



March 5, 2026

**To: Office of the Advocate for Small Business Capital Formation, U.S. Securities and Exchange Commission**

**From: American Securities Association (ASA)**

**Re: March 9th Annual Small Business Forum**

The American Securities Association (ASA)<sup>1</sup> submits these recommendations for consideration during the SEC's 45<sup>th</sup> Annual Small Business Forum on March 9<sup>th</sup>. The ASA appreciates the Securities and Exchange Commission (SEC) holding this forum again to solicit ideas for how the SEC and Congress can right-size regulation to help businesses raise capital and increase opportunities for investors.

## **I. General**

The ASA has been an active participant in developing policy proposals to revitalize the initial public offering (IPO) market and help businesses of all sizes raise capital. The 2012 Jumpstart Our Business Startups (JOBS) Act was a landmark bill that established the IPO "on-ramp" and made it more attractive for high-growth businesses to go public. And while Congress has passed subsequent reforms that build upon the success of the JOBS Act, the costs of going public and, as important, *remaining* a public company remain stubbornly high.

ASA commends Chairman Atkins for re-focusing the SEC on its statutory mandate to facilitate capital formation and we look forward to working closely with the commissioners and staff on these issues in the coming months.

## **Recommendations**

### **II. Tailor regulations for emerging growth companies and small public companies**

The JOBS Act established the emerging growth company (EGC) as a class of SEC-registered public companies. EGCs are eligible for the IPO "on-ramp" which provides a temporary exemption from some of the more costly mandates that apply to traditional IPOs. Thirteen (13) years after the JOBS Act, the EGC framework remains robust, it has not compromised investor protection nor has it decreased market confidence in any way. But more can be done. Congress

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<sup>1</sup> ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





and the SEC should use the EGC definition as a model to further tailor regulation for businesses considering an IPO.

**1. Extend the EGC on-ramp from five years to 10 years and increase the revenue threshold to a minimum \$2 billion.**

- EGCs are afforded exemptions from certain rules, including the auditor attestation requirements under the 2002 Sarbanes-Oxley Act and certain executive compensation disclosures. These exemptions last for either five years or when an EGC crosses \$1.235 billion in annual revenue. EGCs would benefit from a longer time period that allows them to mature without having to divert resources to regulatory requirements that are more appropriate for larger companies and systemically important banks. The ASA supports the reforms contained in Rep. Steil's Helping Startups Continue to Grow Act.

**2. Allow EGCs to file short-form 10Qs with full negative assurance comfort from auditors on all (from SAS 72 standpoint) financial statements with limited MD&A.**

- The IPO Task Force of 2011 – whose recommendations informed much of what ultimately became the JOBS Act – noted that 92% of public company CEOs reported the “administrative burden of public reporting” was a major challenge to becoming a public company.<sup>2</sup> Rep. Ann Wagner's Modernizing Disclosures for Investors Act permit EGCs to file short-form 10Qs, however the SEC retains authority on its own to effectuate this change.

**3. Allow all issuers to use Form S-3 shelf registration forms.**

- Form S-3 is the most simplified and cost-effective form that issuers can file with the SEC. It allows them to pursue follow-on offerings by pulling already filed forms off the “shelf.” Unfortunately, EGCs and small issuers remain prohibited from using such forms. Rep. Wagner's previously introduced Accelerating Access to Capital Act would permit broader Form S-3 use, but the SEC also has existing authority to enact this reform.

**III. Improve Research Coverage for Pre-IPO and Small Public Companies**

A recent report from the SEC's Office of the Advocate for Small Business Capital Formation reported that 44% of small and mid-capitalization stocks have no analyst coverage at all, compared to 73% of large capitalization stocks which are followed by more than 10 analysts.<sup>3</sup>

<sup>2</sup> Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth – IPO Task Force (October 20th, 2011) Available at [https://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on\\_ramp.pdf?mod=article\\_inline](https://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on_ramp.pdf?mod=article_inline)

<sup>3</sup> <https://www.sec.gov/files/2024-oasb-annual-report.pdf>





Having limited or no research coverage negatively impacts liquidity and volatility in the stock of smaller public companies. While certain JOBS Act provisions were intended to increase research coverage, those changes have not materialized.

**1. Broker-dealers should be permitted to receive hard-dollar payments for research from clients without having to register as investment advisers.**

- The EU's Markets in Financial Instruments Directive II (MiFID II), contributed to a steep decline in the number of research analysts employed by broker-dealers as well as the total number of companies covered by analysts. MiFID II prohibited brokers from accepting bundled payments for research and other services and instead required that research payments be made in "hard dollars." However, in the United States brokers would be required to register as investment advisers if they accept hard dollar payments for research. The SEC previously issued a series of "no-action" letters that permitted broker-dealers to accept "hard dollar" payments without having to register as advisers, however the SEC declined to extend that relief in 2023. We should not be importing ill-conceived regulations from Europe. At a minimum, the SEC should permanently allow broker-dealers to receive hard dollars without having to register as investment advisers.

