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## House Financial Services Approves 14 Bills Intended To Ease Capital Formation, Plus CFPB Reform Package

### Capital Markets Measures Get Largely Bipartisan Votes, Save for McHenry Package of 12 Bills

Over the course of a markup that lasted 13 hours, the House Financial Services Committee yesterday (Wednesday, April 26) approved 15 bills mostly related to relaxing SEC regulations on capital formation. Of that group, 13 bills were approved by voice vote or by large bipartisan votes, while Chairman Patrick McHenry's *Expanding Access to Capital Act* – which gathered together 12 smaller bills that Republicans said would strengthen public markets, help small businesses and entrepreneurs, and increase access to private markets – was adopted on a party-line 28-21 vote after Ranking Member Waters called it “a partisan package that would significantly weaken investor protections by removing the very disclosures and legal protections investors rely on to hold businesses accountable.”

Rep. Andy Barr's (R-KY) measure assembling several different bills that would reshape the Consumer Financial Protection Bureau (CFPB), the *CFPB Transparency and Accountability Reform Act* (HR 2798), was approved on a party-line vote after a flare-up what Democrats called “race-baiting” comments led the committee to recess for an hour (see below).

Materials from the markup, including links to substitute amendments, are posted [here](#). Attached with this alert please find a PDF of the substitute amendment for HR 2799, Chairman McHenry's *Expanding Access to Capital Act*.

#### Statements

In his opening [statement](#), Chairman Patrick McHenry (R-NC) said that while the committee had lately focused on turmoil in the banking industry, and would be hearing testimony from banking regulators in May, “this Committee can walk and chew gum at the same time” and would provide “legislative solutions” that strengthen and expand access to U.S. capital markets, which he called a priority for committee Republicans. “That’s exactly what we’re doing with the 15 bills before us today,” he said. “Over the last three months, Capital Markets Subcommittee Chair Ann Wagner [R-MO] held four hearings and considered more than 30 bills. We’ve heard from experts across the ideological spectrum... Many of the bills we’ll consider today are bipartisan, and I look forward to moving those to the floor immediately.” McHenry urged members to consider the remaining bills, which he said “contain common-sense policies that will encourage everyday investors and small entrepreneurs to access our capital markets,” with bills focusing on micro-offerings, the gig economy, strengthening crowd-funding rules and expanding angel investing and the SEC’s “accredited investor” definition.

Turning to the *CFPB Transparency and Accountability Reform Act*, McHenry called it a compilation of seven reform bills that were the subject of a committee hearing in February. “Since its inception, the CFPB has been one of the most unaccountable agencies ever created,” he said. “In 2020, the Supreme Court held the removal provisions related to the executive director as unconstitutional... Next term, the Supreme Court will examine the funding structure.” He said HR 2798 “will ensure the CFPB is finally accountable to Congress and to the American people.”

In her [statement](#), Ranking Member Maxine Waters (D-CA) said that instead of focusing on investigating the collapse of three banks in recent months or “considering legislation that could get our banks back up and lending again to small

businesses... the chairman is focused on what has become a deregulatory agenda," while the Republican House leadership is "pushing forward with their demands of a toxic set of budget cuts, including to the [SEC], as a ransom to allow our government to pay the debts that Republicans agreed to incur... If this committee really wanted to support small businesses' access to capital, we should be doing everything in our power to avoid a debt default, which would be devastating for small businesses across the country." Waters faulted McHenry for not backing up his talk about a bipartisan approach to legislating, saying, "I'd love to say that I appreciated how well Mr. McHenry's and my staff worked together, but shortly after we came to an agreement on a list of bills for this markup, the Chair went back on his word. I had hoped that our Committee could rise above the partisanship of the House, but I understand that the Chair is beholden to his leadership at the end of the day. So while... there are 12 targeted pieces of legislation that we will support, there are two packages of truly toxic bills, and a third stand-alone measure that I will strongly oppose," referring to the CFPB reform bill.

