

House Financial Services Committee Markup Bills on 10b5-1 Plans, Board Gender Diversity, Multi-Class Companies and IPO Underwriting Fees

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Several of the bills marked up recently by the House Financial Services Committee, with all but the last one agreed to by voice vote, impact public companies and IPOs, including:

- **Promoting Transparent Standards for Corporate Insiders Act**. Introduced in July 2018 by Representative Maxine Waters, the SEC would study whether Rule 10b5-1 should be amended to consider changes to restrict practices for plan adoption under the rule, many of which are already being implemented by companies.

Under the bill, the SEC should consider limiting the adoption of plans during times when insiders are permitted to buy or sell securities; limiting the adoption of multiple, overlapping plans; establishing mandatory delays between plan adoption and the first trade; and limiting how often participants can modify or cancel plans. In addition, issuers may be required to publicly file plan adoptions, terminations and transactions. Boards may be required to adopt policies covering trading plan trades, as well as monitor transactions and ensure that policies on plan use are considered in the context of equity hedging, holding and ownership requirements.

- **Enhancing Multi-Class Stock Disclosures Act**. Introduced in July 2018 by Representative Gregory Meeks, the SEC would require companies with multi-class stock structures to make disclosures about a director or executive officer who holds five percent or more of the combined voting power of all classes of stock entitled to vote in director elections.

The disclosure would include the amount of equity interest directly or indirectly owned by such person, expressed as a percentage of the total value of the outstanding equity securities of the issuer and the amount of voting power held by such person, expressed as a percentage of the total combined voting power of all classes of the securities.

- **Middle Market IPO Underwriting Cost Act**. Introduced in July 2018 by Representative Jim Himes, the bill would require the SEC to study direct and indirect underwriting fees, including gross spreads and pricing practices, for mid-sized IPOs.

Under the bill, the SEC would compare underwriting fees in foreign countries; analyze the relationship between the costs of taking a company public and the underwriting fees, including gross spreads; compare the underwriting fees for larger company IPOs with mid-sized IPOs; look at the changes to underwriting fees, if any, between 1980 and today; and consider reasons for any disparities along with how the fees limit capital formation or impact companies' decisions to go public.

- **Gender Diversity in Corporate Leadership Act of 2017**. Introduced in March 2017 by Representative Carolyn Maloney, the SEC would issue rules to require companies to disclose the gender composition of their boards. The bill would also establish a gender diversity advisory group at the SEC to study and report to the SEC on strategies to increase gender diversity on boards.

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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