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March 20, 2012

The Honorable Tim Johnson  
Chairman  
Committee on Banking, Housing, and Urban Affairs  
U.S. Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Richard C. Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
U.S. Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Shelby,

Recently, the House of Representative passed H.R. 3606, the "Jumpstart Our Business Startups Act." The Security Traders Association, "STA"<sup>1</sup> would like to share our thoughts regarding this bill. Furthermore, we wish to comment on the existing state of our market structure and its ability to perform its role in capital formation. The STA has been in existence since 1934. Our long history of writing comment letters and white papers has provided regulators with a unique perspective on market events and trends. The subject of market structure and its role in capital formation is an issue the STA has commented on in the past, including in a letter to then SEC Chairman William Donaldson, dated May 14, 2003<sup>2</sup> which stated:

"The raising of equity capital by corporations is the cornerstone of our economy. However, given the recent regulatory events surrounding research and investment banking and market structure changes affecting trading, the raising of capital has become exceeding more difficult. That, in turn, is impacting the U.S. economy and its ability to create jobs.

Action must be taken soon to remedy what could soon be a capital formation crisis."

STA would like to offer statements on the current market structure's ability to assist or detract from the process of capital formation, provide opinions on the rule making process as it pertains to market structure issues, and offer commentary on the impact on shareholders and investors of newly listed and less actively traded securities as the result of reducing access to liquidity

<sup>1</sup> The STA is an organization comprised of individuals who are involved in the trading of financial securities. Our members represent many of the business models in the financial services sector, including full and discount service broker dealers, agency only broker dealers, asset managers, exchanges and ATS's.  
<sup>2</sup> See; Special Report: The STA's Perspective on U.S. Market Structure, May 2008, p. 19, appendix D.



providers. We hope this will assist you in your decision making process.

#### General Statements:

1. STA does not dispute the data which shows a declining trend in the number of U.S. companies going public.
2. We do not think the declining number of initial public offerings is attributed to any single regulatory or competitive event, nor is it isolated to one segment of our market structure.
3. For our financial markets to perform their role in capital formation, efficiencies in regulation and competition need to exist among and within all the participants involved in the capital formation process: **issuers, broker dealers, investment banks, exchanges and investors.**
4. Any attempt to reform this process should cover the entire spectrum of participants.
5. Amendments which introduce major market structure issues such as “trade at”, sub-penny trading, and transactional activity on non-exchange venues should either be rejected or limited to requests for studies.

#### Rule Making Process

Today, rule changes regarding how transactions occur in equities and listed options are introduced into the market either through an individual SRO rule proposal or regulatory mandate. While there are similarities in these processes, the decision as to which procedure should apply for a particular situation is often an area of debate among market participants. STA acknowledges the difficulty in balancing a market participant's right to compete versus the greater good of our overall market structure and investor confidence.

Regardless of which approach is taken, STA has long held the position that by following certain basic principles for rulemaking, the promise of the National Market System (“NMS”) to benefit all investors will be fulfilled. These principles include:

- The observance of due process in rulemaking.
- The use of empirical data in the rule making process.
- Regulations should not favor any one business model or platform.
- Changes to market structure need to be thoughtful, comprehensive, take into consideration other financial markets and implemented incrementally.
- It is important to implement changes when market participants are not reacting emotionally.



It is the opinion of the STA that the above criteria cannot be fulfilled through amendments which introduce major market structure change, and therefore, any such amendments should either be rejected or limited to studies. STA feels the market is better served if such changes to market structure issues are considered by the respective regulatory entity through the full diligence of rulemaking and the consideration of our stated principles.

#### Loss of Liquidity Providers

STA continues to have the opinion expressed in the aforementioned letter to then SEC Chairman Donaldson, dated May 14, 2003<sup>3</sup>

"The loss of liquidity providers and its potential impact on investors is of major concern to STA. While we would agree that the most active NYSE and NASDAQ stocks could literally trade "by themselves", those less active securities (the overwhelming number of publically traded securities) and their shareholders do in fact benefit by the presence of market makers and specialists."

While STA would not recommend nor support legislation to create new rules or benefits to address our concerns on the loss of liquidity providers, we do strongly recommend that an examination on the profitability of both electronic and traditional market making and other liquidity providers be conducted. It is reasonable to expect any study to consider a balance of market maker obligations with corresponding benefits. In our opinion, volatility is a primary market structure concern for listed companies. We believe both market makers and other liquidity providers dampen market volatility to the benefit of the marketplace and investor confidence. While we are not advocating a return to past, we do believe in the benefits of enhanced liquidity and regulators need to find a modern way to incentivize its existence.

We welcome any opportunity to discuss the points mentioned in this letter with yourselves or members of the committee.

Jennifer Setzenfand  
Chairman

James Toes  
CEO & President

<sup>3</sup> Ibid