

July 2017

NEWS ROUND UP

A Morrison & Foerster summary of recent developments affecting Israeli companies active in the capital markets.

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More on the IPO Market from the SEC Investor Advisory Committee

The SEC Investor Advisory Committee devoted its June 22, 2017, session to a discussion of the decline in the number of U.S. IPOs. Chair Clayton addressed the Committee and noted that the decline in the number of U.S. IPOs and in the number of listed companies was a concern. The Chair noted that the Director of the Division of Corporation Finance is “actively exploring ways in which we can improve the attractiveness of listing on our public markets, while maintaining important investor protections.” The panel heard from academics (see, for example, this [article](#)), as well as bankers about the changes in U.S. market dynamics that may be at the root of the decline in the number of IPOs. Slides from one of the presentations are available at: <https://goo.gl/kqR84W>.

NYSE Withdraws Proposed Rule Allowing Listing Without an IPO

On June 19, 2017, the NYSE withdrew its proposed rule, originally issued on March 13, 2017, to modify the provisions regarding the qualification of companies listing on the NYSE to allow for a listing without an IPO. Section 102.01B of the NYSE Listed Company Manual currently recognizes that some companies that have not previously registered their common equity securities under the Exchange Act, but which have sold common equity securities in a private placement, may wish to list those common equity securities on the NYSE at the time of effectiveness of a resale registration statement filed solely for the resale of the securities held by selling stockholders. The proposed rule change was published for comment in the Federal Register on March 31, 2017, and the SEC received no comments on the proposed rule.

The notice of withdrawal for the proposed rule is available at: <https://goo.gl/qfRmMT>.

PCAOB Adoption of Enhanced Auditor's Reporting Model

On June 1, 2017, the Public Accounting Oversight Board (PCAOB) adopted Auditing Standard No. 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*, which the PCAOB believes will increase the relevance and utility of auditors' reports by including additional information regarding the audit process, and other disclosures.

Most significantly, the new standard requires inclusion in the audit report of a discussion of critical audit matters (CAMs) identified in the course of the audit. The new standard also contains an auditor tenure disclosure requirement and standardizes the format of the report, among other changes. The new standard retains the pass/fail opinion of the existing auditor's report.

The new standard and other changes are subject to Securities and Exchange Commission (SEC) approval. Assuming that approval is obtained, the PCAOB expects the provisions, other than those related to CAMs, to take effect for audits for fiscal years ending on or after December 15, 2017. Provisions related to CAMs will take effect for (1) large accelerated filers, in connection with audits for fiscal years ending on or after June 30, 2019, and (2) all other filers, in connection with audits for fiscal years ending on or after December 15, 2020.

The new standard has culminated from an effort begun by the PCAOB in 2010. Following PCAOB staff outreach to investors, auditors, preparers of financial statements, audit committee members, and other interested parties, the PCAOB issued a concept release in 2011 and, in 2013, initially proposed a standard that would require CAMs

disclosure and other elements of the recently adopted standard. Following comments and receipt of other feedback, the PCAOB re-proposed the standard in May 2016; the re-proposed version more strongly emphasized CAMs, though limited the source of potential CAMs to those communicated or required to be communicated to the audit committee. The re-proposed audit standard also added a materiality element to the meaning of CAM, relating specifically to those matters that involved especially challenging, subjective, or complex auditor judgment, further narrowing the scope of the requirement from the PCAOB's original proposal. On June 1, 2017, the PCAOB adopted the final standard.

To learn more, read our client alert: <https://goo.gl/gYLdoo>

U.S. Treasury Department Report on Core Principles for Regulating the United States Financial System

As required by the President's Executive Order 13772 setting forth the core principles that should be taken into account in connection with the regulation of the U.S. financial system, the U.S. Treasury Department published a report identifying regulations inconsistent with the seven principles articulated in the order.

The report is the first of series of reports. The current report addresses only the depository system and defers an evaluation of the orderly liquidation authority established by the Dodd-Frank Act. We await future reports that address the regulation of the capital markets, the asset management and insurance industries, and non-bank financial services companies.

The report notes that stimulating economic growth depends, in the administration's view, on relieving regulatory burdens on financial

institutions and establishing a more efficient system of financial regulation. The report not only identifies regulations inconsistent with the core principles but also recommends changes in varying degrees of specificity and identifies whether the recommendations contemplate regulatory changes or Congressional actions. Thus the report provides both recommendations and a general road map for implementing regulatory changes in the United States.

To learn more, read our client alert: <https://goo.gl/jiVR1Z>.

CHOICE Act: Reform or Recalibration?

In the last session of the U.S. Congress in mid-2016, Representative Jeb Hensarling first introduced The Financial CHOICE (Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs) Act, which represented an amalgamation new proposals as well as numerous individual measures that had been introduced in Congress, as a comprehensive deregulatory bill. The Financial CHOICE Act failed to advance much beyond the Financial Services Committee of the House of Representatives in 2016. Given the new presidential administration's deregulatory agenda, many have anticipated that new legislation would be introduced to carry forward campaign commitments to repeal the Dodd-Frank Act. However, thus far, from the administration itself there have been only various Presidential orders, such as the Executive Order relating to the Core Principles for Regulating the United States Financial System (Order 13772) discussed above, which addresses the principles under which effective financial services regulation should be evaluated for potential amendment or repeal.

