



February 8, 2023

The Honorable Patrick McHenry
Chair
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2221 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Ann Wagner
Chair
Subcommittee on Capital Markets
2350 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brad Sherman
Ranking Member
Subcommittee on Capital Markets
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair McHenry, Ranking Member Waters, Subcommittee Chair Wagner, and Subcommittee Ranking Member Sherman,

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, thank you for holding the Subcommittee on Capital Markets February 8th hearing entitled "Empowering Entrepreneurs: Removing Barriers to Capital Access for Small Businesses." NVCA appreciates the committee's focus on finding legislative solutions to facilitate capital formation, expand entrepreneurial activity into more regions of the country, and support the next generation of high growth companies.

In particular, NVCA is thrilled to see the *Developing and Empowering our Aspiring Leaders (DEAL) Act* included as part of the hearing discussion, a longtime legislative priority that will improve capital formation in the earliest stages of the startup ecosystem. The *DEAL Act* will allow VC funds to acquire more shares from founders, angel, and seed stage investors and provide capital to emerging VC funds without triggering the costs and burdens of fund registration, providing liquidity and improving returns in the earliest stages of the startup ecosystem. These early-stage investors will then be able to make new investments into the next generation of nascent American companies.

NVCA is grateful for the exemption provided by statute that was intended to exempt venture capital funds from the costs and challenges associated with the Registered Investment Advisor (RIA) registration requirements imposed under Dodd-Frank. However, industry trends have made the definition of a venture capital fund promulgated by the Securities and Exchange Commission (SEC) in rule 203(l)-1 of the Investment Advisers Act in 2011 increasingly out of touch with the realities of today's startup ecosystem. The definition leaves out critical

participants in the entrepreneurial ecosystem, constrains the investment activity of some Exempt Reporting Advisors (ERAs) who must monitor investment strategies to actively avoid the regulatory morass of registration, and imposes unnecessary compliance burdens on other firms who participate in venture capital.

The *DEAL Act* is the legislative solution to this challenge. The bill would encourage capital formation for startups by directing the SEC to make a larger percentage of secondary investments qualifying for purposes of the definition of a venture capital fund. We are also excited to see the *DEAL Act* make fund-of-fund investments into VC funds qualifying. These types of investments are not currently qualifying under the SEC definition despite the prominent role of fund-of-fund investments in growing venture capital ecosystems in more regions of the country, an issue that's been supported by the SEC's Advisory Committee on Small Business Capital Formation.¹

NVCA also supports *Improving Capital Allocation for Newcomers Act*, which would improve investment opportunities by increasing the permitted investor and capital limits of certain startup investments funds structured under 3(c)(1) of the Investment Company Act to 200 investors and to \$150 million, respectively. This bill would expand access to capital for emerging and smaller VC fund managers and the small companies in which they invest, particularly for those in nascent emerging ecosystems.

We are thrilled to see the committee spotlight improvements to the capital formation process and expand investment opportunities for both emerging fund managers and the next generation of American startups. Thank you for your leadership and efforts to increase new company creation, economic opportunity, and American competitiveness. We look forward to working with you on these important issues.

Sincerely,

A handwritten signature in cursive script that reads "Bobby Franklin".

Bobby Franklin
President and CEO

¹ U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee to Chair Gary Gensler, May 21, 2021. <https://www.sec.gov/spotlight/sbcfac/encouraging-small-regional-funds-043021.pdf>.