causes of IPO decline and to explore solutions."[14]

The Treasury Department's Access to Capital Conference resulted in the formation of the IPO Task Force. We set out to study the decline in IPO activity and recommend changes to make it easier for companies to go public. That is because private companies have two principal ways of returning capital to their early-stage investors: either through a company sale to an acquirer or by going public. Acquired companies are absorbed into a larger enterprise, often with efficiencies realized through the elimination of redundant positions. In contrast, the research of the IPO Task Force showed that companies that go public experience over 90% of their job growth

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[13] Barack Obama, State of the Union Address (Jan. 25, 2011), available at https://obamawhitehouse.archives.gov/the-press-office/2011/01/25/remarks-president-barack-obama-state-union-address-prepared-delivery.

[14] James Freeman, "How Silicon Valley Won in Washington," *Wall Street Journal* (Apr. 6, 2012), available at https://www.wsj.com/articles/SB10001424052702303299604577326270090887812.

post-IPO.[15] Given the direct connection between IPO activity and job growth, we wanted to restore the balance between the M&A and IPO alternatives that a private company faces when the time is right to return early-stage investment capital and pursue its next level of growth.

We issued the IPO Task Force report in October 2011. Two months later, our recommendations became the basis of Title I of the JOBS Act when, in December 2011, bipartisan co-sponsors in both the Senate and the House of Representatives introduced bills to enact the IPO Task Force's recommendations.

Maintaining Perspective

Testifying in December 2011 before the Securities Subcommittee of the Senate Banking Committee, Harvard Law Professor John Coates described the bipartisan IPO on-ramp bill (which ultimately became Title I of the JOBS Act) as "the most carefully written and calibrated" and "cautious" of the several bills that in combination became the JOBS Act. He also characterized the bill as "an experiment" that "would be a good idea to try."[16]

Professor Coates's description of the IPO on-ramp as an "experiment" drew a memorable response from Senator Pat Toomey (R-Pa.). To the contrary, said Senator Toomey, rather than "experimental," the IPO on-ramp bill was a "very constructive" step to provide a limited period during which a limited number of companies would be "relieved of a relatively new regulation":

> I just want to comment on the characterization . . . made about these bills as a series of proposals for experiments. At least in the case of [the IPO on-ramp bill], certainly, it seems to me that one of the central provisions, one of the most important provisions in this bill, if not the most important provision, is the

[15] Task Force Report at 5 (citing Venture Impact Study 2010 by IHS Global Insight).

[16] Hearing of the Securities, Insurance and Investment Subcommittee of the Senate Banking, Housing and Urban Affairs Committee (Dec. 14, 2011), available at https://www.banking.senate.gov/hearings/examining-investor-risks-in-capital-raising.

> fact that it would allow these emerging growth companies for a limited period of time, so a very small subset of all companies for a limited period of time, to simply be relieved of a relatively new regulation, which is 404(b) of Sarbanes-Oxley, which is only about 10 years old.
>
> So for untold previous decades, while the United States capital markets became the largest, deepest, most efficient, most sophisticated, most advanced markets in the history of the world, we never had any such regulation during that entire period of time. So to suggest that we simply go back to that regime for a brief period for a small subset of companies doesn't strike me as terribly experimental, but it does strike me as very constructive for the companies that would otherwise be faced with the very, very expensive cost of complying with this provision.[17]

If the IPO on-ramp was an experiment, it has succeeded. After more than a decade of experience under the IPO provisions of the JOBS Act, Senator Toomey's remarks have proved prescient.

His remarks also offer an important reminder about designing balanced compliance obligations that scale based on a company's size and maturity. As legal and regulatory compliance burdens continue to accrete with new legislation and SEC rulemakings, a limited accommodation period for a limited number of companies can provide a constructive and tailored approach to regulatory compliance. The success of the JOBS Act confirms that compliance obligations can and often should provide for an extended transition period for newly public companies, and the category of emerging growth companies offers a useful vehicle for doing so.

Small Changes Can Make a Big Difference

Last month, a witness told this Subcommittee that the public company compliance obligations are so extensive that they cannot

[17] Id.

be reduced enough to make any meaningful difference to private company executives considering whether to pursue an IPO and that "neither Congress nor the SEC would ever be able to lower the public company bar enough to materially alter that calculus."[18]

That claim, if true, sounds more like an urgent call to corrective action than a basis for complacent resignation. But, in fact, the claim is not true. I doubt any lawyer with meaningful IPO experience would make such a claim. It is reminiscent of Professor Coates's agnosticism in 2011 when assessing the potential efficacy of the IPO on-ramp provisions.

