June 6, 2022

The Honorable Pat Toomey
Ranking Member
Senate Banking, Housing and Urban Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Toomey:

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write in response to your request for feedback regarding the recently announced JOBS Act 4.0 package. Thank you for the opportunity to provide the perspective of the American startup ecosystem on this legislative package. Many of these provisions are of particular importance to our community as VC-backed companies have made up a majority of all companies that went public over the previous seven years in a row.

Below is a background on the venture capital industry and our views on several proposals that would support capital formation in America's startup ecosystem. Broadly speaking, this legislative package contains a range of provisions that will accelerate the growth of new U.S. companies, encourage more companies to enter and remain in the public markets, and create more American jobs. A decade after passage of the Jumpstart our Business Startups (JOBS) Act, we are excited to see that Congress is serious about leveraging this success to foster more opportunities for emerging businesses. Thank you for your leadership and commitment to creating more economic opportunity and competition in the U.S. economy. We look forward to working with you on these important issues.

<u>Background on Venture Capital</u>

NVCA represents the U.S. venture capital and startup community, advocating for public policies that support America's entrepreneurial system.[1] VCs create partnerships with institutional investors to combine their talent and expertise with the capital held by pension funds, endowments, foundations, and others in order to make high-risk, long-term equity investments in innovative young companies. These are generally partnerships that last ten to fifteen years, building investments far longer than any other asset class.

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[1] *See* Nat'l Venture Cap. Ass'n, *About Us*, https://nvca.org/about-us/ (last visited Apr. 4, 2022).

VCs generally provide minority equity investment across multiple financing rounds, supporting startups from just an idea to the growth and expansion of a successful business. This capital is used to conduct research, expand workforces, build out new facilities, and generally focus on growth activities that create long-term value.[2] Far from merely cutting a check, venture capital funds actively strive to develop startups into successful companies—working alongside the entrepreneurs by taking board seats, providing strategic advice and counsel, opening contact networks, and offering broad-spectrum assistance aimed at turning ideas into reality.[3] Companies backed by venture capital predominantly focus on technological innovation, including IT hardware and software, biotechnology and medical devices, blockchain, and climate and sustainability technology.

Economic Impact of Venture Capital Activity

Venture capital builds the product for the IPO pipeline. Venture-backed companies constitute approximately 50 percent of companies that go public each year and are responsible for developing around half of new FDA-approved drugs.[4] Public companies originally built with venture capital financing account for an astounding 92 percent of R&D spending undertaken by all public companies founded within the last fifty years.[5] Companies that received venture capital funding in their incipient stages include giants like Apple, Microsoft, Amazon, Alphabet, Facebook, and Tesla—some of the largest U.S. companies by market capitalization.[6] Venture capital also backed companies like Moderna and Zoom that were invaluable during the COVID-19 pandemic.[7]

In addition to innovation and economic growth, venture capital has a massive impact on the U.S. workforce. New research found that employment at VC-backed companies between 1990 and 2020 grew 960 percent, whereas total private sector employment during that same period grew only 40 percent. These jobs are distributed broadly across the entire U.S. with 62.5 percent of jobs at VC-backed companies located outside the states of California, Massachusetts, and New York.[8]

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[2] *Venture Capital at Work*, NVCA, available at Venture Capital Investment at Work - National Venture Capital Association - NVCA

[3] *See* Nat'l Venture Cap. Ass'n, *What is Venture Capital?*, https://nvca.org/about-us/what-is-vc/#toggle-id-1 (last visited Apr. 4, 2022).

[4] *Trends in Healthcare Investments and Exits 2019*, Silicon Valley Bank, available at https://www.svb.com/globalassets/library/managedassets/pdfs/healthcare-report-2019-midyear.pdf

[5] *The Economic Impact of Venture Capital: Evidence from Public Companies (July 2021),* Professors Will Gornall and Ilya Strebulaev, available at The Economic Impact of Venture Capital: Evidence from Public Companies by Will Gornall, Ilya A. Strebulaev :: SSRN

[6] Will Gornall & Ilya A. Strebulaev, *The Economic Impact of Venture Capital: Evidence from Public Companies* 2 (June 2021), https://papers.ssrn.com/sol3/papers/cfm?abstract_id=2681841

[7] Bobby Franklin & Gregory Brown, *Numbers Don't Lie: America's Most Resilient Jobs Are Venture-Backed*, The Hill (Feb. 24, 2022), https://thehill.com/opinion/finance/595509-numbers-dont-lie-americas-most-resilient-jobs-are-venture-backed/

