

March 28, 2025

Via Electronic Mail: fsc119@mail.house.gov

The Honorable French Hill
Chairman
House Financial Services Committee
US House of Representatives
Washington, DC 20515

The Honorable Ann Wagner
Chairman
House Subcommittee on Capital Markets
US House of Representatives
Washington, DC 20515

Dear Chairman Hill and Chairman Wagner:

MFA¹ appreciates your focus on legislative proposals that increase investor access, facilitate capital formation, and strengthen public and private markets.² Recent regulatory history has wrongly viewed public markets and private markets as zero-sum. Both are critically important to overall economic growth and prosperity. Each provides its own benefits to a company at different points in the lifecycle, and to investors. We commend your commitment to transparency and inclusivity in developing policies that support our capital markets—the backbone of the American economy.

The work done by you and your colleagues on the 2012 JOBS Act and the so-called JOBS Act 2.0 in 2014 made material improvements to the initial public offering (“IPO”) process and strengthened our public and private markets. Studies have found that the 2012 JOBS Act alone increased IPOs by 25% and made it 33% more likely that companies exploring IPOs completed the process.³ We welcome Congress seeking to turn the page on the recent period of neglecting capital formation. Historically, the top 10 stocks have accounted for 24% of the market, but today they make up 38%.⁴ To increase IPOs and maintain the world’s most vibrant capital markets, we need deep, liquid markets that create jobs, bolster retirement savings, and drive innovation. Stable, predictable policies that protect investors while encouraging capital formation and innovation are essential to U.S. economic competitiveness.

¹ Managed Funds Association (MFA), based in Washington, DC, New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² HFSC, Financial Services Committee Requests Feedback on Legislative Proposals to Increase Investor Access and Facilitate Capital Formation (Feb. 26, 2025), available at: <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409480>.

³ See <https://leeds-faculty.colorado.edu/bhagat/JOBSAct-IPO-Volume.pdf>.

⁴ See <https://www.visualcapitalist.com/charted-sp-500-market-concentration-over-145-years/>.

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Alternative asset managers play a critical role in capital markets. In pursuing their investment theses, they provide businesses with essential funding for growth and job creation and, in turn, enhance price discovery and the diversification of portfolios. Since up to 40% of the market is estimated to be held by passive investors,⁵ private funds lead the vital work of active management and the efficient allocation of capital. We ask the Committee to continue to embrace alternative asset management as a driver of economic growth. The economy is strongest when both capital markets-based and bank-based finance are available. Private funds help stabilize financial markets, diffuse risk, and strengthen economic resilience. Encouraging a broader range of market participants, including private funds, to invest in the capital markets will lead to more robust markets and stronger economic growth.

For example, hedge funds provide essential liquidity at those times when key investing indices are reconstituted, supporting the buys and sells necessary for passive investors to adjust their portfolios to stay true to the benchmark. Hedge funds also help to drive price discovery and market efficiencies. They invest in more illiquid portions of the markets. They serve as a stable asset base for a wide variety of investment strategies. By standing ready to put capital at risk in volatile or uncertain markets when other investors choose to remain on the sidelines, hedge funds employing investment strategies that rely on arbitrage, hedging or contrarian approaches help to absorb market shocks and act as a buffer for other market participants. In doing so, hedge funds can inject needed liquidity into markets irrespective of market direction and act as stabilizing influences, reducing the severity of price fluctuations in stressed market conditions.

In addition, private credit is a vital but often misunderstood force in American economic growth, providing nearly \$2 trillion in capital to businesses nationwide. Their investments support pensions, foundations, and endowments, helping fund retirements, community programs, and scholarships. Unlike banks, private credit fund investors, not depositors, bear the investment risks. With thousands of funds dispersing activity across the market, they lack the concentration risks seen in banking and are relatively uncorrelated to the broader markets. Their distinct structure requires a regulatory framework tailored to their unique role that in many ways compliments traditional bank activity.

MFA and its members support legislative and regulatory efforts that foster capital formation and improve regulatory efficiency. We stand ready to work with Congress and the Securities and Exchange Commission (“**SEC**”) to advance policies that promote economic growth and financial well-being. We welcome the opportunity to discuss how legislative proposals can enhance investor access and strengthen US capital markets.

I. Markets & Company Lifecycle

A. Making the IPO Process More Efficient

We believe Congress and the SEC should work toward adopting measures to decrease the expense and burden of the IPO process, especially for small- and medium-sized companies. Among other things,

⁵ See https://www.hbs.edu/ris/Publication%20Files/double-what-you-think-it-is%20may%2023_3c1ae213-5aec-407d-b656-13e3822f0b8b.pdf.

