

MEMORANDUM

To: Members of the Committee on Financial Services

From: Committee Majority Staff

Date: February 21, 2025

Re: February 26, 2025, Subcommittee on Capital Markets Hearing titled “The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation.”

On February 26, 2025, at 10:00 a.m. in Room 2128 of the Rayburn House Office Building, the Subcommittee on Capital Markets will hold a hearing titled “The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation.” The following witnesses will testify:

- Andrew Barnell, CEO and Co-Founder, Geneoscopy
- McKeever Conwell, Founder and Managing Partner, RareBreed Ventures
- Rebecca Kacaba, CEO and Co-Founder, DealMaker
- Anna Pinedo, Partner, Mayer Brown
- Alexandra Thornton, Senior Director, Financial Regulation, Center for American Progress

This hearing will examine the critical role of capital formation in driving economic growth. The Committee will review the bipartisan Jumpstart Our Business Startups (JOBS) Act of 2012, legislation that reduced regulatory barriers and expanded access to capital. With thirteen years of evidence, the hearing will assess the JOBS Act’s impact and explore remaining regulatory obstacles. Additionally, the Committee will consider reforms to enhance capital formation and investment opportunities, particularly for underrepresented entrepreneurs and communities.

Attached Legislation:

1. **H.R. ___, the *Fair Investment Opportunities for Professional Experts Act (Hill)*:** The discussion draft would expand the “accredited investor” definition to include individuals with certain licenses, qualifying education, or job experience. The qualifying licenses, education, and job experience would be determined by the SEC through rulemaking and verified by FINRA or an equivalent self-regulatory organization (SRO).
2. **H.R. ___, the *Accredited Investor Definition Review Act (Huizenga)*:** The discussion draft would require the SEC to review the list of certifications, designations, and credentials for individuals to qualify as an accredited investor and add additional certifications, designations, and credentials that the SEC determines are substantially similar. This bill would require the SEC to repeat this process every five years after the initial assessment.

3. **H.R. ___, *the Improving Access to Small Business Information Act (Kim)*:** The discussion draft would amend the Securities Exchange Act of 1934 to specify that actions of the Advocate for Small Business Capital Formation are not a collection of information under the Paperwork Reduction Act.
4. **H.R. ___, *the Small Entity Update Act (Wagner)*:** The discussion would direct the SEC to conduct a study, followed by a rulemaking consistent with the results of such study, including defining the term “small entity” under the Regulatory Flexibility Act.
5. **H.R. ___, *the Equal Opportunity for All Investors Act (Flood)*:** The discussion draft would expand the “accredited investor” definition to include individuals who are certified through an examination established by the SEC and administered by FINRA.
6. **H.R. ___, *the Encouraging Public Offerings Act (Wagner)*:** The discussion draft codifies Rule 163B under the Securities Act by allowing an issuer to communicate with potential investors to determine interest in a 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 SEC for review prior to public filing. The bill updates the public filing condition to allow any issuer conducting an initial public offering to file its registration statement publicly 10 days before the effective date of the registration statement.
7. **H.R. ___, *a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes (Nunn)*:** The discussion draft updates the emerging growth company (EGC) financial statement requirements to clarify that an EGC may present two years, rather than three years, of audited financial statements in both IPOs and spin-off transactions. The bill allows a spin-off of an EGC to benefit from the two-year financial statement accommodation, which is currently only available during an IPO.
8. **H.R. ___, *a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes*:** The discussion draft establishes 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.
9. **H.R. ___, *the Enhancing Multi-Class Share Disclosures Act (Meeks)*:** The discussion draft would require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material.
10. **H.R. ___, *the Senior Security Act (Gottheimer)*:** The discussion draft establishes the Senior Investor Taskforce within the SEC. The taskforce must report on topics relating to investors over the age of 65, including industry trends and serious issues impacting such investors, and make recommendations for legislative or regulatory actions to address problems encountered by senior investors. The GAO must report on the financial exploitation of senior citizens.

