Equity Markets Association

September 21, 2023

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing & Urban Affairs
U.S. Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing & Urban Affairs
U.S. Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Brown and Ranking Member Scott:

As the Committee on Banking, Housing & Urban Affairs considers the "Secure And Fair Enforcement Regulation Banking Act of 2023" or the "SAFER Banking Act of 2023," the Equity Markets Association (EMA)[1] supports the addition of language to Section 3's Safe Harbor provision to provide U.S. exchanges with the legal certainty they would need to list the securities and exchange-traded products of cannabis companies operating in states in which it is legal and thereby allow those companies to raise capital. A public listing allows the most diverse universe of investor's access to ownership. This democratization allows employees, individual investors, pensions, mutual funds, corporations, and others to put their capital to work and enjoy the rewards, and risks, of equity ownership.

U.S. exchanges are a source of strength, resilience, and confidence for America's investors. The role performed by U.S. exchanges in our capital markets is vitally important, and the manner in which they perform that highly regulated role is sound. Operating our nation's equity markets for more than 225 years, U.S. exchanges have developed robust real-time and post-trade regulatory capabilities that make them a vital partner to the Securities and Exchange Commission (SEC) to protect U.S. investors. Exchanges are uniquely positioned to fulfill their obligations as self-regulatory organizations (SROs), enhancing the Commission's mission to protect investors and foster fair, orderly, and efficient markets in an increasingly complex environment. The role performed by U.S. exchanges in our capital markets is vitally important, and the manner in which they perform that highly regulated role is sound.

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[1] Established in 2015, the EMA provides federal policymakers, regulators, and investors with in-depth analysis on important issues that impact the U.S. capital markets. Its members -- Cboe Global Markets, Nasdaq, and NYSE Group -- each operate U.S. registered cash equity and options exchanges. They manage fair, orderly, and transparent markets that incentivize capital formation and ensure a robust secondary market for trading securities. U.S. exchanges are a source of strength, resilience, and confidence for America's investors.

When the "SAFE Banking Act" passed the U.S. House of Representatives during the 117th Congress, it did not provide any clarity about the ability of companies to interact with U.S. national securities exchanges, as it does for depository institutions. Adding language to eliminate the legal uncertainty that currently prevents U.S. cannabis companies from being able to list on U.S. exchanges, subject to those companies meeting the exchange's listing standards, would increase the number of industry jobs, increase tax revenue, and provide capital and financial stability that would benefit everyone in the regulated U.S. cannabis industry from entrepreneurs and small businesses to medium-size companies and larger employers. It would also align the ability of U.S cannabis companies operating in states in which it is legal to raise capital for these purposes with that of their foreign competitors.

U.S. exchanges perform a myriad of regulatory functions designed to protect investors. These functions include assessing whether a company or fund has met standards to list on a public exchange, determining whether a listed company fails to continue to meet those standards, determining whether to halt trading in a security for the protection of investors, and the maintenance of fair and orderly markets, and monitoring and enforcing member compliance with exchange rules.

Listing on a national securities exchange provides important benefits to companies entering the public markets for the first time, most notably in reducing their cost of capital. Those same benefits continue in perpetuity spanning a company's entire journey as a public entity. Market makers can intervene at critical moments, such as managing the first trade of an in initial public offering. This brings lower volatility and smoother trading than would be possible otherwise, resulting in real cost savings for listed companies and their investors.

Exchanges investigate potential violations of exchange rules and federal securities laws, impose fines or other discipline on members who violate those rules, and routinely refer significant matters to the SEC for further inquiry. U.S. exchanges perform a valuable role from which the broader public benefits, serving the businesses that need capital to grow; and the investors whose savings can be put to work.

Thank you for the opportunity to comment on the SAFER Banking Act, the EMA is ready to work with you and your staff and all Senators to provide more companies with access to the U.S. capital markets.

Sincerely,

Kevin R. Edgar
Counsel to the EMA and Partner, BakerHostetler LLP