

## MEMORANDUM

**To:** Members of the Committee on Financial Services

**From:** Committee Staff

**Date:** March 6, 2023

**Re:** Subcommittee on Capital Markets Hearing entitled “U.S. Public Markets Built for the 21st Century: Exploring Reforms to Make Our Public Markets Attractive for Small and Emerging Companies Raising Capital”

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On Thursday, March 9, 2023, at 10:00 a.m. (ET), the Subcommittee on Capital Markets will hold a hearing, entitled: “U.S. Public Markets Built for the 21st Century: Exploring Reforms to Make Our Public Markets Attractive for Small and Emerging Companies Raising Capital.” The purpose of this hearing is to examine policies designed to strengthen public markets. Testifying at the hearing will be:

- The Honorable Michael S. Piwowar, Executive Vice President of MI Finance, Milken Institute
- Sue Washer, Former CEO of Applied Genetics Technology Corp. (AGTC)
- Anna T. Pinedo, Partner and Co-Leader of Global Capital Markets, Mayer Brown
- Stacey Bowers, Professor of the Practice, University of Denver Sturm College of Law

### Importance of Entering the Public Markets

In a challenging global economy, the strength of our capital markets is vital to long-term economic growth. However, rising costs and increased regulatory burdens prevent small businesses from entering our public markets, depriving everyday investors of opportunities to invest in high growth companies and hindering the United States’ ability to compete globally.

The number of new businesses entering public markets through an initial registration of publicly traded securities (or IPO) with the Securities and Exchange Commission (SEC) has declined, except for a surge in 2021 driven by an increase in the number of IPOs by special purpose acquisition companies (SPACs). The U.S. has recorded several of its worst years on record for IPOs,<sup>1</sup> while costs businesses incur to go public have doubled since the 1990s.<sup>2</sup>

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<sup>1</sup> See, e.g., Corrie Driebusch, *IPO Market Faces Worst Year in Two Decades. ‘Really Hard Pill to Swallow.’*, The Wall Street Journal (Aug. 22, 2022), available at [https://www.wsj.com/articles/ipo-market-faces-worst-year-in-two-decades-startups-11661181427?mod=markets\\_lead\\_pos5](https://www.wsj.com/articles/ipo-market-faces-worst-year-in-two-decades-startups-11661181427?mod=markets_lead_pos5).

<sup>2</sup> Tom Simpson, *Changes brewing in DC could make it easier for companies to go public and beef up the economy*, INLANDER (Aug. 2, 2018), available at <https://www.inlander.com/spokane/changes-brewing-in-washington-dc-could-make-it-easier-for-new-companies-to-go-public-and-beef-up-the-economy/Content?oid=11195585>; see Jay R. Ritter, *Initial Public Offerings: Updated Statistics* (Feb. 1, 2021), available at <https://site.warrington.ufl.edu/ritter/files/IPO->

According to some reports, “Investment bankers, lawyers, and auditors collectively charge millions of dollars to prepare the lengthy registration statement that must be filed with the SEC before shares can be sold.”<sup>3</sup>

While IPOs in U.S. markets approach their lowest point on record, the number of annual IPOs in Mainland China continues to increase.<sup>4</sup> In 2022, Mainland China accounted for 39 percent of all global IPO activity.<sup>5</sup> The launch of the Beijing Stock Exchange in 2021 and tighter regulatory restrictions on Chinese issuers on U.S. exchanges have contributed to this growth.<sup>6</sup> Additionally, Beijing’s “Made in China 2025” agenda lays out its plan to dominate the high-tech, biotech, and artificial intelligence industries within the next ten years.<sup>7</sup> This increased pressure from foreign markets, especially Mainland China, only heightens the necessity for immediate action and reform.

Nearly eleven years ago, a divided Congress passed the Jumpstart Our Business Startups Act, or JOBS Act of 2012, to facilitate capital formation for small companies and entrepreneurs. The JOBS Act included several provisions specifically designed to strengthen public markets. Most notably, to encourage more small-cap IPOs, Title I created a new “Emerging Growth Company” (EGC) designation and an IPO “on ramp” for companies to gradually begin complying with public company regulatory requirements. Additionally, Title V raises the thresholds for mandatory registration as a public company to prevent private companies from being forced to go public before they are ready. Congress should build on the success of these provisions by introducing smart, incremental reforms that encourage companies to go public. With more companies entering our public markets, everyday investors will have greater access to investment opportunities.

