November 13, 2024

Re: Empowering Main Street in America Act of 2024

Dear Senator:

The undersigned organizations strongly oppose the so-called "Empowering Main Street in America Act of 2024." The provisions of this bill, specifically in Titles I and II, would severely threaten the transparency, integrity, and accountability of U.S. securities markets, placing millions of investors at risk and undermining the broader economy.

This legislative package is deeply misguided and would cause harm in several key ways:

1. Expanding opaque, unaccountable private markets at the expense of transparent, accountable public markets;
2. Exposing more investors—many of them vulnerable—to the risks of illiquid, opaque, high-risk, and often predatory private markets; and
3. Undermining the SEC's and state securities regulators' ability to fulfill their missions of protecting investors, maintaining fair and efficient markets, and facilitating healthy capital formation.

While marketed as a "capital formation" bill, this legislative package is really a recipe for capital destruction. We urge you to reject it.

I. Background

The U.S. securities markets were built on the principle that all investors deserve access to essential information to make investment decisions. For decades, these markets have driven economic growth by ensuring full and fair disclosure. However, this transparency has been steadily eroded by deregulatory measures, allowing private markets to operate with minimal transparency, accountability, and oversight. The Empowering Main Street Act would worsen this troubling trend by expanding opaque, unaccountable markets and exposing more investors to high-risk, illiquid investments.

II. Key Concerns

Section 101: Helping Startups Continue to Grow Act

This section would raise the revenue threshold for Emerging Growth Companies (EGCs) from $1 billion to $2 billion and extend the EGC qualification period from 5 to 10 years. This would allow large public companies to evade critical independent audits of their internal financial controls for a decade. Audits are crucial for ensuring the accuracy of financial disclosures and maintaining investor confidence. Companies that avoid audits are more likely to suffer from material weaknesses in financial reporting—an issue that affects both investors and overall market integrity. By exempting more companies from these audits, this section would increase the risk of material misstatements and fraud.

Section 102: Micro-Offering Exemption
This section would allow micro-offerings (up to $500,000 per year) to escape regulatory scrutiny entirely. Investors would not need to meet financial sophistication requirements, and issuers would not need to provide basic disclosures to investors. This exemption would create a wild west for questionable offerings, allowing bad actors to prey on retail investors, with no accountability. Worse, the SEC lacks the resources to monitor these small offerings, making them ripe for abuse.

Section 105: Crowdfunding
Crowdfunding markets are already plagued by noncompliance. Instead of addressing these issues, this section would permit issuers to raise up to $500,000 without providing audited or reviewed financial statements. Investors would have to rely on unverified and potentially error-prone financial information, exposing them to increased risks of loss.

Section 107: Unlocking Capital for Small Businesses
This section would allow unregistered individuals, or "finders," to conduct brokerage activities without oversight. This would encourage bad actors to exploit vulnerable investors and harm small businesses seeking legitimate capital. Unregistered finders have historically been linked to predatory practices, and this provision would only increase those risks.

Section 201: Equal Opportunity for All Investors
This section would recklessly expand the definition of accredited investor, exposing millions of retail investors to high-risk, illiquid, and opaque private investments without the information necessary to evaluate them. This expansion would fuel predatory practices and foist speculative investments on vulnerable investors, many of whom are elderly and can ill-afford to be exposed to the kinds of risk and losses that exist in these markets.

Section 204: Increasing Investor Opportunities
This section would allow closed-end funds to invest 100% of their assets in high-risk, high-cost, opaque, and illiquid private funds. Such funds would be pushed onto many retail investors who are ill-prepared to handle such risks. Private markets are already a two-tiered market of haves and have-nots. This bill would deepen the divide, with the haves continuing to gain access to the best deals, while the have-nots get the leftover lower-quality deals.

Section 205: Enhancement of 403(b) Plans
This section would allow unregistered securities to be sold to 403(b) retirement plans, including those used by public school teachers. By eliminating the SEC's regulatory oversight, the bill would open the door to unregistered financial products with hidden risks and costs being sold to some of the most vulnerable retirement savers.

Section 403: Rulemaking Requirements
This section would cripple the SEC's ability to protect investors and maintain market integrity. By imposing unnecessary rulemaking burdens and costs, it would empower industry interests to derail important reforms. Far from improving the regulatory process, this measure would make it harder for the SEC to respond to emerging risks in the market.

Conclusion
This legislation would harm retail investors, damage market integrity, destroy capital, and hamstring the SEC's and state securities regulators' ability to carry out their missions. Far from benefiting Main Street, this bill would only increase risks and losses for those who can least afford it. We urge you to reject this dangerous legislation and protect the transparency, accountability, and fairness of U.S. securities markets.

Respectfully submitted,

Americans for Financial Reform
Consumer Action
Consumer Federation of America
Institute for Agriculture and Trade Policy
Private Equity Stakeholder Project
Public Citizen