**2. The ASA supports the ongoing SEC reconsideration of the Global Research Settlement**

- In December, the SEC announced that it had agreed to amend the Global Research Analyst Settlement. As Commissioner Uyeda noted in a statement, since the 2004 settlement, analyst coverage of small and mid-size public companies has collapsed.<sup>4</sup> Subsequent rulemakings have also called into question whether the settlement continues to make sense today. Amending the settlement is a critical first step towards re-incentivizing coverage of small public companies.

**3. Allow investment banking and research analysts to jointly attend "pitch" meetings in order to have open and direct dialogue with EGCs.**

- Under the JOBS Act, investment banking research and analysts may jointly attend pitch meetings, however analysts are prohibited from engaging in efforts to solicit investment banking business. While the SEC has provided guidance for what analysts may discuss in such meetings, in practice those conversations are limited. Bankers and analysts typically do not jointly attend pitch meetings despite the clear intention of the JOBS Act. The SEC should consider the removal of barriers prohibiting investment banks and analysts (including those from "settling" firms) from jointly

<sup>4</sup> <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-global-research-analyst-settlement-120525>





attending meetings (including pitches) for EGCs, and expressly expand the permitted content that can be discussed at such meetings so long as no direct or indirect promises of favorable research are given. This would result in more information to flow to investors regarding the operations and investment profile of EGCs.

#### **IV. Protecting Shareholders Against Political Activism**

Unfortunately for investors, the previous SEC bowed to political pressure from a consortium of well-funded and highly politicized special interest groups. This acquiescence allowed many of the longstanding exclusions under Rule 14a-8 that companies used to prevent proposals related to non-material and non-financial issues in their proxy materials to be overridden by SEC staff.

The agency's mission creep into the purview of corporate law, which is exclusively reserved to the states, has led to the "federalization of corporate governance."<sup>5</sup> The Chair's 2025 issuance of Staff Legal Bulletin 14M (SLB 14M) was necessary to reinstate strict materiality standards, curb micromanagement, and re-emphasize the economic relevance 5% rule<sup>6</sup>. While these changes will have a substantial impact, further *permanent* changes are needed to protect investors from the costs imposed by political activists and the politics of future chairman.

##### **1. Close the Rule 14a-4 Loophole**

- While SLB 14M is a step in the right direction, some activists are now exploiting provisions of the SEC's universal proxy rule to force public companies to include their proposals with the company's proxy materials.<sup>7</sup> This rule, known as Rule 14a-4, is a loophole that circumvents the existing shareholder proposal system under Rule 14a-8. Activists have already proven they can be successful using this strategy to force immaterial political questions to be considered during annual proxy seasons. Left unaddressed, it will become the preferred route of special interests to continue their abuse of the securities laws. The SEC must close this loophole.

##### **2. Prohibit the inclusion of immaterial and frivolous shareholder proposals with a company's proxy materials**

- SLB 14M ended the "broad societal impact" standard that should minimize the enormous costs companies and their shareholders incur to deal with frivolous activist campaigns. However, the SEC should go further and adopt a formal rulemaking that prohibits the inclusion of all immaterial non-economically relevant proposals during

<sup>5</sup> See e.g. Shareholder Proposals: An Exit Strategy for the SEC (Dan Gallagher, John Cook) Washington Legal Foundation, September 2015. Available at <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/09-252015GallagherCookWP.pdf>

<sup>6</sup> <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>

<sup>7</sup> <https://www.cooley.com/news/insight/2024/2024-08-06-2024-shareholder-proposal-highlights>





proxy season and provide boards with legal certainty to exclude such proposals without fear of retribution from the SEC.

### 3. Establish strong oversight of proxy advisory firms

- At the heart of the consortium to politicize the capital markets lies the proxy advisory firms. These firms make recommendations to institutional investors on how to vote on director elections and shareholder proposals. The business models of the two largest proxy advisors – Institutional Shareholder Services (ISS) and Glass Lewis (Duopoly) – are inherently conflicted as both of these foreign-owned firms have an incentive to support politically-motivated shareholder proposals. If companies don't achieve a certain political metric in a shareholder proposal, the Duopoly uses this as reason to offer their consulting and ratings business as a solution to avoiding future politically motivated proposals. Importantly, the duopoly's proxy advice is not subject to any economic or legal analysis, and the SEC must change that.
- The Duopoly is also prone to making major errors when developing vote recommendations. In 2020, the SEC adopted reforms that would have allowed public companies the chance to review and respond to draft vote recommendations from proxy advisors and hold proxy advisors accountable for any false or misleading statements. Unfortunately, the SEC subsequently rescinded many of those reforms before they went into effect. The SEC should clarify its authority over proxy advisory firms, ensure that this industry operates under rules just as every other actor in the proxy system does, reinstate the rule holding them accountable for false or misleading statements, and subject their proxy voting advice to an economic analysis.

## V. Conclusion

We appreciate the SEC's convening of the annual small business forum and look forward to serving as a resource on these critical issues for commissioners and staff.

Sincerely,

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