First, incremental changes can have a disproportionately positive impact. The IPO on-ramp demonstrated this with targeted, incremental changes that streamlined the IPO process in meaningful ways. These incremental changes with outsized impact included (i) permitting offering-related communications to institutional accredited investors before and during the offering process; (ii) allowing companies to begin the SEC review process confidentially; (iii) scaled, less extensive disclosures; and (iv) relief from the requirement to provide an external audit of internal controls, wholly separate from the external audit of the company's financial statements. The SEC and its staff extended the first two accommodations for all companies based on years of successful experience with the IPO on-ramp. And the IPO Task Force based the latter two accommodations on pre-existing exceptions available to smaller companies before the JOBS Act.

Second, some of the incremental changes of the IPO on-ramp offer meaningful cost savings. One example is the ability to go public using two years rather than three years of audited financial statements. That offers a meaningful savings in financial statement audit costs. Another, even more significant example is relief from the requirement to provide an external audit of internal controls. As Senator Toomey demonstrated in his remarks in 2011, that accommodation makes a real difference to a newly public company. An annual internal controls audit can easily cost $1 million or more.

[18] Stacey L. Bowers, Testimony, U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets (Mar. 9, 2023), available at https://docs.house.gov/meetings/BA/BA16/20230309/115394/HHRG-118-BA16-Wstate-BowersS-20230309.pdf.

That money would otherwise go straight to the bottom line. For a software company trading at a 12x EBITDA multiple, $1 million in compliance costs equals $12 million in enterprise value.

Do not discount incremental changes. When carefully chosen, they can make a big difference. In Appendix B to these remarks, I have summarized proposals to increase economic growth and job creation by facilitating capital formation, many of which are reflected in bills under current consideration.

Looking Back On a Decade of Success

In 2012, the JOBS Act had plenty of detractors. Some critics of the IPO on-ramp predicted that the regulatory accommodations were too extensive and would lead to increased fraud and a crisis of investor confidence that would cause more harm to the IPO market. These critics overlooked the effect of the extensive and rigorous liability provisions of the federal securities laws that would continue to apply to all IPOs and public companies. Other critics of the IPO on-ramp claimed that the changes were unlikely to make a meaningful difference or that the new accommodations would fail to gain market acceptance. These critics proved mistaken when market acceptance of the IPO on-ramp quickly ensued. Moreover, the SEC and its staff followed Congress's lead by extending two of the key on-ramp accommodations—confidential SEC review and testing-the-waters—to apply to all companies across the board. Today, the IPO on-ramp provisions of the JOBS Act have been vindicated, and no serious detractors remain after more than a decade of successful experience.

That is why the story behind the JOBS Act merits your careful consideration today. It offers a template for successful bipartisan legislation. It offers an approach to balancing compliance obligations to allow for regulatory burdens to scale based on the size and maturity of the affected company. It leaves all regulatory compliance obligations in place for all companies over the long run as they mature into larger enterprises. And it leaves intact all of the extensive and rigorous antifraud liability provisions of the federal securities laws.

Conclusion

Implementing changes to the federal securities laws is no easy task. But the experience of the IPO on-ramp provisions in Title I of the JOBS Act shows the path to success. To conclude, I will highlight four important lessons learned from the IPO Task Force experience.

First, simplicity. Look for small, even seemingly technical, changes that offer a disproportionately significant practical impact.

Second, look for ways to scale the regulatory obligations so that the largest, most mature companies bear the full regulatory compliance burden while smaller and less mature public companies benefit from meaningful regulatory accommodations. The winning regulatory approach is scaled to company size and maturity, building on longstanding approaches that have succeeded in tailoring the level of compliance obligations.

Third, recognize what does not change in the context of proposals for regulatory accommodations. In particular, the robust and comprehensive liability regime of the federal securities laws offers very significant, tried-and-true investor protections that are unaffected by the innovative changes currently before you. Critics of the JOBS Act overlooked this fact when they predicted doom and gloom, but a decade of success has proved them wrong.

Fourth, implement new changes using self-executing statutory text. Enacting clear amendments to the statutory framework is the best way to achieve the intent of Congress and far preferable to mandatory rulemakings, especially given the agency's exceedingly crowded rulemaking docket.

You have the opportunity to build on the success of Title I of the JOBS Act and the lessons it offers us today. Given the direct connection between capital formation and job creation, the opportunity is compelling.

I welcome your questions.

