

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: April 4, 2014

Subject: April 9, 2014, Subcommittee on Capital Markets and Government Sponsored Enterprises Hearing Entitled “Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies”

The Subcommittee on Capital Markets and Government Sponsored Enterprises will hold a hearing entitled “Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies” at 10:00 a.m. on Wednesday, April 9, 2014, in room 2128 of the Rayburn House Office Building. This will be a one-panel hearing and will include the following witnesses:

- David Burton, Senior Fellow in Economic Policy, Heritage Foundation
- Professor John C. Coffee Jr., Adolf A. Berle Professor of Law, Director of the Center on Corporate Governance at Columbia Law School, Columbia Law School
- Brian Hahn, Chief Financial Officer, GlycoMimetics, Inc., on behalf the Biotechnology Industry Organization (BIO)
- Tom Quaadman, Vice President, U.S. Chamber of Commerce Center for Capital Markets Competitiveness

The hearing will examine the legislation and discussion drafts of legislation outlined below.

H.R. 2629, the “Fostering Innovation Act of 2013”

Rep. Michael Fitzpatrick introduced H.R. 2629, the “Fostering Innovation Act of 2013,” on July 9, 2013. H.R. 2629 requires the Securities and Exchange Commission (SEC) to amend Rule 12b-2 so that companies with a public float of either (i) less than \$250 million with no annual revenue restriction or (ii) between \$250 million and \$700 million and less than \$100 million in annual revenue are deemed “non-accelerated filers” and can

therefore take advantage of certain exemptions from the securities laws and the Sarbanes-Oxley Act of 2002.

H.R. 4200, the SBIC Advisers Relief Act of 2014

On March 11, 2014, Rep. Luetkemeyer introduced H.R. 4200, the “SBIC Advisers Relief Act of 2014.” The bill amends the Investment Advisers Act of 1940 to include advisers of Small Business Investment Companies (SBICs) in the class of venture capital funds and private funds that are exempt from SEC registration.

Discussion Draft of the “Disclosure Modernization and Simplification Act”

Rep. Garrett has proffered a discussion draft of the “Disclosure Modernization and Simplification Act.” The discussion draft would direct the SEC to permit issuers to submit, on Form 10-K annual reports, a summary page to make annual disclosures easier to understand for current and prospective investors. It would also direct the SEC, within 180 days of enactment, to tailor Regulation S-K’s disclosure rules as they apply to emerging growth companies and smaller issuers and to eliminate other duplicative, outdated, or unnecessary disclosure rules as they apply to these smaller issuers. Finally, the discussion draft would direct the SEC to identify and implement additional reforms to Reg. S-K to simplify and modernize SEC disclosure rules.

Discussion Draft of a bill to direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans

Rep. Randy Hultgren has proffered a discussion draft of legislation to amend SEC Rule 701, originally adopted in 1988 under Section 3(b) of the Securities Act of 1933 and last updated in 1998. Under current law, if an issuer sells, in the aggregate, more than \$5 million of securities in any consecutive 12-month period, the issuer is required to provide additional disclosures to investors, such as risk factors, the plans under which offerings are made, and certain financial statements. The discussion draft would require the SEC to increase that threshold to \$20 million. Support for this effort to expand the utility of Rule 701 can be found in the SEC’s Government-Business Forum on Small Business Capital Formation Final Reports for 2001, 2004-2005 and 2013.

Discussion Draft of a bill to require the Securities and Exchange Commission to revise the definition of a well-known seasoned issuer to reduce the worldwide market value threshold under the definition

A Well-Known Seasoned Issuer (WKSI) is an issuer that meets certain criteria that make it eligible to take advantage of certain regulatory benefits, such as the ability to file an automatic shelf registration statement on Form S-3. One WKSI criterion is that the issuer must have at least \$700 million in public float. Rep. Kevin McCarthy has proffered a

discussion draft of legislation to require the SEC to revise the definition of a WKSII to reduce this threshold from \$700 million to \$250 million, thus enabling more issuers to take advantage of the benefits of WKSII designation.

Discussion Draft of a bill to amend the securities laws to improve private market offerings, and for other purposes

Rep. Mick Mulvaney has proffered a discussion draft of legislation to amend SEC Rule 144 to reduce from 6 months to 3 months the mandatory holding period before which restricted securities issued by an SEC reporting company may be resold to the public. The discussion draft would also amend Rule 144 to allow the public resale of restricted securities originally issued by a shell company starting 2 years after the date on which the company files a Form 8-K with the SEC disclosing that it is no longer a shell company. Finally, the discussion draft would amend Section 18(b) of the Securities Act of 1933 to include in the definition of “covered securities” exempt from state regulation any security offered or sold in compliance with Rule 144A. The discussion draft’s provisions reducing the holding period from 6 months to 3 months and providing for shell company relief are based on recommendations in the SEC’s Government-Business Forum on Small Business Capital Formation Final Report for 2012.

Discussion Draft of the “Small Company Freedom to Grow Act”

Rep. Ann Wagner has circulated a discussion draft of the “Small Company Freedom to Grow Act.” The discussion draft would amend the SEC’s Form S-1 registration statement to allow a smaller reporting company to incorporate by reference any documents the company files with the SEC after the effective date of the Form S-1. The discussion draft would also amend the SEC’s Form S-3 registration statement to allow a smaller reporting company to register a primary securities offering exceeding one-third of the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant, and to eliminate the restriction that the smaller reporting company have a class of common equity securities listed and registered on a national securities exchange. Finally, the discussion draft would amend Section 18(b) of the Securities Act of 1933 to include in the definition of “covered securities” exempt from state regulation securities issued by smaller reporting companies and emerging growth companies that are not listed or authorized for listing on a national securities exchange. The discussion draft’s provisions are based on recommendations in the SEC’s Government-Business Forum on Small Business Capital Formation Final Report for 2012.