## Legislative Proposals

- **H.R. [\_\_\_\_], the “Improving Disclosure for Investors Act of 2023”.** This bill directs the SEC to promulgate rules permitting financial firms to electronically deliver certain disclosures to investors.
- **H.R. [\_\_\_\_], the “Helping Startups Continue to Grow Act”.** This bill allows certain issuers of securities regulated as emerging growth companies to continue operating under such regulations, including those related to reduced disclosures and other exemptions, for an

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<sup>3</sup> Frank Partnoy, *The Death of the IPO*, The Atlantic (Nov. 2018), available at

<https://www.theatlantic.com/magazine/archive/2018/11/private-inequity/570808/>

<sup>4</sup> Ernst and Young Report: Global IPO Trends 2021 (Dec. 16, 2021), available at [https://www.ey.com/en\\_gl/ipo/trends](https://www.ey.com/en_gl/ipo/trends).

<sup>5</sup> PWC Report, Global IPO Watch: 2022 in Review, available at <https://www.pwc.com/gx/en/services/audit-assurance/ipo-centre/global-ipo-watch.html#:~:text=The%20US%20accounted%20for%20just,number%20of%20IPOs%20since%202016>.

<sup>6</sup> *Id.*

<sup>7</sup> Council on Foreign Relations: <https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade>.

additional five years. It also raises the maximum thresholds for companies to qualify as emerging growth companies to not more than \$2 billion.

- **H.R. [\_\_\_\_]**, to reduce the required aggregate market value of voting and non-voting common equity shares for an issuer of securities to qualify as a well-known seasoned issuer. A well-known seasoned issuer is allowed to make expedited public offerings of securities through automatic shelf registrations.
- **H.R. [\_\_\_\_]**, the “**Encouraging Public Offerings Act**”. The bill allows issuers of securities to communicate with potential investors to ascertain interest in a contemplated securities offering, either before or after the filing of a registration statement (i.e., *test the waters*). The bill also allows issuers to submit a confidential draft registration statement to the Securities and Exchange Commission for review prior to public filing or within one year after the initial public offering or registration.
- **H.R. [\_\_\_\_]**, to expand the provision for research reports in Section 2(a)(3) of the Securities Act to cover research reports about any issuer that undertakes a proposed public offering of securities.
- **H.R. [\_\_\_\_]**, to update the emerging growth company (EGC) financial statement requirements to clarify that any EGC may present two years, rather than three years, of audited financial statements in both IPOs and spin-off transactions.
- **H.R. [\_\_\_\_]**, to establish that an emerging growth company (EGC), as well as any issuer that went public using EGC disclosure obligations, only needs to provide two years of audited financial statements.
- **H.R. [\_\_\_\_]**, to update the SEC and PCAOB auditor independence requirements to provide that the auditor of a private company that is transitioning to public company status (via IPO, spin-off or otherwise) must comply with SEC/PCAOB independence rules for the latest fiscal year, as long as the auditor is independent under AICPA or home-country standards for earlier periods.
- **H.R. [\_\_\_\_]**, to clarify that a company’s market capitalization, for purposes of testing the significance of an acquisition or disposition, may include the value of all shares, including preferred stock and non-traded common shares that are convertible into, or exchangeable for, traded common shares.
- **H.R. [\_\_\_\_]**, to update Section 12(g) of the Exchange Act to provide that the mandatory registration threshold of 2,000 or more holders of record shall exclude Qualified Institutional Buyers (QIBs) and institutional accredited investors. This bill also prevents the SEC from revising the definition of securities “held of record” in a way that forces companies to go public sooner than they are currently required.

- **H.R. [\_\_\_\_\_]**, to exempt certain low-revenue issuers from being required to have their management’s assessment of the effectiveness of internal controls over financial reporting attested to, and reported on, by an independent auditor, as required by SOX Section 404(b).
- **H.R. [\_\_\_\_\_]**, to codify certain SEC no action letters that allow broker-dealers to continue accepting cash or “hard dollar” payments for research reports, in order to comply with international regulations such as MiFID and MiFID II.
- **H.R. [\_\_\_\_\_]**, to permit a registered investment company to omit certain fees from the calculation of Acquired Fund Fees and Expenses.