

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential review of draft registration statements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential review of draft registration statements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Encouraging Public
5 Offerings Act of 2023”.

6 **SEC. 2. EXPANDING TESTING THE WATERS.**

7 Section 5(d) of the Securities Act of 1933 (15 U.S.C.
8 77e(d)) is amended—

1 (1) by striking “Notwithstanding” and insert-
2 ing the following:

3 “(1) IN GENERAL.—Notwithstanding”;

4 (2) by striking “an emerging growth company
5 or any person authorized to act on behalf of an
6 emerging growth company” and inserting “an issuer
7 or any person authorized to act on behalf of an
8 issuer”; and

9 (3) by adding at the end the following:

10 “(2) ADDITIONAL REQUIREMENTS.—

11 “(A) IN GENERAL.—The Commission may
12 promulgate regulations, subject to public notice
13 and comment, to impose such other terms, con-
14 ditions, or requirements on the engaging in oral
15 or written communications described under
16 paragraph (1) by an issuer other than an
17 emerging growth company as the Commission
18 determines appropriate.

19 “(B) REPORT TO CONGRESS.—Prior to any
20 rulemaking described under subparagraph (A),
21 the Commission shall submit to Congress a re-
22 port containing a list of the findings supporting
23 the basis of the rulemaking.”.

1 **SEC. 3. CONFIDENTIAL REVIEW OF DRAFT REGISTRATION**
2 **STATEMENTS.**

3 Section 6(e) of the Securities Act of 1933 (15 U.S.C.
4 77f(e)) is amended—

5 (1) in the heading, by striking “EMERGING
6 GROWTH COMPANIES” and inserting “CONFIDEN-
7 TIAL REVIEW OF DRAFT REGISTRATION STATE-
8 MENTS”;

9 (2) by redesignating paragraph (2) as para-
10 graph (4); and

11 (3) by striking paragraph (1) and inserting the
12 following:

13 “(1) IN GENERAL.—Any issuer may, with re-
14 spect to an initial public offering, initial registration
15 of a security of the issuer under section 12(b) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78l(b)),
17 or follow-on offering, confidentially submit to the
18 Commission a draft registration statement, for con-
19 fidential nonpublic review by the staff of the Com-
20 mission prior to public filing, provided that the ini-
21 tial confidential submission and all amendments
22 thereto shall be publicly filed with the Commission
23 not later than—

24 “(A) in the case of an initial public offer-
25 ing or initial registration of a security of the
26 issuer under such section 12(b), 10 days before

1 the effective date of such registration state-
2 ment; or

3 “(B) in the case of a follow-on offering, 48
4 hours before the effective date of such registra-
5 tion statement.

6 “(2) FOLLOW-ON OFFERING DEFINED.—In this
7 subsection, the term ‘follow-on offering’ means an
8 offering by an issuer during the 12-month period be-
9 ginning on the effective date of the initial public of-
10 fering of the issuer or the initial registration of a se-
11 curity of the issuer under section 12(b) of the Secu-
12 rities Exchange Act of 1934 (15 U.S.C. 78l(b)).

13 “(3) ADDITIONAL REQUIREMENTS.—

14 “(A) IN GENERAL.—The Commission may
15 promulgate regulations, subject to public notice
16 and comment, to impose such other terms, con-
17 ditions, or requirements on the submission of
18 draft registration statements described under
19 this subsection by an issuer other than an
20 emerging growth company as the Commission
21 determines appropriate.

22 “(B) REPORT TO CONGRESS.—Prior to any
23 rulemaking described under subparagraph (A),
24 the Commission shall submit to Congress a re-

1 port containing a list of the findings supporting
2 the basis of the rulemaking.”.