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Appendix A

EXISTING REGULATORY PROTECTIONS UNCHANGED BY THE JOBS ACT OR BY ANY OF THE PENDING PROPOSALS

Investor protections that apply to all public companies
including emerging growth companies

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I. General Antifraud Provisions

A. ***Duty to Disclose All Material Information.*** Rule 12b-20 under the Securities Exchange Act of 1934 requires that companies must, in addition to providing the information expressly required in a report or other statement to the SEC, include any additional material information that may be necessary to make the required statements not misleading in light of the circumstances.

B. ***Liability for False and Misleading Statements.*** Section 18 of the Exchange Act imposes liability for false and misleading statements in documents filed with the SEC to any person who makes such false or misleading statements, subject to applicable defenses.

C. ***Exchange Act Section 10(b) and Rule 10b-5.*** These provisions broadly prohibit fraudulent and deceptive practices and untrue statements or omissions of material facts in connection with the purchase or sale of any security. Unlike Section 18, these provisions apply to any information released to the public by the issuer and its subsidiaries, including press releases and annual and quarterly reports to stockholders.

D. ***Executive Officer Certification of Reports and Financial Statements.*** As discussed in more detail below, a company's certifying officers can be held personally liable for any untrue statement of material fact or material omission necessary to ensure that statements contained in the reports or other statements to the SEC are not misleading.

E. ***Control Person Liability*.** Section 20 of the Exchange Act and Section 15 of the Securities Act of 1933 provide that a person controlling any person liable under those statutes may be liable jointly and severally and to the same extent as its controlled person for violations of the Exchange Act or the Securities Act.

F. ***Liability for Securities Offerings*.** Sections 11 and 12 of the Securities Act impose liability for any material misstatements or omissions made in connection with registered offerings conducted under the Securities Act. Section 5(b)(1) of the Securities Act prohibits the use of any prospectus that does not satisfy SEC requirements. In addition, Section 5(b)(2) of the Securities Act prohibits any registered sale of a security unless the security is preceded or accompanied by a prospectus that satisfies SEC requirements.

II. SEC Disclosure and Reporting Obligations

A. ***Regulation FD*.** Public companies must comply with Regulation FD's prohibition on selective disclosure of material nonpublic information.

B. ***Limitations on Use of Non-GAAP Financial Measures*.** Regulation G and Item 10(e) of Regulation S-K provide specific requirements for the presentation of any financial measures that are not in compliance with generally accepted accounting principles (GAAP). Non-GAAP financial measures must not be misleading and must include a reconciliation to the most nearly comparable GAAP measure.

C. ***Annual Reporting (Form 10-K)*.** Under Section 13(a)(2) of the Exchange Act, Companies must, within 90 days of the end of each fiscal year, file with the SEC annual reports that include:

1. ***Audited Financial Statements*.** Companies must provide (i) audited balance sheets, (ii) audited financial statements of income and cash flows and (iii) summary financial data. All financial statements

must be prepared in accordance with, or reconciled to, GAAP.

2. ***Description of the Business.*** Regulation S-K requires annual reports to include (i) a description of the company's business, including segments, geographic areas, and competitors; (ii) risk factors affecting the business; (iii) pending legal proceedings; (iv) mine safety disclosures; (v) information about directors and officers, including their compensation and any related party transactions; (vi) management's discussion and analysis of financial condition and results of operations (MD&A); (vii) a description of material contractual obligations; (viii) and discussions of off-balance sheet transactions and market risks.

3. ***Market Information.*** Annual reports must also include information about the market for the company's common equity, related stockholder matters and company purchases of equity securities.

4. ***Description of Corporate Governance Policies.*** Annual reports must also disclose information about corporate governance polices and compliance with governance requirements such as (i) whether the company maintains a code of ethics for its principal executive officers, and if so, it must file such code with the SEC as an exhibit to its annual report; (ii) whether the company has at least one audit committee financial expert; (iii) a description of company's leadership structure and why this structure is appropriate; and (iv) a description of risk oversight by the company's board and how such oversight is administered.

D. ***Quarterly Reporting (Form 10-Q).*** Under Section 13(a)(1) of the Exchange Act, public companies must, within 45 days

after each of the first three fiscal quarters of each year, file with the SEC quarterly reports that include:

1. ***Condensed Financial Statements*.** These interim financial statements are unaudited, but are reviewed by independent accountants and subject to the auditing standards for interim reviews.

2. ***Additional Information*.** Quarterly reports must update the annual report in several key areas including (i) MD&A; (ii) any changes in risk factors since the annual report; (iii) quantitative and qualitative disclosures about market risk; (iv) any material legal proceedings; (v) any changes in securities or defaults on senior securities; (vi) mine safety disclosure; and (vii) any other materially important event not reported in previous current reports.

