

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2793
OFFERED BY MRS. WAGNER OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Encouraging Public
3 Offerings Act of 2023”.

**4 SEC. 2. EXPANDING TESTING THE WATERS AND CONFIDEN-
5 TIAL SUBMISSIONS.**

6 The Securities Act of 1933 (15 U.S.C. 77a et seq.)
7 is amended—

8 (1) in section 5(d) (15 U.S.C. 77e(d))—

9 (A) by striking “Notwithstanding” and in-
10 sserting the following:

11 “(1) IN GENERAL.—Notwithstanding”;

12 (B) by striking “an emerging growth com-
13 pany or any person authorized to act on behalf
14 of an emerging growth company” and inserting
15 “an issuer or any person authorized to act on
16 behalf of an issuer”; and

17 (C) by adding at the end the following:

18 “(2) ADDITIONAL REQUIREMENTS.—

1 “(A) REGULATIONS.—The Commission
2 may promulgate regulations, subject to public
3 notice and comment, to impose such other
4 terms, conditions, or requirements on the en-
5 gaging in oral or written communications de-
6 scribed under paragraph (1) by an issuer other
7 than an emerging growth company as the Com-
8 mission determines appropriate.

9 “(B) REPORT TO CONGRESS.—Prior to any
10 rulemaking described under subparagraph (A),
11 the Commission shall submit to Congress a re-
12 port containing a list of the findings supporting
13 the basis of the rulemaking.”; and

14 (2) in section 6(e) (15 U.S.C. 77f(e))—

15 (A) in the heading, by striking “EMERG-
16 ING GROWTH COMPANIES” and inserting
17 “DRAFT REGISTRATION STATEMENTS”;

18 (B) by redesignating paragraph (2) as
19 paragraph (4); and

20 (C) by striking paragraph (1) and insert-
21 ing the following:

22 “(1) PRIOR TO INITIAL PUBLIC OFFERING.—
23 Any issuer, prior to its initial public offering date,
24 may confidentially submit to the Commission a draft
25 registration statement, for confidential nonpublic re-

1 view by the staff of the Commission prior to public
2 filing, provided that the initial confidential submis-
3 sion and all amendments thereto shall be publicly
4 filed with the Commission not later than 15 days be-
5 fore the date on which the issuer conducts a road
6 show, as defined in section 230.433(h) of title 17,
7 Code of Federal Regulations, or, in the absence of
8 a road show, at least 15 days prior to the requested
9 effective date of the registration statement.

10 “(2) WITHIN 1 YEAR AFTER INITIAL PUBLIC
11 OFFERING OR EXCHANGE REGISTRATION.—Any
12 issuer, within the 1-year period following its initial
13 public offering or its registration of a security under
14 section 12(b) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78l(b)), may confidentially submit
16 to the Commission a draft registration statement,
17 for confidential nonpublic review by the staff of the
18 Commission prior to public filing, provided that the
19 initial confidential submission and all amendments
20 thereto shall be publicly filed with the Commission
21 not later than 15 days before the date on which the
22 issuer conducts a road show, as defined in section
23 230.433(h) of title 17, Code of Federal Regulations,
24 or, in the absence of a road show, at least 15 days

1 prior to the requested effective date of the registra-
2 tion statement.

3 “(3) ADDITIONAL REQUIREMENTS.—

4 “(A) REGULATIONS.—The Commission
5 may promulgate regulations, subject to public
6 notice and comment, to impose such other
7 terms, conditions, or requirements on the sub-
8 mission of draft registration statements de-
9 scribed under this subsection by an issuer other
10 than an emerging growth company as the Com-
11 mission determines appropriate.

12 “(B) REPORT TO CONGRESS.—Prior to any
13 rulemaking described under subparagraph (A),
14 the Commission shall submit to Congress a re-
15 port containing a list of the findings supporting
16 the basis of the rulemaking.”

