



October 13, 2022

The Honorable Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: October 13<sup>th</sup> Meeting of the Small Business Capital Formation Advisory Committee**

Dear Chairman Gensler:

The American Securities Association (ASA)<sup>1</sup> submits these comments in advance of the October 13<sup>th</sup> meeting of the Securities and Exchange Commission's (SEC) Small Business Capital Formation Advisory Committee. The Committee is scheduled to discuss ways to support entrepreneurship and the state of the initial public offering (IPO) market in the United States.

The ASA has been a leader in the debate over how to improve capital formation in the U.S. economy, and we have put forward several recommendations for Congress and the SEC to implement policy reforms on this issue. The SEC has a critical obligation to facilitate capital formation, and Congress has worked on a bipartisan basis in recent years to pass several bills that will help small and growing business raise capital.

Unfortunately, today the SEC has no apparent capital formation agenda. In fact, many rules it has recently proposed would have the effect of *negatively* impacting small businesses and raise compliance costs for newly public companies or those considering going public. We are hopeful that some of the recommendations the Committee puts forward are considered and acted upon by the Commission.

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<sup>1</sup> The 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. The 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. The ASA has a geographically diverse membership of almost one hundred members that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.





Earlier this year, the ASA submitted our capital formation priorities<sup>2</sup> to the SEC. Ideas from that submission include:

### **Improving Research Coverage for pre-IPO and Small Public Companies**

- **Broker-dealers should be permitted to receive hard-dollar payments for research from clients without having to register as investment advisers.** Since the implementation of the EU's Markets in Financial Instruments Directive, there has been a steep decline in the number of research analysts employed as well as the number of companies covered. There has also been a trend towards coverage of larger, more established companies at the expense of smaller ones, which further exacerbates the difficulties that small companies have in accessing the capital markets. In addition to depriving money managers and retail investors of valuable research, the continued decline of company specific information in the marketplace may further accelerate the trend toward automated and passive investment strategies.

While the SEC has issued limited no-action relief to allow broker-dealers to receive hard dollar payments for research, a permanent solution is necessary so that the drop in research coverage is not further exacerbated. Unfortunately, SEC staff recently suggested that it intends to reverse its no-action position which will allow an EU regulation that has not been debated in this country to apply to U.S. broker-dealers. This will have far-reaching consequences and is likely to exacerbate the decline of research coverage for small issuers.

- **The SEC should produce a holistic report and recommendations to improve research of pre-IPO and small public companies.** The ASA strongly supported a previous Treasury Department recommendation for such a review and believe that a comprehensive review of the 2003 Global Research Analyst Settlement as well as SEC and Financial Industry Regulatory Authority (FINRA) rules should be conducted. While there have been rule changes made to encourage pre-IPO research, without a liability safe harbor it is unlikely that we will see a meaningful increase in pre-IPO research.

### **Secondary Market Trading Reforms**

- **Issuers with distressed liquidity should be permitted to suspend unlisted trading privileges.** UTP enables securities listed on an exchange to be traded on other national securities exchanges and is automatically extended to securities prior to their listing on an exchange. While UTP makes sense for larger companies with adequate liquidity and significant trading volume, it simultaneously fragments liquidity and increases trading

<sup>2</sup> <https://www.americansecurities.org/post/asa-sends-letter-on-sec-s-reg-flex-agenda>





costs for thinly traded stocks, which tend to be smaller issuers. A 2018 joint trade IPO report (IPO Report) recommended that issuers with distressed liquidity be given the option to suspend their UTP, and Congress has also recently weighed in on this issue.<sup>3</sup>

- **Certain smaller issuers should be eligible to determine their own intelligent tick sizes.** The IPO Report also recommended that issuers become eligible to determine their own “tick-size” to improve the liquidity of thinly traded or lower priced stocks. The SEC’s 2000 decimalization order transitioned the trading of stocks – regardless of stock price or market capitalization – to penny increments.

While decimalization may make sense for large capitalization, highly traded stocks, narrow trading spreads can serve as a disincentive for market makers to trade the shares of EGCs or other small issuers. A 2019 report from Nasdaq, done in collaboration with a diverse group of market participants and academics, proposes a set of six different tick increments.<sup>4</sup> Stocks would be categorized based upon their duration-weighted average quoted spread over a certain period of time. Importantly, a tick increment for a company would not be static as it could transition to a different increment after a data-driven review of how the security trades. In other words, objectivity, not subjectivity will drive the outcome. ASA supports the concepts included in the Nasdaq proposal and we believe it is time for Congress or the SEC to act upon such initiatives.

### Scaling Regulatory Requirements for Small Issuers

- **Emerging growth companies (EGCs) should be allowed 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>5</sup> Legislation directing the SEC to examine the costs of quarterly reporting for EGCs was included as part of the JOBS and Investor Confidence Act.<sup>6</sup>
- **All issuers should be permitted 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.”

<sup>3</sup> <https://www.centerforcapitalmarkets.com/resource/expanding-the-on-ramp-recommendations-to-help-more-companies-go-and-stay-public/>

<sup>4</sup> <https://www.nasdaq.com/docs/2019/12/16/Intelligent-Ticks.pdf>

<sup>5</sup> [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>6</sup> H.R. 4076 (116<sup>th</sup> Congress) *Modernizing Disclosures for Investors Act*





Unfortunately, EGCs and small issuers remain prohibited from using such forms without the SEC providing any evidence that such restrictions put investors at risk. S-3 eligibility should be expanded to all issuers, and the “baby-shelf” restrictions that limit the amount an issuer can raise should also be eliminated. Legislation to implement these reforms has been introduced and considered in the House of Representatives for several years.<sup>7</sup>

The ASA is hopeful that the Committee’s work will encourage the SEC to pursue capital formation priorities and adopt some of these and other reform ideas. The ASA looks forward to working with commissioners, SEC staff, and Committee members on these important topics.

Sincerely,

*Christopher A. Iacovella*

Christopher A. Iacovella  
Chief Executive Officer  
American Securities Association

Cc:

Members of the Small Business Capital Formation Advisory Committee  
Commissioner Hester Peirce  
Commissioner Caroline Crenshaw  
Commissioner Mark Uyeda  
Commissioner Jaime Lizarraga

<sup>7</sup> Accelerating Access to Capital Act, H.R. 4529 (115<sup>th</sup> Congress)