E. ***Current Reporting (Form 8-K)*.** Under Section 13(a)(1) of the Exchange Act, public companies must file current reports with the SEC within four business days after the occurrence of a reportable event, including events such as (i) the acquisition or disposition of significant assets; (ii) a change in auditors; (iii) any departure or resignation of directors or officers; (iv) material plans or contracts with officers and directors; and (v) many other events relevant to investors.

F. ***Certification of Reports*.** Each principal executive officer and principal financial officer must each make individual certifications on each annual and quarterly report.

1. ***Substance of Certification*.** Certifying officers must certify that (i) such officer has reviewed the reports; (ii) based upon the officer's knowledge, the report does contain any untrue statement of material fact or material omission necessary to ensure that statements in the reports are not misleading; and (iii) based on such officer's knowledge, the financial statements, and other financial information included in the reports fairly present, in all material aspects,

the company's financial condition and results of operations and cash flows.

2. ***Internal Control over Financial Reporting*.** Certifying officers are responsible for establishing, designing and maintaining effective internal controls, must annually assess and report on the effectiveness of the internal controls, and must disclose any change in the company's internal controls in annual and quarterly reports.

3. ***Disclosure Responsibilities to the Board of Directors, Audit Committee and Independent Auditors*.** Certifying officers must disclose to the board, audit committee and the company's auditors (i) all significant deficiencies and material weaknesses in the design or operation of internal controls and (ii) any fraud, whether or not material, that involves management or any other employee with a significant role in the company's internal controls.

4. ***Criminal Penalties Enforced Against Certifying Officers*.** Certifying officers that knowingly or willfully certify a report that does not meet the standards summarized above face criminal penalties of up to 20 years in prison and $5 million in fines.

G. ***Additional Requirements*.** The federal securities laws also require public companies to comply with additional disclosure and reporting requirements:

1. ***Accounts and Accounting Controls*.** Section 13(b)(2) of the Exchange Act requires companies to keep books and records that accurately and fairly reflect transactions and dispositions of assets and to maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are executed in accordance with management's authorization and related requirements.

2. ***Foreign Corrupt Practices Act*.** Section 30A of the Exchange Act prohibits public companies and any related persons acting on behalf of a company from bribing any foreign official, political party or candidate for political office for the purpose of obtaining or retaining business.

3. ***Prohibition on Personal Loans to Directors and Executive Officers*.** Section 402 of Sarbanes-Oxley prohibits any issuer from directly or indirectly extending, maintaining or arranging credit in the form of a personal loan to or for any director or executive officer.

4. ***Whistleblower Procedures and Rules*.** Section 301 of Sarbanes-Oxley requires audit committees to establish procedures for confidential and anonymous "receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters." In addition, under the Dodd-Frank Act, the SEC has adopted rules for a program under which monetary awards are given to whistleblowers who disclose fraud directly to the SEC. For successful enforcement actions resulting in monetary sanctions exceeding $1 million, whistleblowers are entitled to receive between 10% and 30% of the monetary sanctions paid to the SEC.

5. ***Regulation M*.** Companies must comply with Regulation M whenever they make or propose to make a "distribution" of their stock. Under Regulation M, neither the company nor any of its "affiliated purchasers" may bid for or purchase, or induce others to bid for or purchase, any company stock during the applicable "restricted period" unless a specified exception is available.

6. ***Self-Tenders*.** Rule 13e-4 under the Exchange Act applies to any tender offer for a company's shares by the company or one of its affiliates. Under Rule 13e-4, the proposed purchaser must file with the SEC and

promptly disseminate public disclosure regarding the proposed purchaser, the issuer and the offer. In addition, the offer must be held open for a minimum period, stockholders must receive withdrawal rights, and other requirements apply to such transactions.

7. ***Open-Market Repurchases*****.** Public companies typically rely on Rule 10b-18 under the Exchange Act to secure a safe harbor from the anti-manipulation requirements of the Exchange Act in connection with open-market bids and purchases made by an issuer with respect to its own shares.

8. ***Going-Private Transactions*****.** Rule 13e-3 under the Exchange Act imposes filing and disclosure requirements for going-private transactions (including share purchases and tender offers by a company or an affiliate of a company, as well as mergers, sales of assets and other transactions involving an affiliate of the affected company), that are likely to cause that company's shares to be held by fewer than 300 holders of record or to be delisted from a stock exchange.

