

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: April 21, 2023

Re: April 26, 2023, Full Committee Markup

On Wednesday, April 26, 2023, at 10:00 a.m. in Room 2128 of the Rayburn House Office Building, the Financial Services Committee will meet to markup the following measures:

1. H.R. 835, the *Fair Investment Opportunities for Professional Experts Act* (Hill)
2. H.R. 1579, the *Accredited Investor Definition Review Act* (Huizenga)
3. H.R. 1548, the *Improving Access to Small Business Information Act* (Kim)
4. H.R. 2792, the *Small Entity Update Act* (Wagner)
5. H.R. 2797, the *Equal Opportunity for All Investors Act* (Flood)
6. H.R. 2793, the *Encouraging Public Offerings Act of 2023* (Wagner)
7. H.R. 2610, a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes (McHenry)
8. H.R. 2608, a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes (McHenry)
9. H.R. 1807, the *Improving Disclosure for Investors Act of 2023* (Huizenga)
10. H.R. 2795, the *Enhancing Multi-Class Share Disclosures Act* (Meeks)
11. H.R. 2593, the *Senior Security Act* (Gottheimer)
12. H.R. ___, the *Middle Mark IPO Act* (Himes)
13. H.R. 2796, the *Promoting Opportunities for Non-Traditional Capital Formation Act* (Waters)
14. H.R. 2799, the *Expanding Access to Capital Act* (McHenry)
15. H.R. 2798, the *CFPB Transparency and Accountability Reform Act* (Barr)

1. H.R. 835, the *Fair Investment Opportunities for Professional Experts Act* (Hill)

H.R. 835, the *Fair Investment Opportunities for Professional Experts Act*, was introduced by Representative French Hill (R-AR) on February 6, 2023. It has two cosponsors, Representatives David Schweikert (R-AZ) and Byron Donalds (R-FL).

H.R. 835 would expand the “accredited investor” definition to include individuals with certain licenses, qualifying education, or job experience. The qualifying licenses, education, and job experience would be determined by the Securities and Exchange Commission (EGC) through rulemaking and verified by FINRA or an equivalent self-regulatory organization (SRO).

This bill passed on suspension by voice vote in the 115th Congress.

2. H.R. 1579, the *Accredited Investor Definition Review Act* (Huizenga)

H.R. 1579, the *Accredited Investor Definition Review Act*, was introduced by Representative Bill Huizenga (R-MI) on March 14, 2023.

H.R. 1579 would require the SEC to review the list of certifications, designations, and credentials for individuals to qualify as an accredited investor and add additional certifications, designations, and credentials that the SEC determines are substantially similar. This bill would require the SEC to repeat this process every five years after the initial assessment.

3. H.R. 1548, the *Improving Access to Small Business Information Act* (Kim)

H.R. 1548, the *Improving Access to Small Business Information Act*, was introduced by Representative Young Kim (R-CA) on March 10, 2023. It has one cosponsor, Representative Josh Gottheimer (D-NJ).

H.R. 1548 bill would amend the Securities Exchange Act of 1934 to specify that actions of the Advocate for Small Business Capital Formation are not a collection of information under the Paperwork Reduction Act.

4. H.R. 2792 the *Small Entity Update Act* (Wagner)

H.R. 2792, the *Small Entity Update Act*, was introduced on April 20, 2023, by Representative Ann Wagner (R-MO).

The bill would direct the Securities and Exchange Commission to conduct a study, followed by a rulemaking consistent with the results of such study, including the defining the term “small entity” under the Regulatory Flexibility Act.

5. H.R. 2797, the *Equal Opportunity for All Investors Act* (Flood)

H.R. 2797, the *Equal Opportunity for All Investors Act*, was introduced by Representative Mike Flood (R-NE) on April 24, 2023.

The bill would expand the “accredited investor” definition to include individuals who are certified through an examination established by the SEC and administered by FINRA.

6. H.R. 2793, the *Encouraging Public Offerings Act* (Wagner)

H.R. 2793, the *Encouraging Public Offerings Act*, was introduced on April 20, 2023, by Representative Ann Wagner (R-MO). It has one co-sponsor, Representative Gregory Meeks (D-NY).