11. H.R. ___, *the Middle Market IPO Underwriting Cost Act (Himes)*: The discussion draft requires the GAO to study and report on the costs encountered by small- and medium-sized companies when undertaking IPOs and certain offerings exempt from securities registration requirements.
12. H.R. ___, *the Promoting Opportunities for Non-Traditional Capital Formation Act (Waters)*: The discussion draft amends the Securities Exchange Act of 1934 to require the Advocate for Small Business Capital Formation to provide educational resources and host events to promote capital-raising options for underrepresented small businesses and businesses in rural areas.
13. H.R. ___, *the Improving Disclosures for Investors Act (Huizenga)*: The discussion draft directs the SEC to promulgate rules with respect to the electronic delivery of certain required disclosures to investors. Under the bill, such rules are to allow registered investment companies (i.e., mutual funds, closed-end funds, and exchange-traded funds), business development companies (BDCs), registered broker-dealers, registered advisers, and other SEC-regulated entities to meet their obligations under U.S. securities laws to deliver regulatory documents to investors electronically.
14. H.R. ___, *the Helping Angels Lead Our Startups (HALOS) Act (Lawler)*: The discussion draft would define an angel investor for purposes of the federal securities laws. It would also clarify the definition of general solicitation contained in the Securities Act of 1933 to ensure that startups can discuss their products and business plans at certain events, known as “demo days,” without such discussions being considered an investment offering.
15. H.R. ___, *the Increasing Investor Opportunities Act (Wagner)*: The discussion draft would amend the Investment Company Act of 1940 and remove an SEC staff-level position that places an arbitrary limit on the amount of assets a closed-end fund may invest in private funds.
16. H.R. ___, *the Retirement Fairness for Charities and Educational Institutions Act (Lucas)*: The discussion draft would amend the Exchange Act to allow 403(b) retirement plans to invest in unregistered insurance contracts and collective investment trusts (CITs) that currently may be invested in by comparable retirement plans, such as 401(k) plans.
17. H.R. ___, *Remove Aberrations in the Market CAP Test for Target Company Financial Statements (Salazar)*: The discussion draft clarifies that a company’s market capitalization, for purposes of testing the significance of an acquisition or disposition and determining whether a target company’s financial statements are required, may include the value of all shares of stock, including preferred stock and non-traded common shares that are convertible into, or exchangeable for, traded common shares.
18. H.R. ___, *the Helping Startups Continue to Grow Act (Steil)*: The discussion draft provides an extension of certain exemptions and reduced disclosure requirements for companies that were EGCs and would continue to meet all other requirements for EGCs except for the five-year restriction. This title also increases the maximum threshold amounts to qualify as an EGC to \$3 billion and removes the disqualification for “large accelerated filers.”

19. **H.R. ___, *SEC and PCAOB Auditor Requirements for Newly Public Companies* (McClain):** The discussion draft updates 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.
20. **H.R. ___, *Expands Protections for Research Reports to Cover All Securities of All Issuers* (Williams):** The discussion draft expands the provision for research reports in Section 2(a)(3) of the Securities Act to include research reports about any issuer that undertakes a proposed public offering of securities. The current provision only offers limited protection for EGC research reports by deeming them a non-offer.
21. **H.R. ___, *a bill to exclude QIBs and IAI's From the Record Holder Count for Mandatory Registration* (Garbarino):** The discussion draft updates 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 (IAIs).
22. **H.R. ___, *a bill to expand WKSI Eligibility* (Steil):** The discussion draft expands the availability of Well-Known Seasoned Issuer (WKSI) status by updating the WKSI definition to apply to all companies that otherwise satisfy the WKSI definition with a public float of \$75 million, rather than the current public float of \$700 million.
23. **H.R. ___, *Smaller Reporting Company, Accelerated Filer, and Large Accelerated Filer Thresholds*:** The discussion draft raises the thresholds and removes overlap in the definitions to qualify as a smaller reporting company, accelerated filer, and large accelerated filer. It also exempts 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).
24. **H.R. ___, *Unlocking Capital for Small Businesses Act* (Salazar):** The discussion draft would direct the SEC to finalize its 2020 proposed exemption from broker registration requirements for "finders" who help issuers raise capital in private markets from accredited investors.
25. **H.R. ___, *the Small Business Investor Capital Access Act* (Barr):** The discussion draft amends the Investment Advisers Act of 1940 to increase the exemption from registration threshold for advisers to small private funds to reflect changes in inflation.
26. **H.R. ___, *the Improving Capital Allocation for Newcomers (ICAN) Act* (Timmons):** The discussion draft would modify the Qualifying Venture Capital Fund Exemption under Section 3(c)(1) of the Investment Company Act of 1940 by increasing the cap on aggregate capital contributions and uncalled capital commitments from \$10 million to \$150 million. This title would also increase the allowable number of beneficial owners in a qualifying venture capital fund from 250 to 600.