III. Corporate Governance Standards

A. ***Exchange Act and Sarbanes-Oxley Corporate Governance Requirements*****.** Companies listed on a national securities exchange are subject to the following corporate governance requirements pursuant to the Exchange Act and the Sarbanes-Oxley Act of 2002:

1. ***Audit Committee*****.** Section 10A(m) of the Exchange Act requires listed companies to have an audit committee that complies with applicable requirements.

a. ***Establish Audit Committee*****.** The audit committee of the board of directors is directly responsible for the appointment, compensation, retention and oversight of the company's auditors.

b. ***Independence Requirement.*** Each member of the audit committee must be independent as defined by listing standards established in accordance with Rule 10A-3 under the Exchange Act.

c. ***Financial Expert.*** At least one member of the audit committee must have financial management expertise, in accordance with Section 407 of Sarbanes-Oxley.

d. ***Whistleblower Protection.*** The audit committee must establish procedures to receive and respond to any complaints and concerns regarding the company's accounting, accounting controls or auditing matters.

2. ***Independent Auditor.***

a. ***Public Company Accounting Oversight Board (PCAOB).*** Auditor must follow the standards established by the PCAOB.

b. ***Audit Partner Rotation.*** Companies must rotate their audit firm partners every five years, in accordance with Section 203 of Sarbanes-Oxley.

c. ***No Conflicts of Interest with Auditor.*** An outside auditor may not perform audit services for a company if a chief executive officer, controller, chief financial officer or any other equivalent person of the company was employed by that auditor and participated in the audit of the company during the one-year period preceding the date of the audit, in accordance with Section 206 of Sarbanes-Oxley.

d. ***Prohibition on Improperly Influencing Auditors.*** Section 303 of Sarbanes-Oxley

prohibits any officer or director of an issuer from directly or indirectly taking action to coerce, manipulate, mislead, or fraudulently influence any auditor of financial statements that are required to be filed with the SEC.

3. ***Duty of Attorneys to Report Violations*****.** Section 307 of Sarbanes-Oxley requires attorneys to report specified violations to the company's chief legal officer or chief executive officer and, if such persons do not respond appropriately within a reasonable time, to report further to the company's board of directors or audit committee. These reporting obligations apply if the attorney is representing a company before the SEC and becomes aware of evidence of a material violation of federal or state securities laws or any other federal or state laws or a material breach of fiduciary duty by the company, or any officer, director, employee or agent of the company.

B. ***Listing Standards*****.** Companies must also comply with the corporate governance standards established by any securities exchange upon which they list securities, such as the New York Stock Exchange or Nasdaq, which are often more rigorous.

IV. Proxy Statement Obligations

A. ***Duty to Deliver Proxy Statement (Regulation 14A)*****.** Solicitations of proxies or consents in respect of a US domestic public company's shares are subject to the SEC's proxy rules. Under Section 14 of the Exchange Act, companies must deliver a detailed proxy statement to stockholders in connection with their annual meetings to address such issues as (i) the election of directors; (ii) selection of accountants; (iii) voting on stockholder proposals; (iv) adoption or approval of amendments to the corporate documents, stock option or other plans; and (v) other material issues and transactions.

B. ***Antifraud Requirements*****.** In addition to general antifraud requirements under the federal securities laws, Rule 14a-9 under the Exchange Act specifically prohibits false or misleading statements made in connection with any proxy solicitation.

V. Reporting Obligations of Officers, Directors and Significant Stockholders

A. ***Reporting Persons (Forms 3 & 4)*****.** Under Section 16(a) of the Exchange Act, a US domestic public company's directors, certain designated officers, and 10% stockholders must continually report their direct or indirect beneficial ownership of the company's equity and derivative securities.

B. ***Disgorgement of Short-Swing Profits*****.** Section 16(b) of the Exchange Act imposes strict liability on reporting persons to pay to the company any short-swing profits realized on a purchase and sale (or vice versa) of the company's shares within any six-month period, regardless of whether the reporting person was in possession of or used inside information in connection with the trades.

C. ***5% Stockholder (Schedule 13D)*****.** Under Section 13(d)(1) of the Exchange Act, any person who acquires direct or indirect beneficial ownership of more than 5% of a company's common stock must, within 10 calendar days after the acquisition, send a statement on Schedule 13D to the company and the SEC, stating (i) the identity, residence, citizenship and nature of beneficial ownership of the stockholder; (ii) the source and amount of funds used in making the purchases; and (iii) the purpose of the purchases. Institutional investors, passive investors and certain other persons may report their beneficial ownership on a short-form Schedule 13G.

