AFL-CIO | AFR Americans for Financial Reform

July 17, 2018

Dear Representative,

On behalf of Americans for Financial Reform and the AFL-CIO, we are writing to recommend a vote in opposition to S 488 (the "JOBS and Investor Confidence Act of 2018") which is being considered on the House floor under suspension of the rules today. [1] This legislation does contain several positive elements, and we also appreciate efforts by the bill sponsors that resulted in significant improvements to a number of provisions in the bill. However, on balance it is still a bad tradeoff for investors and the public.

S 488 contains thirty-two different provisions. AFR has previously opposed eleven of these provisions and supported four, and takes no position on the other seventeen.[2] To be clear, unlike the recently passed Economic Growth, Regulatory Reform and Consumer Protection Act (EGRRCPA), S 488 does not reverse important protections passed in the wake of the 2008 financial crisis or take other radical steps to narrow financial protections. Nevertheless, we are concerned that it meaningfully weakens some investor protections and changes the structure of securities markets in unjustified ways. The pro-investor portions of the bill in Sections 27, 29, 30, and 31 are mostly in the nature of studies and advisory provisions, while several of the deregulatory provisions make much more active steps to change securities laws.

A few examples of provisions in S 488 that cause concern include the following:

- Title 3 of the bill creates an "M&A Broker" exception from SEC oversight for firms that assist in buying and selling privately held companies with gross annual revenues of up to $250 million. While a carefully crafted exception for intermediaries in the sale of local small businesses could be appropriate, the $250 million limit in this section far exceeds this kind of small business transaction.

- Title 4 cements in statute a definition of "accredited investor" based on income and wealth thresholds that have not changed since 1982 and are far outdated today, rendering seniors vulnerable to exploitation. While Title 4 would update these thresholds for inflation going forward, placing them in statute would make it impossible for the SEC to properly adjust the thresholds for over 35 years of inflation. The accredited investor definition should be revisited but this provision does so in an ill-considered way that would tie the SEC's hands in making needed reforms.

- Title 5 would double the time for which certain new public companies are exempt from key financial reporting controls, most notably attestation by an auditor that their earnings and accounting are accurate. It grants this exemption to a class of companies, newly

[1] Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at http://ourfinancialsecurity.org/about/our-coalition/

[2] AFR has previously opposed Titles 1, 3, 4, 5, 8, 14, 15, 20, and 26 of the bill. We opposed a somewhat different version of Title 26 and oppose the version in this bill due to its interaction with Title 20 (venture exchanges). We opposed a somewhat different version of Title 32 and are still examining this version. We have previously supported Titles 27, 29, 30, and 31. We take no current position on other provisions.

public companies with low revenue growth, which have a particularly strong incentive to manipulate their financial statements and deceive investors.

- Title 8 would require the SEC to rewrite its oversight rules for trading exchanges in ways that would be likely to narrow its current broad authority over exchange pricing practices. Given the broad powers granted by government to Self-Regulatory Organizations (SROs) such as exchanges and the monopoly pricing power created by these powers, there is simply no reason to bring pressure on the SEC to limit its power over SROs.

- Title 20 on venture exchanges would establish SEC-licensed exchanges for the trading of shares in early-stage private startups. This is a type of investment that is inappropriate for exchange trading because it tends to be illiquid and opaque. Exchange trading of venture startups would likely lead to exploitation of naïve investors by insiders seeking to exit unsuccessful venture investments and would also discourage companies from going public. Title 25 on venture capital funds would further encourage excessive secondary market trading in venture shares by permitting companies to qualify for venture capital exemptions from SEC rules by trading secondary stakes in venture capital companies.

The pro-investor studies and advisory bodies in Sections 27, 28, and 30 have value, but they are still studies while the provisions cited above and others in S 488 actively change securities laws in significant ways, in many cases (such as venture exchanges) without proper study of their implications first.

On balance, Congress should not act to grant the benefits to industry contained in this bill without demanding more meaningful steps to enhance investor and consumer protections.

Thank you for your attention. For more information please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform

AFL-CIO