

## US

Morrison &amp; Foerster

## Promoting capital formation

**R**egulators and lawmakers in the US continue to review and consider measures that may promote capital formation for smaller and emerging companies. Although the number of initial public offerings (IPOs) in the US in 2014 reached highs not seen since the early 2000s, there are a few important

observations.

Companies continue to rely heavily on private financings and only pursue IPOs once they have attained a significant size or maturity. Often, institutional investors participate in private placements that almost serve as surrogates for

traditional IPOs as the size of pre-public, later stage private placements has grown significantly. The median size of IPOs remains high – there are relatively few IPOs in which the offering proceeds are less than \$100 million. This dynamic has resulted in a need to ensure that there are more liquidity opportunities for the holders of securities in privately held companies.

Secondary trading markets for private company securities have continued to grow, but now, regulators have begun to assess whether additional measures might be implemented to promote greater transparency and liquidity on such markets. Recently, the Securities and Exchange Commission's (SEC) Advisory Committee on Small and Emerging Companies met to consider a number of alternatives, including providing greater legal certainty for the resale of restricted securities. Various SEC commissioners have voiced their interest in evaluating the creation of venture exchanges that may facilitate the listing and trading of securities of small-cap companies. A recent Congressional hearing also considered the merits of such an approach to promoting capital formation for smaller companies. There are a number of venture exchanges or small-cap exchanges, including the TSX Venture Exchange in Canada and London's AIM.



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An SEC commissioner also has suggested reintroducing regional exchanges that might meet the needs of small-cap companies.

Perhaps it would be prudent to tackle the obstacles to capital formation already identified by smaller public companies and by emerging companies before undertaking these experiments. For example, the SEC's Government-Business Forum on Small Business has each year made a number of suggestions. Similarly, there are a number of pending bills in Congress that would pick up where the JOBS (Jumpstart Our Business Startups) Act left off and continue to implement measures designed to right-size regulation by extending to smaller public companies a number of the accommodations made available for emerging growth companies by the JOBS Act. Of course, there is also an urgent need for the SEC to complete the rulemaking mandated by the JOBS Act, including the adoption of final rules that would permit companies to raise up to \$50 million through smaller public offerings, known as Regulation A+.

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