



House Financial Services Committee Approves the Small Company Capital Formation Act; Regulation A Revival Closer?

On June 22, 2011, the House Financial Services Committee on Capital Markets and Government Sponsored Enterprises (the “House Financial Services Committee”) approved the Small Company Capital Formation Act of 2011, as amended (the “Small Company Capital Formation Act”).¹ Several amendments were introduced and debated by the full House Financial Services Committee.² Representative David Schweikert (R-AZ), Vice Chairman of the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises, said: “I am extremely pleased that the Financial Services Committee passed my Small Company Capital Formation Act. This common-sense proposal, passed with bipartisan support, reduces burdensome regulation on small business and creates more jobs. I am glad my colleagues stand with me in unwinding regulation and make our capital markets more vibrant and competitive.”³ On March 14, 2011, Representative Schweikert introduced the Small Company Capital Formation Act in the U.S. House of Representatives (the “House”). The bill seeks to increase the offering threshold from \$5 million to \$50 million for public offerings of smaller companies exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”) pursuant to Regulation A.⁴

The House Financial Services Committee approved amendment no. 1 offered by Representative Schweikert.⁵ This amendment would amend Section 18(b)(4) of the Securities Act by including in the definition of covered security: “a rule or regulation adopted pursuant to Section 3(b)(2) and such security is (i) offered or sold through a broker or dealer; (ii) offered or sold on a national securities exchange; or (iii) sold to a qualified purchaser.” Accordingly, pursuant to this amendment, certain Regulation A offerings would be preempted from state “Blue Sky” review. The North American Securities Administrators Association had objected to limitations in state authority in connection with Regulation A offerings in a comment letter to the House Financial Services Committee dated June 15, 2011, citing investor protection concerns.⁶

¹ This is bill H.R. 1070. See http://financialservices.house.gov/UploadedFiles/HR1070_REPSUBCOM_xml.pdf. See press release issued by the House Financial Services Committee, available at <http://financialservices.house.gov/News/DocumentSingle.aspx?DocumentID=248319>.

² See the overview provided by the House Financial Services Committee available at <http://financialservices.house.gov/Calendar/EventSingle.aspx?EventID=247453>.

³ See press release issued by the House Financial Services Committee, available at <http://financialservices.house.gov/News/DocumentSingle.aspx?DocumentID=248319>.

⁴ See our Client Alert “Small Company Capital Formation Act of 2011; Regulation A Revival?” dated March 30, 2011, for a discussion of the background for and elements of the proposed legislation.

⁵ See <http://financialservices.house.gov/UploadedFiles/062211hr1070schweikertam.pdf>.

⁶ See http://www.nasaa.org/content/Files/NASAA_Comment_Letter_HR1070_HR1082.pdf.

Amendment no. 1a offered by Representative Gary Ackerman (D-NY) was also approved.⁷ This amendment provides that the Securities and Exchange Commission (the “Commission”) *shall* require an issuer to file audited financial statements with the Commission annually, aiming to put stronger investor protections in place for investors in smaller companies.

Finally, amendment no. 1b offered by Representative Barney Frank (D-MA), providing that each prospectus for securities offered in a Regulation A offering will be treated as a registration statement for purposes of liability under Section 11 of the Securities Act, was approved.⁸ Currently, an exempt offering pursuant to Regulation A is excluded from Section 11 liability, while remaining subject to the antifraud provisions under the federal securities laws.

While on a fast track and subject to bipartisan support,⁹ the Small Company Capital Formation Act is still in the early stages of the legislative process, and it remains to be seen whether Regulation A reform will succeed.

Contacts

Gerd D. Thomsen
(212) 336-4335
gthomsen@mof.com

Anna T. Pinedo
(212) 468-8179
apinedo@mof.com

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⁷ See <http://financialservices.house.gov/UploadedFiles/062211hr1070ackermanam.pdf>.

⁸ See <http://financialservices.house.gov/UploadedFiles/062211hr1070frank02am.pdf>.

⁹ The Small Company Capital Formation Act is currently co-sponsored by 17 representatives (of which 15 are Republicans and 2 are Democrats).