PATRICK McHENRY, NC
CHAIRMAN

MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

April 13, 2023

The Honorable Gary Gensler
Chair
US Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Capital Formation

Dear Chair Gensler:

We write to express our deep concern regarding the Securities and Exchange Commission's ("SEC" or "Commission") inattention to capital formation issues. The Commission's failure to promote capital formation has weakened public markets, hurt small businesses and entrepreneurs, and decreased opportunities for investors.

As you know, capital formation is a foundational pillar of the SEC's statutory mission. However, under your leadership, the Commission has proposed more than 50 rules, none of which directly promotes capital formation. Instead, the Commission has focused on implementing costly regulatory disclosure requirements on topics that go beyond its scope. This approach has made the U.S. capital markets less attractive to existing and potential public companies. In today's fiercely competitive global economy, the strength of the U.S. public markets is critical to long-term national prosperity and the financial well-being of American families. Therefore, the SEC must shift its priorities towards facilitating capital formation and ensuring that American public markets remain the most attractive in the world.

In 2012, a divided Congress united to pass the bipartisan Jumpstart Our Business Startups Act of 2012 (JOBS Act), which reduced regulatory barriers and created new opportunities in U.S. securities laws, empowering entrepreneurs and small businesses to raise funds and create jobs. Ground-breaking leaders in sectors such as healthcare and technology owe much of their successes to the JOBS Act's provisions, which enabled them to access resources, hire employees and fund their businesses.

However, under your tenure, the Commission has ignored the positive lessons of the JOBS Act. While the cost of entering U.S. public markets has doubled since the 1990s, the number of publicly traded companies has declined sharply.[1] Moreover, fewer companies are

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[1] Tom Simpson, *Changes brewing in DC could make it easier for companies to go public and beef up the economy*, INLANDER (Aug. 2, 2018), *available at* https://www.inlander.com/spokane/changes-brewing-in- washington-dc-could-make-it-easier-for-new-companies-to-go-public-and-beef-up-the- economy/Content?oid=11195585; *see* Jay R. Ritter, *Initial Public Offerings: Updated Statistics* (Feb. 1, 2021), *available at*

opting to enter American public markets through initial public offerings (or "IPOs"). In 2022, IPO activity was the slowest in over three decades, with the number of IPOs falling by 78 percent and the capital raised in IPOs by 94 compared to the previous year.[2] The decrease in public companies and slow IPO activity severely limits investment opportunities for everyday Americans, negatively impacting their savings for retirement and their children's education. Additionally, it stifles the growth and innovation of our economy since high-growth companies must rely on public markets to raise capital to achieve their objectives.

The Commission should revise its rulemaking agenda by pursuing smart, incremental reforms that will strengthen U.S. public markets, expand opportunities for underrepresented entrepreneurs and investors, and encourage small businesses to grow, hire more workers and go public. Failing to act on this important pillar of the SEC's mission threatens the strength of the U.S. capital markets and jeopardizes American business' ability to foster domestic economic activity and compete globally.

Please respond to the following questions.

1. How does the SEC balance its mission to protect investors with the need to encourage capital formation and maintain fair, orderly, and efficient markets? What factors are considered when prioritizing items on the SEC's agenda?

2. While more than 50 rules have been proposed under your leadership, none appear to directly address capital formation. If the SEC believes that one or more of these proposals directly addresses this crucial issue, please explain which ones, and specifically how that standard is met.

3. How has the declining number of public companies and slowing U.S. IPO activity affected the investment opportunities available to everyday Americans and the growth and innovation of the economy?

4. What steps is the SEC taking to address the declining number of public companies and slowing U.S. IPO activity? What factors are contributing to this trend, and how does the SEC plan to address the increasing regulatory burdens and compliance costs that may be discouraging early-stage companies from going public?

5. What is the SEC's stance on expanding access to high-growth investments for all American investors? What specific reforms is the SEC considering, and how will they impact entrepreneurs and investors?

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https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf?elqTrackId=aad710c20b5b472fbb1ae8383f6a301b&elq=929af67dfea74fdca3eed3e0b70b886c&elqaid=10789&elqat=1&elqCampaignId=6718.

[2] Ernst and Young Report: Global IPO Trends 2021 (Dec. 16, 2021), *available at* https://www.ey.com/en_gl/ipo/trends.

6. What specific regulatory burdens and compliance costs disproportionately burden small businesses and other job creators in need of capital? What specific reforms is the SEC considering for these capital needs?

We appreciate your attention to this matter. Please respond no later than April 27, 2023.

Sincerely,

Patrick McHenry
Chairman
House Financial Services Committee

Ann Wagner
Chairman
Subcommittee on Capital Markets
of the House Financial Services
Committee