H.R. 2793 codifies Rule 163B under the Securities Act by allowing an issuer to communicate with potential investors to determine interest in a securities offering, either before or after the filing of a registration statement (*i.e.* test the waters). The bill also allows issuers to submit a confidential draft registration statement to the Securities and Exchange Commission for review prior to public filing. The bill updates the public filing condition to allow any issuer conducting an initial public offering to file its registration statement publicly 10 days before the effective date of the registration statement. Issuers may conduct a follow-on offering before the end of the twelfth month after the effective date of its IPO to file the registration statement publicly at least 48 hours before the effective date of the registration statement.

7. H.R. 2610, a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes (McHenry)

H.R. 2610 was introduced on April 13, 2023, by Representative Patrick McHenry (R-NC).

The bill updates the emerging growth company (EGC) financial statement requirements to clarify that an EGC may present two years, rather than three years, of audited financial statements in both IPOs and spin-off transactions. The bill allows a spin-off of an EGC to benefit from the two-year financial statement accommodation, which is currently only available during an IPO.

8. H.R. 2608, a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes (McHenry)

H.R. 2608 was introduced on April 13, 2023, by Representative Patrick McHenry (R-NC).

The bill establishes that an Emerging Growth Company (EGC), as well as any issuer that went public using EGC disclosure obligations, only needs to provide two years of audited financial statements.

9. H.R. 1807, the Improving Disclosure for Investors Act of 2023 (Huizenga)

H.R. 1807, the *Improving Disclosure for Investors Act of 2023*, was introduced on March 27, 2023, by Rep. Bill Huizenga (R-MI). It has three cosponsors: Rep. Bryan Steil (R-WI), Rep. Wiley Nickel (D-NC), and Rep. Jake Auchincloss (D-MA).

H.R. 1807 directs the Securities and Exchange Commission to promulgate rules with respect to the electronic delivery of certain required disclosures to investors. Under the bill, such rules are to allow registered investment companies (*i.e.*, mutual funds, closed-end funds, and exchange-traded funds), business development companies (BDCs), registered broker-dealers, registered advisers, and other SEC-regulated entities to meet their obligations under U.S. securities laws to deliver regulatory documents to investors electronically.

10. H.R. 2797, the *Enhancing Multi-Class Share Disclosures Act* (Meeks)

H.R. 2797, the *Enhancing Multi-Class Share Disclosures Act*, was introduced on April 24, 2023, by Representative Gregory Meeks (D-NY).

The bill would require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material.

This bill, as written, passed by voice out of the Committee in the 115th Congress. It was also included in S.488, the Jobs and Investor Confidence Act, which passed the House 406-4 in the 115th.

11. H.R. 2593, the *Senior Security Act* (Gottheimer)

H.R. 2593, the *Senior Security Act*, was introduced on April 13, 2023, by Josh Gottheimer (D-NJ).

This bill establishes the Senior Investor Taskforce within the Securities and Exchange Commission. The taskforce must report on topics relating to investors over the age of 65, including industry trends and serious issues impacting such investors, and make recommendations for legislative or regulatory actions to address problems encountered by senior investors. The Government Accountability Office must report on the financial exploitation of senior citizens.

This bill passed by suspension in both the 116th and 117th Congress.

12. H.R. ___, the *Middle Mark IPO Act* (Himes)

H.R. ___, the *Middle Market IPO Underwriting Cost Act*, was introduced on April 25, 2023, by Representative Jim Himes (D-CT).

The bill would require the SEC, in consultation with the Financial Industry Regulatory Authority, to study the direct and indirect costs associated with small and medium-sized companies to undertake initial public offerings.

This bill, as written, passed by voice out of the Committee in the 115th Congress. It was also included in S.488, the Jobs and Investor Confidence Act, which passed the House 406-4 in the 115th.

13. H.R. 2796, the *Promoting Opportunities for Non-Traditional Capital Formation Act* (Waters)

H.R. 2796, the *Promoting Opportunities for Non-Traditional Capital Formation Act*, was introduced on April 24, 2023, by Rep. Maxine Waters (D-CA).

This bill would amend the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital-raising options for underrepresented small businesses and businesses in rural areas.