27. **H.R. ___, *the Small Entrepreneurs Empowerment and Development (SEED) Act (Garbarino)***: The discussion draft would amend the Securities Act of 1933 to allow small issuers to conduct a micro-offering free of mandated disclosures or filings. Under this bill, issuers that conduct a micro-offering would remain subject to the anti-fraud provisions of the Federal securities laws.
28. **H.R. ___, *Regulation A+ Improvement Act (Stutzman)***: The discussion draft would increase the amount that companies can raise under Regulation A from \$50 million to \$150 million. It would also require the SEC to adjust this amount for inflation every two years to the nearest \$10,000.
29. **H.R. ___, *the Developing and Empowering our Aspiring Leaders (DEAL) Act (Wagner)***: The discussion draft requires the SEC to revise the definition of a qualifying investment, for purposes of the exemption from registration for venture capital fund advisers under the Investment Advisers Act of 1940. The revised definition is to include an equity security issued by a qualifying portfolio company. It also requires the SEC to revise the definition of a qualifying investment to include an investment in another venture capital fund (i.e., fund of funds investments).
30. **H.R. ___, *Improving Crowdfunding Opportunities Act***: The discussion draft would preempt state regulation of secondary transactions involving crowdfunding vehicles and clarifies legal liability for crowdfunding portals. It also increases the allowable aggregate amount companies can raise in any 12-month period from \$5 million to \$10 million and allows all non-accredited investors to invest up to 10% of the greater of their annual income or net worth. Finally, this bill allows investment companies to participate in crowdfunding offerings and increases the offering size threshold under which an issuer may meet its financial statement requirements.
31. **H.R. ___, *Amendment for Crowdfunding Capital Enhancement and Small-business Support (ACCESS) Act (Meuser)***: The discussion draft expands the exemption from certain disclosures applicable to crowdfunding issuers with specified target offering amounts. Under current law, crowdfunding issuers that have target offering amounts of \$100,000 or less are not required to make available financial statements reviewed by an independent public accountant. The bill increases that amount to \$250,000.
32. **H.R. ___, *Restoring Secondary Trading Market Act (Meuser)***: The discussion draft would amend the Securities Act of 1933 to preempt State blue sky laws for off-exchange secondary trading in companies that make available current public information, including information required by Regulation A.
33. **H.R. ___, *Risk Disclosure and Investor Attestation Act (Davidson)***: The discussion draft would amend the Securities Act of 1933 to permit an individual to invest in private issuers upon acknowledging the investment risks.
34. **H.R. ___, *Investment Opportunity Expansion Act (Stutzman)***: The discussion draft would expand the “accredited investor” definition to include individuals who invest 10 percent or less of the greater of their net assets or annual income in a private offering.

35. H.R. ___, *Accredited Investors Include Individuals Receiving Advice from Certain Professionals Act*: The discussion draft would expand the “accredited investor” definition to include individuals receiving individualized investment advice or individualized investment recommendations with respect to a private offering from a professional who qualifies as an accredited investor.
36. H.R. ___, *To permit a registered investment company to omit certain fees from the calculation of Acquired Fund Fees and Expenses, and for other purposes*: The discussion draft would allow a registered investment company to exclude from the calculation of acquired fund fees and expenses those incurred indirectly from investment in a business development company.