[8] *An Analysis of Employment Dynamics at Venture-Backed Companies Between 1990 and 2020*, NVCA, Venture Forward, and the University of North Carolina Kenan Institute of Private Enterprise (February 2022), at https://nvca.org/wp-content/uploads/2022/02/Employment-Dynamics-at-Venture-Backed-Companies_FINAL.pdf

Improving the market for private capital

Modernize the SEC's Definition of Venture Capital Fund

NVCA is particularly thrilled to see the *Developing and Empowering our Aspiring Leaders (DEAL) Act* included in the JOBS Act 4.0 package, a longtime legislative priority that will improve returns and capital formation in the initial stages of the startup ecosystem. Authored by Senator Mike Rounds (R-SD) in the Senate and Representative Trey Hollingsworth (R-IN) in the House of Representatives, the *DEAL Act* will allow VC funds to acquire more shares from founders, angel, and seed stage investors, and provide capital to emerging VC funds without triggering the costs and burdens of fund registration. These early-stage investors will then be able to make new investments into the next generation of nascent American companies.

NVCA is grateful for the exemption provided by statute that was intended to exempt all venture capital funds from the costs and challenges associated with the Registered Investment Advisor (RIA) registration requirements under Dodd-Frank. However, industry trends have made the definition of a venture capital fund promulgated by the Securities and Exchange Commission (SEC) in rule 203(l)-1 of the Investment Advisers Act too narrow to appropriately reflect the current market. The definition leaves out critical participants in the entrepreneurial ecosystem, constrains the investment activity of some Exempt Reporting Advisors (ERAs) who must monitor investment strategies to actively avoid the regulatory morass of registration, and imposes unnecessary compliance burdens on other firms who participate in venture capital.

The *DEAL Act* is the legislative solution to this challenge and would encourage capital formation for startups by directing the SEC to make a larger percentage of secondary investments qualifying for purposes of the definition of a venture capital fund. We are also excited to see the *DEAL Act* expanded to make venture capital fund-of-fund investments qualifying. These types of investments are not currently eligible under the SEC definition despite the prominent role of fund-of-fund investments in growing venture capital ecosystems into more regions of the country.

Expanding American Entrepreneurship Act

NVCA supports increasing the permitted investor and capital limits of certain startup investments funds that to 500 investors and to $50 million, respectively. Giving these funds room to grow will provide greater access to capital for small companies, particularly for those in nascent emerging ecosystems.

Encouraging companies to be publicly traded

Expand Emerging Growth Company (EGC) status for issuers continuing to meet definition

NVCA is pleased to see inclusion of a provision to extend the length of time that a company can remain an EGC in the public markets from five years to ten years. This proposal would provide companies making the determination about whether to go public greater confidence in the expected regulatory burden they will face. One of the most successful aspects of the JOBS Act was the creation of the EGC designation for growth companies accessing the public markets. This designation provides a more flexible regulatory regime for companies that have been public for less than five years, with less than $1.07 billion dollars in annual revenues, that are not yet large accelerated filers (defined in SEC regulations as having a total public float in excess of $700 million). EGC designation smooths the transition to the public markets for innovative growth companies, making an IPO relatively more attractive.

We also recommend that Congress include a transition period of one year for companies that lose their EGC status because their public float exceeds $700 million for the first time. This change would allow a more orderly transition period for companies that lose EGC eligibility because the value of their public float increases beyond the eligibility threshold.

Public company reporting requirements

NVCA supports the inclusion of S.3919, the *Reporting Requirements Reduction Act of 2022*. from Senator Thom Tillis (R-NC). This proposal would allow companies to file public reports semiannually, as opposed to quarterly. Many companies built with venture capital are technology-intensive and focused on long-term value creation through the development and scaling of frontier technology projects. Progress on these projects should be measured in years, not weeks or months. Senator Tillis' proposal would better align reporting requirements with the longer-term nature of technology development.

SEC research requirements and trading venue choice

NVCA supports efforts to research challenges that young companies face when they become public companies, including requirements for the SEC to study middle-market IPO underwriting and decimalization. We also encourage Congress to consider additional requirements that the SEC study ways to increase liquidity and research coverage for smaller companies. Finally, we encourage Congress to allow smaller companies to consolidate the trading of their shares on a limited number of exchanges of their choosing to help improve depth of liquidity.

<u>Conclusion</u>

We are thrilled to see the release of this package of important provisions that will bolster American competitiveness and enhance competition in the U.S. economy. JOBS 4.0 builds off the success of the original JOBS Act and will ultimately support new company creation and growth in regions across the country. We look forward to working with you to pass this package into law.

Sincerely,

Bobby Franklin

Bobby Franklin
President and CEO