14. H.R. 2799, the *Expanding Access to Capital Act* (McHenry)

H.R. 2799 was introduced on April 24, 2023, by Representative McHenry and is comprised of the following 19 separate bills.

Division A - Strengthening Public Markets

Title I - the *Remove Aberrations in the Market CAP Test for Target Company Financial Statements*, was introduced on April 6, 2023, by Representative French Hill (R-AR).

Title I clarifies that a company's market capitalization, for purposes of testing the significance of an acquisition or disposition and determining whether a target company's financial statements are required, may include the value of all shares of stock, including preferred stock and non-traded common shares that are convertible into, or exchangeable for, traded common shares.

Title II – the *Helping Startups Continue to Grow Act*, was introduced on April 13, 2023, by Representative Bryan Steil (R-WI).

Title II provides an extension of certain exemptions and reduced disclosure requirements for companies that were EGCs and would continue to meet all other requirements for EGCs except for the five-year restriction. This title also increases the maximum threshold amounts to qualify as an EGC to \$1.5 billion and removes the disqualification for large accelerated filers.

Title III – the *SEC and PCAOB Auditor Requirements for Newly Public Companies*, was introduced on April 13, 2023, by Representative Patrick McHenry (R-NC).

Title III updates the SEC and PCAOB auditor independence requirements to provide that the auditor of a private company that is transitioning to public company status (via IPO, spin-off or otherwise) must comply with SEC/PCAOB independence rules for the latest fiscal year, as long as the auditor is independent under AICPA or home-country standards for earlier periods.

Title IV – *Expands Protections for Research Reports to Cover All Securities of All Issuers*, was introduced on April 13, 2023, by Representative Roger Williams (R-TX).

Title IV expands the provision for research reports in Section 2(a)(3) of the Securities Act to include research reports about any issuer that undertakes a proposed public offering of securities. The current provision only offers limited protection for EGC research reports by deeming them a non-offer.

Title V – *a bill to exclude QIBs and IAs From the Record Holder Count for Mandatory Registration*, was introduced on April 13, 2023, by Representative Patrick McHenry (R-NC).

Title V updates Section 12(g) of the Exchange Act to provide that the mandatory registration threshold of 2,000 or more holders of record shall exclude Qualified Institutional Buyers (QIBs) and institutional accredited investors (IAs).

Title VI – *a bill to expand WKSI Eligibility*, was introduced on April 13, 2023, by Representative Bryan Steil (R-WI).

This title expands the availability of Well-Known Seasoned Issuer (WKSI) status by updating the WKSI definition to apply to all companies that otherwise satisfy the WKSI definition with a public float of \$250 million, rather than the current public float of \$700 million.

Title VII – *Smaller Reporting Company, Accelerated Filer, and Large Accelerated Filer Thresholds*, was introduced on April 13, 2023, by Representative Blaine Luetkemeyer (R-MO).

This title, among other things, raises the thresholds and removes overlap in the definitions to qualify as a smaller reporting company, accelerated filer, and large accelerated filer. It also exempts certain low-revenue issuers from being required to have their management’s assessment of the effectiveness of internal controls over financial reporting attested to, and reported on, by an independent auditor, as required by SOX Section 404(b).

Division B – Helping Small Businesses and Entrepreneurs

Title I – the *Unlocking Capital for Small Businesses Act*, was introduced on April 13, 2023, by Representative Andrew Garbarino (R-NY).

Title I would direct the SEC to finalize its 2020 proposed exemption from broker registration requirements for “finders” who help issuers raise capital in private markets from accredited investors.

Title II – the *Small Business Investor Capital Access Act*, was introduced by Representative Andy Barr (R-KY) on April 13, 2023.

This title would amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for advisers to small private funds to reflect changes in inflation.

Title III – the *Improving Capital Allocation for Newcomers (ICAN) Act*, was introduced on April 20, 2023, by Representative William Timmons (R-SC).

This title would modify the Qualifying Venture Capital Fund Exemption under Section 3(c)(1) of the Investment Company Act of 1940 by increasing the cap on aggregate capital contributions and uncalled capital commitments from \$10 million to \$150 million. This title would also increase the allowable number of beneficial owners in a qualifying venture capital fund from 250 to 600.

