Consumer Federation of America

June 5, 2018

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

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

Dear Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

We understand that the Financial Services Committee has scheduled a mark-up this week that will include yet another set of bills that claim to promote capital formation but instead undermine our capital markets. Not one of these bills does anything to encourage investors to commit more capital to investment in small companies, to increase the likelihood that more private companies will choose to go public, or to make it easier for investors to get reliable information on which to base their investment decisions. On the contrary, the bills continue this Committee's relentless attack on the transparency and efficiency so crucial to our markets' health and integrity. For that reason, we urge you to vote no on all of these measures.

Vote no on H.R. 5877, the Main Street Growth Act, which would allow a new class of venture exchanges to offer securities of early stage companies without meeting a host of requirements to ensure either that the markets operate fairly or that issuers meet basic standards appropriate for sales to the general public. Most troubling, this new class of venture exchange would be exempt from state regulatory protections, despite the fact that state securities regulators are the best situated to provide meaningful oversight of this type of market. Further, it's unrealistic to expect that the SEC would be able to provide effective oversight of such a small and fragmented market.

Vote no on H.R. 5054, the Small Company Disclosure Simplification Act, which would exempt a wide range of companies from requirements to provide disclosures in structured format (XBRL), without first conducting economic analysis on the costs and benefits of such regulatory action and without any apparent input from the SEC. Such a "shoot first, ask questions later" approach is anathema to smart and effective, evidence-based regulation. Moreover, this approach is counter-productive, making it harder for investors and analysts to get information about the very companies Congress purports to want to help raise capital. As such, it is likely to undermine, rather than encourage, investment in such companies.

Vote no on H.R. 5756, which would require the SEC to adjust certain resubmission thresholds for shareholder proposals. The bill would unreasonably increase, by between double and triple, the required amount of shareholder support necessary to be included in a company's proxy materials. The clear intent of this bill is to make it virtually impossible for shareholders to get their voices heard by management and other shareholders. Its effect would be to silence shareholders, stifle internal debate, and impede improvements relating to important corporate governance issues.

Vote no on H.R. ____, the Streamlining Communications for Investors Act, which would open the door to sales activities by underwriters and dealers before a prospectus had been filed with the Commission. If underwriters and dealers are permitted to communicate about an offering on behalf of an issuer before a registration is filed, they will be able to secure indications of interest, essentially pre-selling the security, before any document has been filed with the Commission. As Professor John Coffee warned in his recent testimony before the Committee, the bill "would tend to make the registration statement irrelevant or only a souvenir of the transaction," thus undermining both the transparency and fairness of our capital markets.

This Committee's past efforts to promote capital formation have been at best ineffective, at worst harmful. This has been in part because those efforts have focused on the wants of issuers and ignored the needs and wants of investors, the providers of capital. By continuing that trend, these bills would inflict further harm on our markets without doing anything to promote healthy capital formation and job growth. We urge you to vote no.

Respectfully submitted,

Barbara Roper
Director of Investor Protection

Micah Hauptman
Financial Services Counsel