



February 26, 2018

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The Honorable Mike Crapo
Chairman

Senate Committee on Banking, Housing, and Urban Affairs
SD-534
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member

Senate Committee on Banking, Housing, and Urban Affairs
SD-534
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

The Security Traders Association (STA)¹ appreciates the opportunity to provide comments on legislative proposals in advance of the February 28, 2019, Senate Committee on Banking, Housing, and Urban Affairs hearing on “Legislative Proposals on Capital Formation and Corporate Governance.” The STA comments are focused on the following provisions in S.488, the JOBS and Investor Confidence Act of 2018, as passed by the House in the 115th Congress:

- Title IX, Encouraging Public Offerings (including similar companion legislation, S.2347, the “Encouraging Public Offerings Act” introduced in the 115th Congress);
- Title XX, Main Street Growth (including companion legislation, S.3723 and H.R. 5877, the “Main Street Growth Act,” introduced in the 115th Congress);
- Title XXIV, Improving Investment Research for Small and Emerging Issuers (including H.R. 6139 and S.3578, introduced in the 115th Congress); and,
- Title XVIII, Options Markets Stability (including S.3283 and H.R. 5749, introduced in the 115th Congress).

Encouraging Public Offerings

Prior to the enactment of the Jumpstart Our Business Startups Act (JOBS Act), companies conducting public offerings could only meet with potential investors in time constrained meetings in the ten (10) days leading up to their IPO. This roadshow process did not allow sufficient time for issuers to provide a full description of their business model or for investors to properly research the company prior to investing. The JOBS

¹ STA is comprised of 24 affiliate organizations in

the U.S. and Canada, and STA members include individuals representing exchanges, ATs, and buy- and sell-side firms involved in the trading of securities.

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Act, among other things, allowed for emerging growth companies (“EGCs”), upon drafting registration statements to the SEC, to conduct testing-the-waters meetings with investors prior to their roadshow. These meetings enable EGCs to provide fuller descriptions on their products to potential investors. Since enactment of the JOBS Act, the testing-the-waters provision has proven to be beneficial for issuers in particular industry sectors and for their investors.

STA supports Title IX of S.488 (115th Congress) and S.2347 (115th Congress), which would expand testing-the-waters to all issuers, and would level the playing field for issuers trying to compete for capital and provide benefits to investors by providing more time for them to make an investment decision.

Venture Exchanges

H.R. 5877 from the 115th Congress (and Title XX of S.488, and S. 3723 from the 115th Congress) would allow the creation of venture securities exchanges. The legislation is intended “to help smaller issuers have greater access to investment and equity capital by creating venture exchanges that can help concentrate liquidity.”² Among other things, the legislation defines a venture security to include those with a public float of less than that which would qualify it as a large accelerated filer (less than \$700 million in public float). In addition, while small issuers would have a choice on where to list their shares, a venture exchange would not be permitted to extend unlisted trading privileges (UTP) to any venture security, thus restricting the trading to those securities.

Today, there are venture markets in the United States, Canada and United Kingdom. In the U.S., the venture market is an over-the-counter or multi-dealer market model, where price and liquidity information is provided by broker-dealers quoting securities on markets operated by OTC Markets Group, whose trading platform is registered with the Securities and Exchange Commission (SEC) as an Alternative Trading System and regulated by FINRA. In Canada, their venture market, TSXV, is based on an exchange model. TSXV is owned by the TMX Group, which also owns Canada’s largest national exchange, TSX. TSXV operates a real-time, continuous auction market that matches individual orders with continual price discovery in the central limit order book.

In a letter³ to the Commission dated May 5, 2015, STA recommended that the Commission compare the attributes of the U.S. over-the-counter venture market to the Canadian venture exchange model to determine to what degree, if any, a gap exists between the current U.S. model and what may be achieved if an exchange alternative were introduced. The letter also recommended that the Commission include in such a study how to best create the conditions which encourage enhanced liquidity provision;

² U.S. Congress, House Committee on Financial Services, Main Street Growth Act: Report (to Accompany H.R. 5877, U.S. Congress, House

Committee on Financial Services, the Main Street Growth Act), 115th Cong., 2d Sess., 2018, H. Report 115-807, page 4, <https://www.congress.gov/115/crpt/hrpt807/CRPT-115hrpt807.pdf>

³ STA letter to Brent J. Fields, Federal Advisory Committee Management Officer, U.S. Securities and Exchange Commission <https://www.sec.gov/comments/265-27/26527-49.pdf>



operational capability and investor protections. OTC Markets Group graduates approximately sixty (60) U.S. companies per year to listed U.S. exchanges, which is a meaningful number of companies finding a pathway to the public exchanges. STA agrees that smaller issuers have greater challenges in accessing public markets and their securities are generally less liquid. Furthermore, we believe our one size fits market structure does not serve the needs of smaller issuers and their investors well. However, STA has concerns regarding a venture exchange regime which has the elimination of UTP as part of it construct. STA recognizes H.R. 5877 from the 115th Congress does not mandate that all securities less than \$700 million in public float list on a venture exchange, but we are unaware of any empirical data that concludes aggregating liquidity in these securities to one venue, as the legislation would do, results in greater amounts of total liquidity available. In addition, since the bill would include as venture securities those with less than \$700 million in public float, the legislation would capture a meaningful percentage of all listed securities.

For these reasons, STA has reservations towards legislation authorizing the creation of U.S. venture exchanges with these characteristics.

Investment Research on Small Companies

Title XXIV of S.488 (115th Congress; S.3578 and H.R. 6139, 115th Congress) would require the SEC to study the availability of investment research on small company issuers, including companies considering initial public offerings, and to make recommendations for increasing investment research for such companies. Investment research on smaller company issuers can help to increase liquidity in these securities and provide investor protections. STA believes investors are better able to make informed investment decisions in smaller company issues when investment research is available. STA also believes that investors who become shareholders in smaller companies become vulnerable to losses when that research is no longer available. STA supports this legislation, as the SEC study would help in understanding the issues affecting the ability of smaller company issuers in obtaining research coverage.

Options Markets Stability

Title XVIII of S.488 (115th Congress; S. 3283 and H.R. 5749 Options Markets Stability Act, 115th Congress) aims to facilitate liquidity in options markets by calling on bank regulators to correct certain risk-insensitive capital requirements. Regulatory capital rules governing banking organizations do not take into account the risk-reducing characteristics of options and instead impose unnecessarily inflated capital requirements for options positions that can be riskless or risk-reducing. Presently, market-makers rely on banks for clearing and capital purposes necessary for providing liquidity for exchange-listed options. STA supports S.3283 because it addresses the inadvertent dampening of liquidity in the options market caused by bank capital rules. STA believes



that the soundness of centrally-cleared options markets is critical to the overall U.S. capital markets and the increase in volumes over the past decade lends credence that investors are finding these products to be attractive instruments.

Conclusion

STA looks forward to working with you on these and related capital formation and trading issues. Thank you for your leadership and for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "D Clark".

Doug Clark
Chairman of the Board

A handwritten signature in black ink, appearing to read "James Toes".

James Toes
President & CEO