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Appendix B

PROPOSALS TO INCREASE ECONOMIC GROWTH AND JOB CREATION BY FACILITATING CAPITAL FORMATION[*]

We applaud the ongoing bipartisan efforts to increase economic growth and job creation by facilitating capital formation. To that end, we are submitting our proposals for consideration by your Committee.

As leaders of the IPO Task Force, whose recommendations in the Report to the U.S. Department of the Treasury formed the basis of Title I of the Jumpstart Our Business Startups (JOBS) Act of 2012, we are pleased to offer our perspective on current reform proposals. We are submitting these proposals in our individual capacity and not as representatives of our respective organizations.

Simplicity contributed to the success of the IPO Task Force recommendations. Today, we recommend three simple changes based on our experience and the last decade of success. Congress should (1) extend the IPO on-ramp by updating the emerging growth company (EGC) definition; (2) expand the category of well-known seasoned issuers (WKSIs) to apply to all short-form eligible registrants; and (3) adopt specific clarifications to eliminate certain inefficiencies remaining after the JOBS Act reforms.

1. Extend the IPO on-ramp based on a decade of successful experience.

Congress should extend the IPO on-ramp by updating the EGC definition to (i) increase the $1.07 billion revenue test to $2.0 billion; (ii) extend EGC status for a minimum of five years post-IPO; (iii) secure this five-year minimum period for any company that is an EGC when it begins the IPO review process but loses EGC status before completing IPO; (iv) eliminate disqualification based

[*] Previously submitted to the U.S. Senate Committee on Banking, Housing & Urban Affairs, Letter to Ranking Member Patrick J. Toomey (June 25, 2022), available at https://www.banking.senate.gov/imo/media/doc/Joel%20Trotter%20and%20Kate%20Mitchell.pdf.

on large accelerated filer status; and (v) increase the current maximum five-year IPO on-ramp period to 10 years.

The JOBS Act's IPO on-ramp succeeded by providing accommodations that streamlined the IPO process and promoted efficiency without compromising investor protection. The IPO on-ramp accommodations are limited, measured and based on analogous pre-existing principles or practices in federal securities regulation. The proposed enhancements to the IPO on-ramp represent a balanced approach to promote IPO activity without compromising investor protections, including all of the disclosure and liability requirements that continue to remain in place for all companies.

As updated, EGC would mean an issuer that had total annual gross revenues of less than $2.0 billion before beginning the IPO registration process until the last day of the fiscal year in which the IPO's fifth anniversary occurs. Thereafter, EGC status will continue until the end of the earliest fiscal year in which (i) revenues exceed $2.0 billion; (ii) the IPO's tenth anniversary occurs; or (iii) the issuer has more than $2.0 billion in non-convertible debt securities outstanding as of year-end.

2. Expand WKSI eligibility based on decades of successful experience.

Congress should expand availability of WKSI status. Currently, WKSI status is unduly limited. As updated, the WKSI definition would apply to companies with a non-affiliate market capitalization, or public float, of $75 million, rather than the public float threshold of $700 million currently required for WKSI status. The last two decades of successful experience have shown that the WKSI category merits expansion so that it overlaps with eligibility for short-form registration.

First, since the introduction of the WKSI definition nearly two decades ago, the automatic shelf registration process and other benefits available to WKSI issuers have significantly improved capital formation and market efficiency without compromising investor protection. When initially proposing the WKSI category, the SEC acknowledged that a much lower float test for WKSI status

could be appropriate. The last two decades of experience have demonstrated that to be the case.

Second, for the last three decades, companies with a public float of $75 million have been able to engage in short-form registration of securities using the integrated disclosure system based on those companies' periodic reporting. When proposing the short-form registration process, the SEC identified the $75 million public float threshold as the level at which a company's securities efficiently reflect available information about the company.

As a result, WKSI status should now be extended to all companies that otherwise satisfy the WKSI definition and have a public float of $75 million, rather than the current, arbitrarily high requirement of $700 million.

3. *Adopt clarifications to eliminate needless inefficiencies remaining after the JOBS Act reforms.*

(a) *Streamline and clarify the EGC public filing condition to require public filing 10 days before the effective date of the IPO registration statement.*

Congress should update the public filing condition for EGC IPO registration statements to require public filing at least 10 days before effectiveness of the registration statement. The current requirement for an EGC to publicly file its confidential IPO registration statement at least 15 days before conducting a road show is inefficient and subject to uncertain interpretations.

The update we propose would enhance efficiency, promote certainty, and builds on the SEC's recognition that modern "communications technology, including the Internet, provides a powerful, versatile, and cost-effective medium to communicate quickly and broadly." An EGC is permitted to begin SEC 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 was intended to facilitate public review of the registration statement between the first public filing and the IPO pricing. However, experience has shown that 15 days is more than

ample time for that purpose. Moreover, the application of the current requirement can sometimes be unclear based on uncertainty surrounding the definition of a road show.