Waters called McHenry's *Expanding Access to Capital Act* a "partisan package would significantly weaken investor protections by removing the very disclosures and legal protections investors rely on to hold businesses accountable. This bill goes so far as to deregulate venture capital funds, after we continue to learn about the role venture capital played in SVB's bank run." Turning to HR 1807, Bill Huizenga's (R-MO) *Improving Disclosure for Investors Act*, Waters said the bill "would allow brokerages and investment advisers to force millions of Americans to access their investment statements and other materials online, even if they don't have access to the internet. I saw how this tactic made it difficult for many business owners to access PPP loans during the pandemic, when banks required the applications to be completed online. It is elitism at best, and discriminatory at worst." (Nonetheless when the committee was holding votes, Waters allowed HR 1807 to pass by voice vote.) Waters said of Chairman McHenry, "While you talk a good game about bipartisanship and you keep telling the public how well we're doing, you're not doing that well, because you are absolutely going back on commitments that were made" to the minority.

## Markup Action

Note that for each of the bills listed below, the committee adopted substitute amendments with new text before moving to final votes. The committee:

- Adopted, by voice vote, HR 835, the Fair Investment Opportunities for Professional Experts Act, sponsored by French Hill (R-AR). The bill 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).
- Adopted, by a vote of 41-2, HR 1579, the Accredited Investor Definition Review Act, sponsored by Bill Huizenga (R-MO). The bill would require the SEC to review the list of certifications, designations and credentials for individuals to qualify as an accredited investor and add additional credentials that the SEC determines are substantially similar. The SEC would have to repeat this process every five years after the initial assessment.
- Adopted, by a vote of 42-1, HR 2797, the Equal Opportunity for All Investors Act, sponsored by Mike Flood (R-NE). The bill would expand the SEC's "accredited investor" definition to include individuals who are certified through an examination established by the SEC and administered by FINRA.
- Adopted, by a vote of 41-0, HR 1548, the Improving Access to Small Business Information Act, sponsored by Young Kim (R-CA). The bill 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.

- Adopted, by a vote of 42-0, HR 2792, the Small Entity Update Act, sponsored by Ann Wagner (R-MO). The bill would direct the SEC to conduct a study, followed by a rulemaking consistent with the results of such study, including the defining the term “small entity” under the Regulatory Flexibility Act.
- Adopted, by a vote of 39-1, HR 2793, the Encouraging Public Offerings Act of 2023, sponsored by Rep. Wagner. The bill would codify Rule 163B under the Securities Act by allowing an issuer to “test the waters” by communicating with potential investors to determine their interest in a securities offering, either before or after the filing of a registration statement. The bill also would allow issuers to submit a confidential draft registration statement to the SEC for review prior to public filing, and would update 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.
- Adopted, by a vote of 42-0, HR 2610, 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 SEC for confidential review, sponsored by Chairman McHenry. The bill would clarify that an EGC may present two years, rather than three years, of audited financial statements in both IPOs and spinoff transactions, and would allow a spinoff of an EGC to benefit from the two-year financial statement accommodation, currently available only during an IPO.
- Adopted, by a vote of 41-0, HR 2608, a bill to amend federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company (EGC), sponsored by Chairman McHenry. The bill would establish that establishes that an EGC, as well as any issuer that went public using EGC disclosure obligations, only needs to provide two years of audited financial statements.
- Adopted, by voice vote, HR 1807, the Improving Disclosure for Investors Act of 2023, sponsored by Rep. Huizenga. The bill directs the SEC to promulgate rules with respect to the electronic delivery of certain required disclosures to investors. Such rules would 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 to deliver regulatory documents to investors electronically.
- Adopted, by voice vote, HR 2795, the Enhancing Multi-Class Share Disclosures Act, sponsored by Gregory Meeks (D-NY). The bill would require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material.
- Adopted, by a vote of 49-0, HR 2593, the Senior Security Act, sponsored by Josh Gottheimer (D-NJ). The bill would establish the Senior Investor Taskforce within the SEC. The task force would have to report on topics relating to investors older than 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 would have to report on the financial exploitation of senior citizens. Previous versions of this bill passed by suspension in the 116th and 117th Congresses.
- Adopted, by a vote of 49-0, HR 2812, the Middle Market IPO Underwriting Cost Act, sponsored by Jim Himes (D-CT). The bill would require the SEC, in consultation with FINRA, to study the direct and indirect costs associated with small and medium-sized companies to undertake initial public offerings.
- Adopted, by a vote of 49-0, HR 2796, the Promoting Opportunities for Non-Traditional Capital Formation Act, sponsored by Ranking Member Waters. The bill would amend 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.

