Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
April 5, 2022 at 10:00 AM

Thank you, Mr. Chairman.

I will address insider trading, but first I'd like to acknowledge that ten years ago to this very day, President Obama signed the Jumpstart Our Business Startups, or JOBS, Act into law. This remarkable piece of bipartisan legislation opened new avenues for companies to raise capital. For example, it created a streamlined path for new startups to go public as "emerging growth companies."

Since 2014, these "emerging growth companies" have accounted for almost 90% of all initial public offerings, or IPOs. Yet, the number of public companies continues to decrease. In fact, the number of public companies has declined 40% since its peak in the late 1990s. If not for the JOBS Act, the situation would be even worse. This decrease hurts economic growth, cuts off funding avenues for American businesses, and reduces investment opportunities for average Americans.

Although the last two years saw more IPOs, this may be an aberration if the large number of SPAC offerings turns out to be a temporary phenomenon. And if last week's SEC proposal on SPACs becomes final, we may see the end of SPACs altogether.

But investors have clamored to be part of SPAC offerings. Why is that? My view is that they want growth-stage investments, and they are not getting them any other way.

Companies face excessive costs in going and staying public, which discourages them from going public in the first place. IPOs used to be a capital raising event. Now, they are too often just a liquidity event for early investors.

These costs of going public will increase substantially if the 23 SEC proposals—announced in only the last four months and many that significantly uproot the historical approaches taken in securities regulation—go into effect. For a single proposal on climate change, the

SEC estimates that it will nearly triple the external costs for companies to prepare their annual 10-K reports. Imagine that.

Think of the money companies spend today on preparing annual reports to cover the entirety of their businesses. And the SEC would nearly triple that cost to add often immaterial disclosure requirements regarding climate change.

In my view, the SEC is taking disclosures in the wrong direction. Unless we change that direction, we could lose America's number one position as the leader in active and efficient capital markets.

That's why yesterday, with my colleagues on the Banking Committee, I have rolled out a discussion draft of the JOBS Act 4.0. This draft is the result of a request I made last February for proposals to increase economic growth and job creation by facilitating capital formation.

In response, we received 35 submissions with more than 150 legislative proposals from a wide variety of bipartisan organizations and stakeholders. We turned a number of these proposals into bills, some of which received bipartisan support.

These bills encourage companies to be publicly-traded, particularly during earlier growth stages, improve the market for private capital by appropriately tailoring regulations for small businesses, enhance retail investor access to investment opportunities, and improve regulatory oversight.

We are seeking feedback on this draft over the next 60 days. I am hopeful that Republicans and Democrats can come together and find agreement on the JOBS Act 4.0. This draft acknowledges the important role played by private markets and how they can be improved.

Some resist improving private markets because they claim that doing so would discourage companies from going public. If we want to encourage companies to go public, maybe the answer is to make it less onerous to be a public company.

I don't believe that one of type of market—private or public—is inherently better than the other. Indeed, the optimal source of capital for a company might vary at different stages of its growth cycle. Improved private markets can help private companies stay around long enough to grow into public companies.

However, as the pool of public companies shrinks, retail investors are cut out of key investment opportunities. We should expand retail investor access to these non-public investments so they can diversify their portfolios and potentially receive the higher returns available to the wealthy.

We know that union pensions, other institutional investors, and high-net worth individuals routinely include non-public investments, such as private equity and venture capital, as a part of their diversified portfolios. We ought to be ensuring that pension plans like CalPERS and wealthy investors aren't the only ones with access to these types of investments.

Now, let me turn to insider trading. The securities markets are at the heart of our economy and our financial system. They reflect the collective decision-making of many individuals on whether to buy, sell, or hold securities. In so doing, they carry out the critical function of price discovery.

An accurate market price—one that efficiently incorporates all available public information—is perhaps the most important investor protection that exists. Thus, it is crucial that market participants have incentives to use lawful means to discover information, conduct analysis, and develop investment hypothesis and to use such efforts to make better decisions about market prices.

For that reason, insider trading has never been about one market participant having better information over another. Instead, insider trading is about one person wrongfully obtaining, or using, material non-public information in breach of a fiduciary duty or through misappropriation.

In the decades since the first insider trading cases were brought, the courts have developed an extensive body of insider trading law. It would be preferable for Congress to codify what that law would entail. If we do so, we should be cautious about legislation that might cause confusion, uncertainty, or unintended consequences in this highly technical area, particularly regarding investment research.

I look forward to hearing from today's witnesses about all of these important issues.