



Legislative Proposals to Facilitate Capital Formation Advance

In our October 2011 client alert,¹ we discussed various bills that had been approved by the House Committee on Financial Services, Subcommittee on Capital Markets and Government-Sponsored Enterprises (the “House Subcommittee”) focusing on capital formation. Several of these were recently approved by a vote of the full House of Representatives (the “House”).

Shareholder Threshold for Small Banks

On November 2, 2011, the House overwhelmingly approved H.R. 1965 without amendment by a vote of 420 to 2.² The bill increases the shareholder threshold under Section 12(g) of the Securities Exchange Act of 1934 (the “Exchange Act”) from 500 to 2,000 for banks and bank holding companies and increases the threshold for total assets of an issuer required to register with the SEC from \$1 million to \$10 million.³ Representative Jim Himes (D-CT), who co-sponsored the bill with Representative Steve Womack (R-AR), remarked that “this bill helps banks help growing businesses access the capital they need to expand and create jobs while maintaining important protections for investors.” Representative Womack noted that “by raising the shareholder threshold from 500 to 2,000, banks will now be better positioned to increase small business lending which, in turn, will promote economic growth in communities across the country.”⁴

Make Room for “Crowdfunding”

H.R. 2930, introduced in the House on September 14, 2011 by Representative Patrick McHenry (R-NC), proposes to add a “crowdfunding” exemption to Section 4 (exempt offerings) of the Securities Act and Section 12(g) of the Exchange Act. On November 3, 2011, the House approved H.R. 2930 by a vote of 407-17.⁵ The bill, as approved, contains a few amendments to the version approved by the House Financial Services Committee on October 26, 2011. Amendments proposed by Representative Steven Fincher (R-TN) and by Representative Ben Quayle (R-AZ) that direct the SEC to adjust for inflation the \$1,000,000 cap on “crowdfunding” transactions and \$10,000 individual investment cap were added.

¹ See <http://www.mofo.com/files/Uploads/Images/111013-Small-Business-Capital.pdf>.

² See <http://financialservices.house.gov/News/DocumentSingle.aspx?DocumentID=267321>. The House approved a motion to suspend the rules and pass H.R. 1065, a procedural shortcut used for bills that are not controversial.

³ This change merely incorporates into statute the current requirements of SEC rules under Section 12(g) and 15(d).

⁴ See press release issued by Representative Himes’ office, available at <http://himes.house.gov/content/house-passes-himes%E2%80%99-bipartisan-bill-reduce-small-biz-credit-crunch>.

⁵ See press release issued House Financial Services Committee, available at <http://financialservices.house.gov/News/DocumentSingle.aspx?DocumentID=267641>.

Representative McHenry also added an amendment to H.R. 2930 that requires the issuer in a “crowdfunding” transaction to state a deadline for reaching the desired offering proceeds and to notify the SEC once the offering has been completed. The notification must include the aggregate offering proceeds and number of purchasers. McHenry’s amendment also revised the “bad actor” provision to disqualify issuers and intermediaries from the transaction if their predecessors, affiliates, officers, or directors have a history of committing securities fraud. This amendment was agreed upon by a voice vote of the House.

Advertising Allowed

During the same session, the House also approved H.R. 2940, without amendment, by a vote of 413 to 11.⁶ This bill would allow for the use of general advertisements to solicit investors in offerings of non-publicly traded securities, so long as the privately held companies market only to accredited investors. The bill would direct the SEC to revise its rules to remove the prohibition against general solicitation or advertising for sales of non-publicly traded securities made only to accredited investors.⁷

Going Forward

H.R. 2167, the bill that would amend Section 12(g) of the Exchange Act to increase the shareholders of record threshold to 1,000 for all companies still awaits review by the House. Having been approved in the House, H.R. 1965, 2930 and 2940 were sent to the Senate for review and are still awaiting Senate Committee referrals. The strong bipartisan support for the bills and the backing of the White House suggests that there is a strong chance that these bills could become law in the near future.

Contacts

Michael J. Rosenberg
(212) 336-4447
mrosenberg@mof.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We’ve been included on *The American Lawyer’s* A-List for eight straight years, and *Fortune* named us one of the “100 Best Companies to Work For.” Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mof.com. © 2011 Morrison & Foerster LLP. All rights reserved.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

⁶ See supra at note 10.

⁷ Id.