- Adopted, by a vote of 28-21, HR 2799, the Expanding Access to Capital Act, sponsored by Chairman McHenry. This bill is a package of 12 other bills, divided into three titles that are intended to: 1) Strengthen public markets, 2) Help small businesses and entrepreneurs, and 3) Increase access to private markets. These bills include:
  - The *Unlocking Capital for Small Businesses Act*, by Andrew Garbarino (R-NY), which 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.
  - The *Small Business Investor Capital Access Act*, sponsored by Rep. Barr, which would amend the Investment Advisers Act of 1940 to increase the exemption from registration threshold for advisers to small private funds to reflect changes in inflation.
  - The *Improving Capital Allocation for Newcomers (ICAN) Act*, sponsored William Timmons (R-SC), which 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.
  - The *Small Entrepreneurs Empowerment and Development (SEED) Act*, sponsored by Chairman McHenry (R-NC), which would amend the Securities Act of 1933 to allow small issuers to conduct a micro-offering free of mandated disclosures or filings, while remaining subject to the anti-fraud provisions of the Federal securities laws.
  - The *Regulation A+ Improvement Act*, sponsored by Erin Houchin (R-IN), which would increase the amount that companies can raise under Regulation A from \$50 million to \$150 million, and require the SEC to adjust this amount for inflation every two years to the nearest \$10,000.
  - The *Developing and Empowering our Aspiring Leaders (DEAL) Act*, sponsored by Rep. Barr, which would require 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) to include an equity security issued by a qualifying portfolio company. It also would require the SEC to revise the definition of a “qualifying investment” to include an investment in another venture capital fund.
  - The *Improving Crowdfunding Opportunities Act*, sponsored by Chairman McHenry, which would pre-empt state regulation of secondary transactions involving crowdfunding vehicles and clarify legal liability for crowdfunding portals. This title would also increase 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, while permitting investment companies to participate in crowdfunding offerings.
  - The *Restoring the Secondary Trading Market Act*, sponsored by Dan Meuser (R-PA), which would amend the Securities Act of 1933 to pre-empt state “blue sky” laws for off-exchange secondary trading in companies that make available current public information, including information required by Regulation A.
  - The *Gig Worker Equity Compensation Act*, sponsored by Chairman McHenry, which would expand Securities Act Rule 701 to allow gig workers to receive equity compensation for their services or goods. This legislation would also pre-empt state law to prevent gig workers from being presumed as employees due to their wage rates or offered benefits.

- The *Risk Disclosure and Investor Attestation Act*, sponsored by Warren Davidson (R-OH), which would amend the Securities Act of 1933 to permit an individual to invest in private issuers upon acknowledging the investment risks.
  - The *Increasing Investor Opportunities Act*, sponsored by Rep. Wagner and Rep. Meeks, which would amend the Investment Act of 1940 to allow for a closed-end fund to invest up to all its assets in private funds.
  - The *Accredited Investors Include Individuals Receiving Advice From Certain Professionals Act*, sponsored by Chairman McHenry, which 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.
- Adopted, by a vote of 26-23, HR 2798, the CFPB Transparency and Accountability Reform Act, sponsored by Andy Barr (R-KY). A compilation of several smaller bills, HR 2798 would change the leadership structure of the CFPB from a single director to a bipartisan, five-member commission; bring the Bureau under the regular appropriations process; create a dedicated Inspector General for the Bureau; create a new Office of Economic Analysis and require cost-benefit analysis for all guidance, orders, rules, or regulations of the Bureau; require all proposed CFPB rules to consider the impact on small businesses; and provide awards to whistleblowers who report original information relating to a violation of consumer financial law resulting in certain monetary sanctions exceeding \$1 million.

During debate over HR 2798, Emanuel Cleaver D-MO) offered an amendment related to housing. At that point, freshman Rep. Monica De La Cruz (R-TX) said, “You want to protect Hispanics, or do only Black lives matter? Because I think Hispanic lives matter, and I think all lives matter. Yes, all lives do matter.” Cleaver took exception to her remarks and stood up while De La Cruz was speaking. Sylvia Garcia (D-TX) asked that De La Cruz's comments be struck from the record, calling them “race-baiting.” After the committee recessed for an hour, De La Cruz said, “It was not my intention to direct any comment to Mr. Cleaver or to offend Mr. Cleaver in any way.”

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