Americans for Financial Reform

Consumer Federation of America

December 18, 2020

Dear Member of Congress:

With policymakers struggling to respond to the economic devastation of the COVID-19 pandemic, some are reportedly attempting to exploit this crisis to push through deregulatory measures that would weaken Federal securities laws in the name of "capital formation." We are writing on behalf of Americans for Financial Reform, Consumer Action, the Consumer Federation of America, Fund Democracy, the Institute for Agriculture and Trade Policy, and Public Citizen to urge you in the strongest possible terms to take the lessons learned from the failed experiment of the JOBS Act and oppose this effort.

President-Elect Joe Biden has argued that improving the wages and lives of workers, addressing racial justice, and addressing climate change need to be at the center of building back our economy. We agree.

Effective regulation of the capital markets is a crucial tool for accomplishing these goals.

Capitalism relies on informed investors allocating their capital to its best uses. But to make this work well, these investors and the public need information. Investors need rights. Investors and the public need to be able to hold companies and their executives accountable for their choices. That accountability has historically been mandated by the federal securities laws, through a combination of public and private disclosure obligations and stakeholder rights.

Unfortunately, Democratic and Republican administrations alike have in the past succumbed to corporate lobbying and weakened these protections. These efforts have not created jobs, but they have led to massive misallocations of capital across the economy, billions in investor losses, and widespread frauds. In the absence of essential disclosures, capital that could be channeled into productive, job-creating investments, has been wasted. And investors who are relying on these returns for retirement or to pay for college have suffered.

In the wake of the last financial crisis, the White House and some Democrats in Congress joined with their Republican colleagues in supporting a bill, the so-called JOBS Act, which used the rhetoric of job-creation and small company capital formation to justify unprecedented rollbacks of the securities laws. That law expanded the exemptions to the federal securities laws so much that, as of last year, approximately 70 percent of securities offerings were exempt from the SEC's corporate accountability regime.

Although backers of the bill claimed it would make it easier for companies to go public, its real and predictable effect was to remove any incentive for companies to do so. As a result, the number of public companies in the U.S. continues its long and rapid decline. There are significantly fewer public companies today than there were, not just at the peak of the public markets in the 1990s, but in the middle 1970s when the push to deregulate securities markets first took hold. At the same time, the private equity industry, whose profits too often derive from destroying jobs, harming workers, and assessing huge fees on their own investors, has grown by trillions of dollars over just the past several years. Similarly, the private debt markets have continued to grow to a massive scale.

As a result of deregulation, companies today can raise unlimited amounts of money from thousands of investors in opaque and poorly regulated private markets. These companies do not have to provide the essential information needed to value those securities. They do not have to treat all investors equally when it comes to price or access to information. And the costs of trading in these securities is much higher than in the public markets. In short, Congress and the SEC have deregulated to the extent that they are recreating the conditions that existed prior to the stock market crash of 1929 that decimated the U.S. markets and the global economy.

Despite this evidence that our public markets are at risk and the lack of any evidence that the JOBS Act produced the promised benefits in the form of sustainable job creation, some are once again suggesting that legislation to restore the economy and create jobs in the wake of the COVID-19 pandemic should include a new round of regulatory rollbacks. This would be a betrayal of the investors and issuers who rely on transparent, orderly and efficient capital markets to support healthy capital formation and productive economic activity, and an even worse betrayal of those suffering real financial hardship as a result of this crisis. Further, efforts to create greater accountability for public companies in areas like climate change and worker rights will be ineffective if there are fewer and fewer public companies to which those obligations apply.

American families and businesses need an economic response from Congress and the administration that provides real job-creating stimulus, and not just another handout to powerful financial interests. To do that, we urge you to promote corporate accountability, and restore the public markets, and not to continue on the path to destroying them.

Sincerely,

Americans for Financial Reform
Consumer Action
Consumer Federation of America
Fund Democracy
Institute for Agriculture and Trade Policy
Public Citizen