Congress and the SEC should allow potential issuers more flexibility to “test the waters” and communicate with potential investors before filing for an IPO. This would allow companies to provide a summary of the issuer and the offering to assess the “appetite” of potential investors to determine whether the potential market for the offering would justify the time, expense, and challenges of preparing offering documents, securing arrangements with underwriters or selling broker-dealers and incurring the other expenses of pursuing an offering. It is critical that issuers be able to test the waters without fear of prospectus liability under the securities laws (of course, the issuer is prohibited from engaging in material misstatements or omissions).

B. Going Public—Barriers and Solutions

Newly public companies bear the most pronounced costs of complying with ongoing public disclosure requirements. Congress and the SEC should work to reduce the compliance costs of being a public company, such as by streamlining 10-Q and 10-K Reports. Congress and the SEC also should take steps to make public markets more attractive for private companies by ensuring that public disclosure requirements are tied to materiality and focus on corporate value maximization, where materiality is viewed from the perspective of the reasonable investor. All investors seek a financial return, making it their shared primary interest, even if they also have other motivations for investing.

Another step Congress and the SEC should consider would be to expand the availability of “well-known seasoned issuer” (“**WKSI**”) status. This would allow a broader range of companies to file a “short-form” registration form with the SEC, relying on the information about the issuer already in the marketplace through the filing of periodic and annual SEC reports, to allow WKSI issuers easier and more timely access to the capital markets.

In addition, Congress should ensure that the SEC refrains from enforcement actions to override managerial decision-making and insinuating itself into corporate management. For example, the SEC should carefully limit what is covered by internal accounting controls from broader administrative controls (*e.g.*, departures from what the SEC deems appropriate cybersecurity policies should not be deemed an internal accounting control violation).

C. Challenges for Small Public Companies

Small public companies face regulatory and market structure challenges to continuing as public companies. Congress and the SEC should allow smaller companies to access capital markets by easing private capital formation and reducing certain regulatory thresholds/hurdles for smaller companies going public. This could include encouraging emerging growth companies (“**EGCs**”) to go public by improving the IPO process and streamlining filing requirements under Regulation S-K and S-X (Form S-1, Form 10-k, etc.).

D. Improving Market Structure

The U.S. financial markets are the largest and most successful in the world due, in part, to their strong regulatory frameworks. U.S. markets promote competitive, open, fair, transparent, and efficient markets. MFA urges Congress and the SEC to consider ways to enhance competition and resiliency of U.S.

markets and to promote market stability, liquidity, and integrity, including by modernizing certain aspects of the Treasury and equity market structures to meet the changing demands of the current markets.

Given the critical role that the U.S. Treasury markets play in the U.S. and global economies, we encourage Congress to ensure that the first principle of all attempts to modernize the Treasury market architecture is to “do no harm.” While we support efforts to promote central clearing, we believe the priority should be to take steps to expand the availability of central clearing. Without this, requirements for some transactions to be centrally cleared will be counter-productive, decreasing market efficiency and resiliency by making it more difficult and expensive for investors to transact and increasing market concentration and risk.

In addition, smaller companies play an essential role in our economy. Currently, there is a single equity market structure for all National Market System (“**NMS**”) securities, regardless of their size or liquidity. Congress and the SEC should consider whether the current market structure is appropriate for smaller companies, whose stocks typically may be more thinly traded. Securities that trade less frequently have generally wider spreads, fewer market makers, and less displayed liquidity. We believe the one-size-fits-all approach of the current market structure does not fit smaller companies well, making them less attractive to institutional investors who trade in large sizes that can provide much-needed liquidity to these issuers.⁶ Improving liquidity in thinly-traded stocks also could encourage more analysts to conduct research in these securities, which would encourage increased investment by managers and other buy-side participants. We encourage Congress and the SEC to explore options for improving the market structure, particularly for smaller companies.

II. Investor Access & Participation in Private Markets

Entrepreneurs face many challenges and impediments when raising capital. These include the costs of the IPO process (discussed above), the lengthiness of federal and applicable state review, the difficulty in identifying suitable investors, and the hesitancy of underwriters in pursuing smaller dollar deals and limitations on other traditional funding sources. For companies that have elected to stay private, the following are some policy solutions that we believe could help improve capital raising in the United States.

A. Broadening Registered Fund Access to Alternatives

Asset management and its strategies and structures continue to evolve, with alternative asset management playing an increasingly important role in a typical diversified portfolio. As policymakers explore ways to ensure that such diversification is not unduly exclusive, they also should maintain the important and well-serving distinctions between private fund and registered fund frameworks. MFA believes that expanded access should have appropriately calibrated rules for sophisticated institutional and high-net-worth investors and others for broader investor participation.

