June 3, 2022

The Honorable Pat Toomey
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs
455 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Pat Toomey,

The Securities Industry and Financial Markets Association ("SIFMA")[1] would like to express our appreciation for your focus on developing legislation to boost economic growth, encourage job creation, and support entrepreneurs by improving our securities laws and regulations with the introduction of the JOBS Act 4.0 discussion draft. The U.S. capital markets are the deepest, most liquid, and most efficient in the world, providing the funding for over 70% of all economic activity in the U.S. These markets not only enabled our financial system to weather the extreme volatility throughout the COVID-19 pandemic, but also serve as a source of strength during times of severe stress by keeping liquidity in the market, providing businesses with much-needed financing, continuing to serve and advise clients, and ensuring timely clearance and settlement activities.

Recognizing the critical role the U.S. capital markets play in our economy, SIFMA was pleased to strongly support the passage of the original JOBS Act in 2012. Now 10 years later, that legislation made great strides in reducing regulatory burdens that too often stand in the way of growth and innovation for businesses. As a result, with the ever-continuing evolution of our markets and market participants, we believe that the time is ripe for the U.S. Congress to examine legislative solutions and proposals that will adequately tailor securities regulations to facilitate improved access to the U.S. capital markets.

We would like to thank you and members of the Committee for leading a deliberative, transparent, and inclusive process of soliciting robust public input and for your focus on developing solutions to issues that impact main street Americans as well as small and mid-sized businesses. This stands in stark contrast to the approach taken by the Securities and Exchange Commission ("SEC") in recent months. In the first quarter of this year, the SEC issued more than one new rule proposal per week, most of which provided excessively short public comment periods. While we support the goals behind several new rule proposals, we believe that others will have adverse effects on American investors and businesses that undermine the SEC's important mission, are unworkable as proposed, and have diverted limited resources away from more time-sensitive priorities. As an executive agency, the SEC is charged with faithfully executing the laws that Congress enacts, so it is commendable when legislators proceed as thoughtfully as you have on these issues.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit http://www.sifma.org.

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SIFMA is pleased to provide comments on several provisions intended to advance the discussion draft's stated goal of accelerating economic growth and spurring new business formation. We greatly appreciate your consideration of our views and look forward to continuing to engage with you and your colleagues on these issues and other matters as this process moves forward.

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S. 1209 – Protecting Investors' Personally Identifiable Information Act
This bill would prohibit the SEC from requiring brokers to submit investors' personally identifiable information ("PII") to its Consolidated Audit Trail ("CAT"). SIFMA has long supported the goals of the CAT, and broker-dealers have been diligent in complying with their obligations to report transaction data. At the same time, the industry has consistently raised material security and privacy concerns about the amount of customer data to be reported to and maintained in the CAT. We appreciate the inclusion of this legislation that provides a much safer approach for investors in which their PII would remain within broker-dealers' systems and only upon request would be transmitted in a timely manner to the SEC and Financial Industry Regulatory Authority ("FINRA").

Small Business Audit Correction Act
This bill would provide much-needed regulatory relief to small, privately held, non-custodial broker-dealers from the requirement to use a Public Company Accounting Oversight Board ("PCAOB") registered audit firm for their annual audits. The Dodd-Frank Act required all broker-dealers to hire a PCAOB registered audit firm to conduct audits using complex guidelines tailored for large, public companies that have created an unnecessary burden on small broker-dealers. SIFMA supports this bill and appreciates the inclusion of it in this discussion draft.

Alleviating Stress Test Burdens to Help Investors Act
This bill would provide relief to non-banks from certain stress test requirements under the Dodd-Frank Act. Traditional prescriptive stress testing is designed and typically used to measure the financial resiliency of commercial banks, assessing their balance sheets to determine whether they have sufficient capital to withstand various adverse economic scenarios. Asset managers operate a completely different business model compared to a traditional bank, acting as a manager of separately custodied accounts. Traditional stress testing scenarios as envisioned under Dodd-Frank are not appropriately tailored to asset managers, which require alternative risk assessment metrics than those used in traditional stress testing. SIFMA supports this bill and appreciates the inclusion of it in this discussion draft.

S.3965 – Increasing Access to Adviser Information Act
This bill would permanently allow broker-dealers to receive payments for research without registering as investment advisers in connection with arrangements subject to the European Union's ("EU") Markets in Financial Instruments Directive ("MiFid"). This solution would help eliminate regulatory uncertainty and continue to facilitate high-quality investment research into public companies of all sizes by providing much-needed clarity for both broker-dealers and asset managers. While SIFMA supports this provision and appreciates the inclusion of it in the discussion draft, we would recommend the language be broadened to address a wider variety of investment manager payments for research to U.S. broker-dealers. It is our view that legislation should not be limited to those payments solely subject to EU directives or similar laws from other jurisdictions, including any future changes to those laws. A broader approach would facilitate a clearer regime and provide comparable treatment of research payments by investment managers related to both EU and U.S. clients, as payments for research could be made directly on behalf of both groups. While a beneficial step, as currently drafted, this legislation would require complex and

burdensome procedures to accommodate the different treatment of research payments on behalf of U.S. clients.

S. 3716 – Tracking Bad Actors Act of 2022

This bill would require the financial regulators to jointly create a public database of bad actors subject to criminal, civil, and administration actions relating to financial services brought by any Federal financial regulator, the Department of Justice, any self-regulatory organization or similar entity overseen by a Federal financial regulator, or any State or local criminal or regulatory agency. SIFMA has consistently advocated for robust investor protection standards in order to safeguard not only the average investor, but also the most vulnerable, like our nation's seniors. As we understand, this legislation would largely serve to extend the FINRA-run BrokerCheck and Investment Adviser Public Disclosure ("IAPD") tools to executives and directors of public companies. SIFMA strongly supports BrokerCheck as a valuable tool for investors to understand the background of their securities industry professional and broker-dealer. We encourage Congress to ensure that any newly created database is not duplicative of, and does not contain erroneous information compared to, this valuable tool for the investing public.

S. 3391 – Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act

This bill as currently drafted would expose small business owners and investors to unnecessary risks without any meaningful benefit from reduced regulatory compliance. Many of our member firms, particularly small and regional registered broker-dealers, have helped small businesses successfully navigate change of ownership transactions through their mergers and acquisitions (M&A) practices. Small business owners rely on their M&A advisors for the specialized knowledge and expertise needed to facilitate these transactions, which are typically the most significant event in the life of a small, family-owned business. Registered broker-dealers are subject to a variety of regulatory requirements that non-broker-dealer M&A advisors are not, and this bill risks leading to lower standards, less rigor, and an unlevel playing field in the provisioning of this important advice. SIFMA respectfully opposes S. 3391.

S. 3922 – Unlocking Capital for Small Business Act of 2022

Many of our member firms, particularly small and regional registered broker-dealers, have helped small businesses successfully raise capital and navigate change of ownership transactions through their banking practices. Registered broker-dealers are subject to a variety of regulatory requirements that non-broker-dealer finders are not, and this bill risks leading to lower standards, less rigor, and an unlevel playing field in the provisioning of these important services. As such, SIFMA respectfully opposes S. 3922.

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Again, SIFMA commends you and your colleagues for putting forth a robust discussion draft incorporating proposals to enhance capital formation, reduce regulatory burdens, and boost economic growth. We welcome the opportunity to comment on these provisions of particular note to our membership and look forward to continuing to work with you on these important legislative solutions.

Sincerely,

Kenneth E. Bentsen, Jr.
President and CEO