To fill the breach, Representative Hensarling introduced a new version of the Financial CHOICE Act, referred to as CHOICE 2.0, in the House of Representatives and it was recently adopted by the House Financial Services Committee. While it is unlikely, given the many disparate measures that comprise the draft of the proposed legislation, that CHOICE 2.0 will be enacted in its current form, it is worth reviewing the principal provisions and the measures that might find broad support.

To learn more, read our *International Financial Law Review* article: <https://goo.gl/kwFHmG>.

NASDAQ Solicits Comments on Shareholder Approval Rules

In June 2017, Nasdaq posted the following notice and request for comment:

“Last year, Nasdaq, solicited comments on our shareholder approval rules. These rules were adopted in 1990 and have remained largely unchanged since then. The comment solicitation was designed to elicit views on whether the rules could be updated given changes in the capital markets since then, without sacrificing the crucial investor protections they provide.

Following review of the comments provided, Nasdaq is considering a rule amendment to: (i) change the definition of market value for purposes of the shareholder approval rules from the closing bid price to a five day trailing average of the closing price; and (ii) eliminate the requirement for a company to obtain shareholder approval for issuances of common stock at a price less than book value. As part of these changes, Nasdaq would also require that an issuance of 20% or more of the company’s outstanding securities be approved by the company’s

independent directors where shareholder approval is not required.

We encourage all interested parties to review the detailed description of these proposed changes in our Comment Solicitation and provide comments before July 31, 2017.”

See Nasdaq [statement](#).

See Nasdaq [comment solicitation](#).

SEC Chief Accountant Gives Speech on Credible Financial Reporting in the Capital Markets

On June 8, 2017, SEC Chief Accountant Wesley Bricker gave a speech titled “Advancing the Role of Credible Financial Reporting in the Capital Markets” at the 36th Annual SEC and Financial Reporting Institute Conference. Mr. Bricker emphasized the importance of reliable accounting and effective control over financial reporting in protecting investors and the capital markets. Mr. Bricker also discussed the key roles played by audit committees and independent external auditors in providing assurance to investors that financial statements are disclosed without material misstatements or omissions.

To learn more, read our MoFo Jumpstarter blog post: <https://goo.gl/D6vkjY>.

UPCOMING EVENT

Regulatory Burden Relief: What to Anticipate *IFLR Webinar*

Tuesday, July 25, 2017
10:00 a.m. – 11:30 a.m. EDT

Join us as presenters share their views and predictions regarding: the Presidential Orders relating to deregulation; the Treasury Department’s initial report regarding the core principles of financial regulation; the Financial CHOICE Act and its principal provisions; the areas of regulatory reform as to which compromise may be possible; and, the likely path forward for regulatory reform and what you should expect in 2017.

Speakers:

- [Oliver Ireland](#)
Partner, Morrison & Foerster
- Paul Kupiec
Resident Scholar, American Enterprise Institute
- [Anna Pinedo](#)
Partner, Morrison & Foerster

For more information, or to register for this free webinar, please visit: <https://goo.gl/VKdSjR>.

CLIENT RESOURCE CORNER

We have a number of resources available to our clients and friends including:



MoFo Jumpstarter.

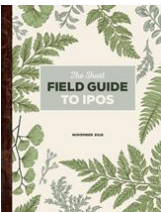
Our Jumpstart blog is intended to provide entrepreneurs, domestic and

foreign companies of all shapes and sizes, and financial intermediaries, with up to the minute news and commentary on the JOBS Act. Visit: www.mofojumpstarter.com



MoFo's Quick Guide to REIT IPOs.

Our recently updated Quick Guide to REIT IPOs provides an overview of the path to an IPO for a REIT. The guide also addresses regulatory, tax and accounting considerations relevant to sponsors considering forming a REIT. Our guide is available here: <https://goo.gl/jwrKE1>.



The Short Field Guide to IPOs.

In our recently updated IPO Field Guide we provide an overview of the path to an initial public offering and address a number of recent developments. Our guide is available here: <https://goo.gl/Cvxa4S>.

Capital Markets Practice Pointers.

In our practice pointers, which address a range of topics of interest, we offer guidance on frequent issues encountered in connection with securities disclosures and filings. Visit our Practice Pointer webpage at: <https://goo.gl/FizH0N>.



SOCIALLY AWARE

MORRISON | FOERSTER 2017 BEST LAW FIRM NEWSLETTER THE SOCIAL MEDIA LAW UPDATE

Social media sites are transforming not only the daily lives of consumers, but also how companies interact with consumers. Social media generates new legal questions at a far faster pace than the law's ability to provide answers to such questions. In an effort to stay on top of these emerging issues, and to keep our clients and friends informed of new developments, Morrison & Foerster has launched a newsletter devoted to the law and business of social media. Visit: www.mofo.com/sociallyaware.

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ABOUT OUR ISRAEL PRACTICE

For more than four decades, Morrison & Foerster has participated in the development of the Israeli market, representing numerous Israeli companies globally, at every stage of their evolution, as well as the foreign investors or investment banks that finance those companies. We provide innovative securities and capital markets advice that is sharply focused on providing global capital markets access to technology-centric companies. We believe that this expertise, as well as our historic commitment to Israel, has contributed to our long and successful track record with Israeli clients. For more information, visit: <https://www.mofo.com/practices/international/israel/>.

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 sciences companies. We've been included on *The American Lawyer's* A-List for 13 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.mofo.com.

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