⁶ See SEC Staff Roundtable on Market Structure for Thinly-Traded Securities (Apr. 23, 2025), transcript available at: <https://www.sec.gov/newsroom/press-releases/2018-65>.

MFA believes that Congress and the SEC should streamline the process for the development of investment products that invest in private markets under the Investment Company Act of 1940 (“**Investment Company Act**”) to expand appropriate retail investment opportunities. Policymakers can remove time-consuming and unnecessarily complex exemptive applications and retract restrictive staff positions on closed-end funds investing in private pools. For example, the SEC could streamline the process of obtaining co-investment orders to a principles-based application process, which would speed time-to-market for managers seeking to allow regulated funds to invest in transactions or securities on the same basis as a manager’s private funds. We commend the SEC staff’s efforts on broadening access to private investments by registered funds, such as reconsidering the staff’s artificial limit of 15% on closed-end fund investments in private funds. We also commend Chairman Wagner’s leadership on this important topic.

In addition, Congress and the SEC should consider modernizing the registration framework under the Investment Company Act to include non-traded business development companies to be considered “registrants” under that Act to level the playing field for issuers and put those funds on equal footing under the blue sky laws with other closed-end funds sold throughout the United States. Business development companies and other closed-end investment companies seek to provide individual investors with an appropriate level of exposure to private market investments and alternative asset classes in a regulated investment pool structure, with the safeguards and oversight that come with that structure. We believe such products offer retail investors the ability to diversify their investment portfolio appropriately. The SEC also should consider modernizing regulations for business development companies and reform the Acquired Fund Fees and Expenses (“**AFFE**”) requirement in the fee tables of registered funds that may invest in them.

B. Diversifying Retirement Investment Options

MFA believes that employer-sponsored or defined contribution retirement plans should have appropriate access to investment options that contain alternative asset classes, as many investors in these plans have a long-term investing horizon. Assets in 401(k) plans now far outnumber defined-benefit pension plans as employees’ only retirement savings option at work. It is critical that those plans contain enough long-term assets to enhance retirement outcomes.

Plan sponsors serve as Employee Retirement Income Security Act (“**ERISA**”) fiduciaries for 401(k) plans. Congress should work with the Department of Labor to identify ways to provide the clarity and safeguards needed for plan sponsors to offer appropriate diversification to allow retirement savers to best meet their long-term objectives.

C. Promoting Innovative Funding Models

We encourage policymakers to take steps to preserve the important role that nonbanks play in providing critical financing to middle-market companies in the United States. Private credit and other nonbank lenders have stepped in to lend to U.S. operating companies as bank regulatory requirements have made middle-market bank lending more difficult. In addition, investment managers serve as a critical

step to help banks reduce their risk by assuming bank debt obligations to free up capital for banks to lend or invest in their own operations.

Private funds also are leveraging emerging technologies to afford greater liquidity of private fund shares, including considering whether to “tokenize” fund offerings and allowing investors to manage private fund investments on a blockchain and developing secondary market trading platforms for private fund shares. These developments could benefit fund investors by increasing liquidity and creating market depth and breadth to aid in valuing private fund shares. It is important that these nascent technologies develop and flourish without unnecessary regulatory impediments or sacrificing investor protection.

D. Reviewing Investment Access

Congress should focus on reviewing the barriers to eligibility for accredited investor status. Exempt securities markets have evolved and become a more significant part of our capital markets. We believe Congress and the SEC should review additional qualitative professional criteria and offer more opportunities, beyond the few professional designations the SEC added in 2020, to demonstrate financial sophistication as an alternative to the existing income and net worth thresholds.

In addition to streamlining public reporting forms (as discussed above), we encourage Congress and the SEC to consider whether it is appropriate to again increase the number of shareholders an issuer is permitted to have before public reporting obligations are triggered under the federal securities laws (*e.g.*, 10-Qs and Ks). The numerical shareholder threshold was last amended in 2012, and has long served as an ill-fitted, de facto limit on private funds and their permitted number of investors.

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MFA appreciates your consideration of our recommendations. We look forward to working with Congress and the SEC to improve securities regulation to protect investors, support U.S. economic growth, and promote capital formation. We would be pleased to discuss our recommendations in further detail. Please do not hesitate to reach out to the undersigned with further questions.

Sincerely,

/s/ Jillien Flores

Jillien Flores
Chief Advocacy Officer
MFA