This proposed change would enhance efficiency by reducing the minimum time before pricing and provide greater predictability by referring to the date of effectiveness, which is more precise than conducting a road show, which is sometimes unclear. The updated public filing condition would require that an EGC must publicly file its registration statement, the nonpublic draft registration statement and all draft amendments at least 10 days before the effective date of the registration statement.

(b) Update the confidential review process for draft registration statements to conform to the updated EGC process.

Congress should update the process for voluntary confidential submission of non-EGC registration statements to conform to the updated requirement for EGCs. The updated confidential registration process for all IPOs, initial listings, and follow-on offerings would conform to the updated EGC process described above.

This change would facilitate capital formation and conform practice for non-EGCs to maintain consistency in the registration process if the changes to the EGC process are made. As updated, the confidential registration process would require that any issuer must publicly file its registration statement, the nonpublic draft registration statement and all draft amendments for (i) an IPO or an initial listing, at least 10 days before the effective date of the registration statement; and (ii) a follow-on offering (before the end of the twelfth month after the effective date of its IPO), at least 48 hours before the effective date of the registration statement.

(c) Update the on-ramp to include spin-off transactions.

Congress should update the EGC financial statement accommodation to clarify that the same accommodation applies to both IPOs and spin-off transactions. This would correct the aberrational effect on a spin-off of an EGC, which currently does

not benefit from the two-year financial statement accommodation now applicable only to IPO registration.

The EGC financial statement requirements should be comparable for both an IPO and a spin-off. Equalizing the requirements in both scenarios will promote efficiency and capital formation without compromising investor protection. As updated, the EGC financial statement requirements would clarify that an EGC may present two years, rather than three years, of audited financial statements in either an IPO or a spin-off.

(d) Clarify EGC financial statement obligations to prevent aberrational results.

Congress should update the EGC financial statement accommodation to clarify that an EGC need not provide financial statements for a period earlier than the two years of audited financial statements required in its IPO registration statement. In some instances, misinterpretations have arisen concerning the accommodation allowing an EGC to provide only two years of audited financial statements in its IPO registration statement, and not for any earlier period. This has arisen occasionally, for example, in the case of acquired company financial statements and for follow-on offerings involving an EGC that lost its EGC status during IPO registration.

This change would increase efficiency by ensuring that EGCs can consistently rely on the scaled disclosure accommodation by eliminating aberrational results that have sometimes required burdensome and unnecessary financial statement obligations. Absent this clarification, in some scenarios EGC issuers have needed to provide audited financial statements for financial periods preceding the earliest period in their IPO registration statements. The proposed update would clearly establish that an EGC need not, under any circumstances, provide financial statements for any period preceding the earliest period required to be presented in the IPO registration statement.

The updated requirements would provide that an EGC, as well as any issuer that went public using EGC disclosure accommodations, is not required to provide target company financial statements or pro forma financial information for any

period before the earliest period that the EGC presents in its IPO registration statement, including (i) for significant acquisitions, target company financial statements for any earlier period; and (ii) for follow-on offerings, financial statements for any earlier period by an issuer that went public using EGC disclosure accommodations.

(e) Remove aberrations in the market capitalization test for target company financial statements.

Congress should clarify that a company's market capitalization, for purposes of testing the significance of an acquisition or disposition, may include the value of all shares. When using a market capitalization test to determine whether an acquisition is significant enough to require target company financial statements, current requirements fail to account for the acquirer's full market capitalization by excluding from the calculation some classes of the acquirer's stock.

The significance test is designed to use market capitalization, or aggregate worldwide market value, to ensure that the evaluation of significance for acquisitions and dispositions compares measures that are consistent with fair value. Consistent with that objective, the test should include the market value of preferred stock (whether traded or convertible into common stock) and non-traded common shares that are exchangeable into traded common shares.

The proposed change would eliminate aberrations that result from contrary interpretations. As updated, the new requirements would clarify that a company testing the significance of an acquisition or disposition may include in its market capitalization the value of all of the acquirer's outstanding classes of stock, including preferred stock and non-traded common shares that are convertible into or exchangeable for traded common shares (based on trading value, conversion value or exchange value, as applicable).

(f) For any private company transitioning to public company status, permit the auditor to comply with SEC and PCAOB independence rules for the most recent year and AICPA or home-country independence for prior periods.

