

Corporate & Financial Weekly Digest

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SEC Chairman Shapiro Remarks on Capital-Raising Reform

In testimony before the U.S. House of Representatives Committee on Oversight and Government Reform on May 10, Securities and Exchange Commission Chairman Mary Shapiro stated that she had instructed the staff of the SEC to "take a fresh look" at rules relating to public and private offerings of securities in light of advances in technology, accelerated communications and changes in the operations of the financial markets, with a view to encouraging capital formation. No timetable was provided. Specific areas of focus outlined by Chairman Shapiro include:

- the restrictions on communications in initial public offerings;
- whether the ban on general solicitation or advertising for private placements should be revised;
- the number of shareholders that trigger public reporting, including questions surrounding the use of special purpose vehicles that hold securities of a private company for groups of investors; and
- regulatory questions posed by new capital-raising strategies.

The SEC has for some time been considering modifying the general solicitation or advertising ban in connection with private placements and had, in 2007, proposed lessening of that prohibition for "large accredited investors." While the SEC has not adopted such a rule, many commentators noted that the general solicitation or advertising ban, in light of current communication technologies, has become anachronistic. Further, the recent Facebook private placement has raised questions concerning both the number of investors triggering public reporting requirements (currently 500) and whether, as is currently the case, only shares "held of record" count for such purposes.

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