Title IV – the *Small Entrepreneurs Empowerment and Development (SEED) Act*, was introduced on April 13, by Representative Patrick McHenry (R-NC).

Title IV would amend the Securities Act of 1933 to allow small issuers to conduct a micro-offering free of mandated disclosures or filings. Under this bill, issuers that conduct a micro-offering would remain subject to the antifraud provisions of the Federal securities laws.

Title V – the *Regulation A+ Improvement Act*, was introduced on April 17, 2023, by Representative Erin Houchin (R-IN).

This title would increase the amount that companies can raise under Regulation A from \$50 million to \$150 million. It would also require the Securities and Exchange Commission to adjust this amount for inflation every two years to the nearest \$10,000.

Title VI, the *Developing and Empowering our Aspiring Leaders (DEAL) Act*, was introduced on April 13, 2023, by Representative Andy Barr (R-KY).

This title requires the Securities and Exchange Commission (the SEC) to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940, to include an equity security issued by a qualifying portfolio company. It also requires the SEC to revise the definition of a qualifying investment to include an investment in another venture capital fund.

Title VII – the *Improving Crowdfunding Opportunities Act*, was introduced by Representative Patrick McHenry (R-NC) on April 13, 2023.

Title VII preempts state regulation of secondary transactions involving crowdfunding vehicles and clarifies legal liability for crowdfunding portals. It also increases the allowable aggregate amount companies can raise in any 12-month period from \$5 million to \$10 million and allows all non-accredited investors to invest up to 10% of the greater of their annual income or net worth. Finally, this bill allows investment companies to participate in crowdfunding offerings and increases the offering size threshold under which an issuer may meet its financial statement requirements.

Title VIII - the *Restoring the Secondary Trading Market Act*, was introduced by Representative Dan Meuser (R-PA) on April 6, 2023.

Title VIII would amend the Securities Act of 1933 to preempt State blue sky laws for off-exchange secondary trading in companies that make available current public information, including information required by Regulation A.

Division C – Increasing Access to Private Markets

Title I – the *Gig Worker Equity Compensation Act*, was introduced by Representative Patrick McHenry (R-NC) on April 13, 2023.

This title would expand Securities Act Rule 701 to allow gig workers to receive equity compensation for their services or goods. This legislation would also preempt state law to prevent gig workers from being presumed as employees due to their wage rates or offered benefits.

Title II –the *Risk Disclosure and Investor Attestation Act*, was introduced by Representative Warren Davidson on March 14, 2023.

This title would amend the Securities Act of 1933 to permit an individual to invest in private issuers upon acknowledging the investment risks.

Title III - the *Increasing Investor Opportunities Act*, was introduced by Representative Ann Wagner (R-MO) on April 13, 2023. It has one cosponsor, Representative Gregory Meeks (D-NY).

Title III would amend the Investment Act of 1940 to allow for a closed-end fund to invest up to all its assets in private funds.

Title IV – the *Accredited Investors Include Individuals Receiving Advice From Certain Professionals Act*, was introduced by Representative Patrick McHenry (R-NC) on April 20, 2023.

This title would expand the “accredited investor” definition to include individuals receiving individualized investment advice or individualized investment recommendations with respect to a private offering from a professional who qualifies as an accredited investor.

15. H.R. 2798, the *CFPB Transparency and Accountability Reform Act* (Barr)

H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, was introduced by Representative Andy Barr (R-KY) on April 24, 2023.

H.R. 2798 is a compilation of seven bills that reform the Bureau of Consumer Financial Protection (Bureau) to make it more transparent and accountable to Congress and the American people. The bill would change the leadership structure of the Bureau from a single Director to a bipartisan, five-member commission. The bill would also bring the Bureau under the regular appropriations process and create a dedicated Inspector General for the Bureau to ensure transparency, accountability and to prevent waste, fraud, and abuse. The bill would create a new Office of Economic Analysis and require cost-benefit analysis for all guidance, orders, rules, or regulations of the Bureau. The bill would also require all proposed rules to consider the impact on small businesses. Finally, the bill would provide awards to whistleblowers who report original information relating to a violation of consumer financial law resulting in certain monetary sanctions exceeding \$1 million.