CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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[redacted]

February 15th, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **February 15th Meeting of the Advisory Committee on Small and Emerging Companies; File Number 265-27**

Dear Mr. Fields:

The U.S. Chamber of Commerce (the "Chamber") created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for the United States capital markets to fully function in a 21st century global economy.[1] The CCMC welcomes the opportunity to comment on the February 15th meeting of the Advisory Committee on Small and Emerging Companies ("Committee"), and we commend the Committee for its important work as an advocate for small and medium sized businesses.

In particular, we appreciate the Committee's focus on exploring why more companies in the United States are choosing to stay private instead of undergoing an initial public offering ("IPO"). The number of public companies in the United States has declined by roughly *half* over the last two decades, and the overall number of public companies is only slightly higher than 35 years ago.[2] As the CCMC has long pointed out, the accumulative costs and burdens of going and staying public have led many companies to make the decision that staying private is in their best interest.

This secular decline is a tragic development for our economy, particularly given the body of evidence which shows that both job and revenue growth increase

[1] The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.
[2] "America's Roster of Public Companies Is Shrinking Before Our Eyes" WSJ January 6, 2017https://www.wsj.com/articles/americas-roster-of-public-companies-is-shrinking-before-our-eyes-1483545879

significantly once a company goes public. For example, a 2012 study by the Kaufmann Foundation found that from 1996-2010, the 2,766 companies that completed an IPO during that period cumulatively increased their employment by over 2.2 million jobs.[3] And a 2009 report estimated that the IPO gap had resulted in up to 22 million lost jobs in the United States.[4] Whatever the exact economic consequence may be, it is indisputable that fewer public companies means less jobs, less growth, and less innovation throughout the American economy.

Despite the high hurdle faced by companies to access the public markets, the Securities and Exchange Commission (the "SEC") for years took little action to address the problem. Eventually, the SEC's neglect led Congress to intervene, and in 2012 Congress passed the Jumpstart our Business Startups ("JOBS") Act. The JOBS Act took a number of important, if relatively minor, steps towards making it incrementally more attractive for businesses to go public. While the IPO "on-ramp" provisions helped increase the number of IPOs in the immediate years following the JOBS Act, the IPO market has since cooled and many long-term issues still remain.

To be sure, there are several factors that a company takes into consideration when deciding whether or not to go public. These include factors that cannot be controlled by regulators such as market conditions, competitive pressures, and cost of capital. However, many of the hurdles to going public are self-inflicted and include the complexity of the SEC's disclosure regime, recent attempts by special interests to use corporate disclosures to advance their agendas, and the outsized influence that proxy advisory firms have on corporate governance in the United States.

For example, the recommendations issued by the IPO Task Force in 2011 – which largely influenced the provisions of the JOBS Act – included a survey in which 92% of public company CEO's reported that the "administrative burden of public reporting" was a significant challenge for their company becoming public.[5] As the SEC's disclosure regime has grown in both cost and complexity over the years, it is no surprise that many companies don't eagerly await the opportunity to spend the time

[3] Kaufmann Foundation report can be found at http://www.kauffman.org/~/media/kauffman_org/research%20reports%20and%20covers/2012/05/post_ipo_report.pdf
[4] "A Wake-Up Call for America" David Weild and Edward Kim, November 2009. http://www.rcgt.com/wp-content/blogs.dir/2/files/2011/04/A_wake_up_call_for_America.pdf
[5] "Rebuilding the IPO On-Ramp" IPO Task Force, October 2011. https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf

and resources it takes to meet quarterly and annual reporting deadlines. In 2014, the CCMC released a number of recommendations that would modernize corporate disclosures for the benefit of both issuers and investors, and which would ultimately entice more companies to go public.[6]

More troublingly, there has been an increased push over the last decade – mainly by well-funded special interests – to use the SEC's disclosure regime in order to advance a political or social agenda. These efforts have included provisions in the Dodd-Frank Act mandating immaterial disclosures such as pay ratio and conflict minerals, as well as continued efforts to mandate political spending disclosures. To help counter this alarming trend, the CCMC issued a report last month emphasizing the need for policymakers to adhere to the Supreme Court-articulated materiality standard, which has effectively governed corporate disclosure for decades.[7]

Proxy advisory firms also continue to play an outsized role in corporate governance and, despite recent action taken by the SEC, two firms – ISS and Glass Lewis – continue to dominate well over 90% of the proxy advice market. These firms operate with little transparency, rampant conflicts of interest, and often times make recommendations that are not correlated to enhancing the underlying economic value of a company. We believe that any discussion that examines the reasons for companies staying private should include a focus on the role that ISS and Glass-Lewis have in our corporate governance framework.

We would also note that the SEC has for years neglected the third leg of its tripartite mission, which is to "facilitate capital formation." Almost all of the capital formation-related rulemakings that the SEC has undertaken recently have been mandated by Congress, and the SEC has failed to organically develop its own capital formation agenda. For these reasons, the CCMC has supported legislation that would require the SEC to, at a minimum, respond to the recommendations made at its annual Government-Business Forum on Small Business Capital Formation.[8] We feel

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[6] CCMC Report "Corporate Disclosure Effectiveness: Ensuring a Balanced System that Informs and Protects Investors and Facilitates Capital Formation" http://www.centerforcapitalmarkets.com/wp content/uploads/2014/07/CCMC_Disclosure_Reform_Final_7-28-20141.pdf?x48633

[7] CCMC Report: "Essential information: Modernizing Our Corporate Disclosure System" http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/U.S.-Chamber-Essential-Information_Materiality-Report-W_FINAL.pdf?x48633

[8] H.R. 4168 114th Congress

that if the SEC was to truly focus on fulfilling its statutory mission to facilitate capital formation, it would discover ways to make the IPO process more attractive to small and growing enterprises.

We believe that the Committee – in addition to the newly created Office of the Advocate for Small Business Capital Formation – will both play an important role in re-focusing the SEC on its important mission and can help more business access the capital markets. We commend the Committee for holding this important discussion, and we stand ready to assist in any way we can.

Sincerely,

Tom Quaadman