



March 8, 2024

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Re: H.R. 2799 – Expanding Access to Capital Act of 2023

Dear Speaker Johnson and Leader Jeffries,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ would like to express our appreciation for your work to modernize our securities laws with the consideration this week of the *Expanding Access to Capital Act of 2023*, H.R. 2799. This bipartisan legislation makes important changes to our securities laws that will reduce regulatory burdens that too often hinder capital formation. SIFMA has been supportive of key elements of this package, including those enumerated below, as those provisions have moved through the legislative process. Accordingly, we urge Congress to pass this legislation.

Recognizing the critical role the U.S. capital markets play in our economy, SIFMA was pleased to support the passage of the original JOBS Act in 2012. Now, over a decade later, that legislation has made great strides in reducing regulatory burdens that too often stand in the way of growth and innovation. Still, with the continuing evolution of our markets and market participants, we believe that it is now appropriate for Congress to consider additional enhancements to the securities laws that will reduce regulatory frictions and facilitate improved access to the U.S. capital markets.

We commend the House Financial Services Committee (HFSC) for holding numerous hearings on this topic to allow for appropriate consideration and feedback from the public and interested stakeholders, and for crafting a package that appropriately balances capital formation with investor protection. We believe the *Expanding Access to Capital Act of 2023* strikes this important balance. In particular, SIFMA is pleased to provide comments on the following proposals included in the legislation.

H.R. 2627 – Increasing Investor Opportunities Act (as incorporated)

This provision would prevent the SEC from setting limits for closed-end funds investing in private funds and would prevent private funds from circumventing anti-pyramiding fund of funds rules. This change

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>.

would eliminate an informal 15 percent cap enforced by the SEC and would let closed-end funds determine the level of private fund investments that would best meet fund investment objectives and benefit shareholders. This provision looks to expand the access that retail investors have to the benefits of investing in private markets. Importantly, this access would come through an investment adviser and registered investment company. Furthermore, this legislation would promote regulatory fairness and clarity by ensuring private funds are considered “investment companies” on a consistent basis, harmonizing the treatment of private funds with registered mutual funds for fund-of-fund anti-pyramiding rules. SIFMA supports this provision and appreciates its inclusion in the package.

H.R. 3063 – Retirement Fairness for Charities and Educational Institutions Act (as incorporated)

This provision would provide parity and uniformity across different types of retirement plans by permitting 403(b) plans to invest in Collective Investment Trusts (CITs) and insurance company separate accounts. Currently 403(b) plans are unable to invest in CITs and insurance company separate accounts even though other plan types such as 401k plans and Thrift Savings Plans (TSP) can invest in those vehicles. Providing parity in retirement plans will ensure all Americans can securely and effectively save for retirement. SECURE 2.0 included changes to the tax code to bring uniformity to 403(b) plans regarding their tax treatment, however, this legislation did not include the necessary changes to securities law to ensure 403(b) plans were granted a level playing field with other retirement plans. SIFMA supports this provision and appreciates its inclusion in the package.

H.R. 1807 – Improving Disclosure for Investors Act of 2023 (as incorporated)

This provision would direct the SEC to update its disclosure delivery rules to allow registered investment companies, business development companies, advisers, broker-dealers, transfer agents, and others to use electronic delivery (“e-delivery”) as the default method of sending certain investor communications and disclosure documents to their customers as required under the securities laws. Importantly, the bill empowers investors by requiring the SEC to ensure that any investor can choose at any time to receive these documents in paper form via regular mail. Furthermore, customers who have not provided digital credentials to their account or to whom e-delivery is unsuccessful will automatically receive their documents in paper form via regular mail. SIFMA supports this provision and appreciates its inclusion in the package.

Division A Title 4 of the Expanding Access to Capital Act – Expand the Protection for Research Reports to Cover All Securities of All Issuers

This legislation would expand a provision in the JOBS Act of 2012 that establishes that a broker-dealer’s distribution or publicization of a research report about an emerging growth company (EGC) does not constitute an “offer.” The JOBS Act allows such research reports to be published and distributed without triggering requirements to file a registration statement and deliver a prospectus. This legislation today would expand the application of the JOBS Act beyond EGCs to cover research reports about any issuer that undertakes a proposed public offering of securities. Research reports help investors make informed decisions and provide critical analysis of the financial and operational well-being of a company or industry. Furthermore, research reports remain highly regulated, subject to myriad SEC and FINRA regulations and oversight designed to protect investors. Smaller and mid-sized issuers can particularly benefit from research reports through enhanced investor recognition and increased liquidity in their securities. SIFMA supports this provision and appreciates its inclusion in the markup.

Division B Title 1 of the Expanding Access to Capital Act – Unlocking Capital for Small Business Act

As articulated during the HFSC’s consideration of this provision, SIFMA remains concerned about and is opposed to the *Unlocking Capital for Small Business Act of 2023*. This provision would direct the SEC to finalize its 2020 proposed rule exempting from broker-dealer registration any entity that acts as a “finder” by helping issuers raise capital in private markets from accredited investors. SIFMA is concerned that this may unlevel the playing field by requiring registered broker-dealers to remain subject to a variety of regulatory requirements while exempting non-broker dealer “finders” from certain foundational protections under the securities laws.

SIFMA commends you and the sponsors of this legislation for your work to advance commonsense, bipartisan solutions to enhance capital formation, reduce regulatory burdens, and promote economic growth. We encourage Congress to pass the *Expanding Access to Capital Act of 2023*, and we look forward to continuing to work with you to strengthen our capital markets and protect investors.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Bentsen", written over a light gray rectangular background.

Kenneth E. Bentsen, Jr.
President and CEO

cc: Chair Patrick McHenry, House Financial Services Committee
Ranking Member Maxine Waters, House Financial Services Committee