

Everyone Wants to Woo “Main Street,” This Time with Proposed Legislation

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It appears that “Main Street” in capital markets is both synonymous with retail investors and private companies, and there is rampant concern that Main Street companies are staying away from IPOs, which is causing Main Street investors to miss out on wealth creation.

On May 23, the House of Representatives Subcommittee on Capital Markets, Securities and Investment, a subcommittee of the House Committee on Financial Services, held a hearing entitled “Legislative Proposals to Help Fuel Capital and Growth on Main Street” to examine 11 bills or discussion drafts of proposed legislation to eliminate perceived regulatory hurdles that harm the ability of Main Street businesses, early-stage companies, smaller companies and emerging growth companies “to access capital, innovate, grow and create jobs.”

The legislation and discussion drafts that have been proposed by the House Committee are set forth below. The most broad-reaching in terms of its application, and possibly the most radical, may be the first bill – replacing the Form 10-Q with a press release.

- **Streamlining Disclosure Options to Reduce Redundant Disclosures to Investors Act** to allow listed issuers to elect to disclose quarterly financial information, other than through filing a Form 10-Q, in a simplified manner such as through a press release or by a shortened form. The issuer must continue to include an income statement, balance sheet and statement of operations and follow the SOX certification requirements.
- **Draft to adjust** the resubmission thresholds for shareholder proposals and change 3%, 6% and 10% to 6%, 15% and 30%, respectively.
- **Draft to apply** the exemption from Section 5(c) of the Exchange Act regarding offers to buy or sell before a registration statement has been filed related to certain offering communications used by well-known seasoned issuers (WKSIs), known as free writing prospectuses, to also include communications by the underwriters and dealers acting by or on behalf of a WKSI.

The remaining proposals relate to Emerging Growth Companies (EGCs) and smaller reporting companies, including extending the time period for EGCs to 10 years.

- **Main Street Growth Act** to allow for the registration of venture exchanges. A venture exchange may only provide a marketplace to bring together purchasers and sellers of the securities of an early-stage growth company (a company that has not had an initial public offering), an EGC or issuers with a certain public float and daily trading volume.
- **Draft to remove the restriction** on large accelerated filers qualifying as EGCs.
- **Draft to increase** the smaller reporting company definition so that the public float is \$250 million and annual revenue is \$100 million and align the smaller reporting company definition and nonaccelerated filer financial thresholds.
- **Draft to require** the SEC to conduct a study to evaluate the issues affecting the ability of small issuers, including EGCs, to obtain research coverage before their IPOs, including the impact on the availability of research coverage for these issuers due to national and state rules and liability concerns.
- **Draft to provide** a five-year extension of certain exemptions and reduced disclosure requirements for companies that were EGCs and would continue to be EGCs but for the five-year restriction, and exempts them from pay ratio disclosure and allows for continuation of more simplified executive compensation disclosure.

- **Small Company Disclosure Simplification Act** to provide an exemption for EGCs and other smaller companies from the requirement to use Extensible Business Reporting Language (xBRL) for financial statements and other periodic reporting.
- **Draft to revise** the definition of a qualifying portfolio company to include an EGC, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act.
- **Draft to increase** the percentage of voting shares a diversified company may hold in a single issuer under the Investment Company Act from 10% to 15%.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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