Congress should update the SEC and PCAOB auditor independence requirements to provide that the auditor of a private company that is transitioning to public company status (via IPO, spin-off or otherwise) must comply with SEC and PCAOB independence rules for the latest fiscal year, as long as the auditor is independent under AICPA or home-country standards for earlier periods. Requiring a private company's auditor to comply with SEC and PCAOB auditor independence rules for all prior years, rather than only the most recent year, can unnecessarily require hiring a different auditor to re-audit earlier periods even though the original auditor was actually independent under then-applicable standards.

As updated, this would allow the auditor of a private company that is transitioning to public company status (via IPO, spin-off or otherwise) to comply with SEC and PCAOB independence rules for the latest fiscal year, as long as the auditor is independent under AICPA or home-country standards for earlier periods. In scenarios where the auditor is independent under AICPA or home-country standards for earlier periods but the SEC and PCAOB independence rules imposes additional requirements, the auditor should be required to comply with SEC and PCAOB independence requirements only for the most recent year.

The more demanding SEC and PCAOB standards should not apply to earlier periods where the auditor has complied with the relevant auditor independence rules that applied to the private company. Under this balanced approach, the auditor must still satisfy SEC/PCAOB independence requirements for the most recent audited year while AICPA or home-country independence standards would suffice for all earlier years.

(g) Expand the protection for research reports to cover all securities of all issuers.

Congress should update the provision for research reports about EGC common equity to cover all securities of an EGC or any other issuer. This would expand the availability of the provision designed

to promote publication of research reports about EGCs by deeming the reports a non-offer.

The current provision offers limited protection of research reports in the context of an EGC's proposed offering of its common equity securities. After a decade of marketplace experience, the provision governing EGC research reports has proved wholly successful. Research analysts remain subject to robust regulation, including SEC Regulation AC certification and conflict disclosure requirements, FINRA conduct and communications rules and antifraud requirements. Based on this success, the research report provision warrants expansion. As expanded, the research report provision in Section 2(a)(3) of the Securities Act would cover research reports about any issuer that undertakes a proposed public offering of securities.

(h) Exclude QIBs and institutional accredited investors from the record holder count for mandatory Exchange Act registration.

Congress should update the mandatory Exchange Act registration threshold to exclude qualified institutional buyers (QIBs) and institutional accredited investors. The update in the JOBS Act to increase the record holder threshold should not include large institutional investors, such as QIBs or institutional accredited investors. Section 12(g) of the Exchange Act currently requires every issuer with more than $10 million in total assets and a class of equity security held of record by 2,000 or more persons (or 500 or more unaccredited investors) to register that class of equity security under the Exchange Act. In the decade since the JOBS Act raised this threshold, experience has shown that institutional investors can be excluded from the record holder count. As updated, Section 12(g) would provide that the registration threshold of 2,000 or more holders of record shall exclude QIBs and institutional accredited investors.

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Joel H. Trotter is a partner of Latham & Watkins LLP, ranked as the #1 capital markets law firm in the world by Bloomberg and Deal Point Data. He serves as co-chair of the firm's National Office, a centralized team of former SEC senior officials and experienced capital markets lawyers located in Washington, D.C. The firm's capital markets practice draws exceptional support from the National Office, providing an unparalleled ability to deliver sophisticated advice in real time on the toughest securities and listing issues clients face.

Mr. Trotter is the former global co-chair of the firm's public company representation practice and previously served for 10 years as co-chair of the Corporate Department in the firm's Washington, D.C. office. His practice focuses on capital markets transactions, securities regulation, mergers and acquisitions, and corporate governance. He represents issuers and underwriters in the public offering process and other SEC-related matters.

As a member of the IPO Task Force's leadership, and as one of two lawyers to serve on the Task Force, Mr. Trotter served as a principal author of the IPO-related provisions of the JOBS Act of 2012, enacted by a nearly unanimous Congress and signed by President Obama to reform the IPO process for emerging growth companies.

Law360 named Mr. Trotter one of the 10 Most Admired Securities Attorneys from over 1,000 nominations, noting his "deep expertise and excellent judgment" on strategic matters, for which he is "one of the firm's go-to sources for advice." Who's Who Legal recognized Mr. Trotter as a leading lawyer who is "adept at handling complex issues for major corporate clients." The Legal 500 US recommended Mr. Trotter for Corporate Governance (Tier 1), and Law Business Research named him to the International Who's Who of Capital Markets Lawyers.

Mr. Trotter received his law and undergraduate degrees from the University of Virginia, where he served as an editor of the *Virginia Law Review*, was named an Echols Scholar and was elected to the Raven Society.