

## Union Calendar No. 67

118TH CONGRESS  
1ST SESSION

# H. R. 2793

**[Report No. 118–90]**

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration submissions, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2023

Mrs. WAGNER (for herself and Mr. MEEKS) introduced the following bill;  
which was referred to the Committee on Financial Services

JUNE 5, 2023

Additional sponsors: Mr. NICKEL, Mr. TORRES of New York, and Mr.  
LAWLER

JUNE 5, 2023

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 20, 2023]

# **A BILL**

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration submissions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Encouraging Public Of-*  
 5       *ferings Act of 2023”.*

6       **SEC. 2. EXPANDING TESTING THE WATERS AND CONFIDEN-**  
 7               **TIAL SUBMISSIONS.**

8       *The Securities Act of 1933 (15 U.S.C. 77a et seq.) is*  
 9       *amended—*

10           *(1) in section 5(d) (15 U.S.C. 77e(d))—*

11                   *(A) by striking “Notwithstanding” and in-*  
 12                   *serting the following:*

13                   *“(1) IN GENERAL.—Notwithstanding”;*

14                   *(B) by striking “an emerging growth com-*  
 15                   *pany or any person authorized to act on behalf*  
 16                   *of an emerging growth company” and inserting*  
 17                   *“an issuer or any person authorized to act on be-*  
 18                   *half of an issuer”; and*

19                   *(C) by adding at the end the following:*

20                   *“(2) ADDITIONAL REQUIREMENTS.—*

21                   *“(A) REGULATIONS.—The Commission may*  
 22                   *promulgate regulations, subject to public notice*  
 23                   *and comment, to impose such other terms, condi-*  
 24                   *tions, or requirements on the engaging in oral or*  
 25                   *written communications described under para-*

graph (1) by an issuer other than an emerging growth company as the Commission determines appropriate.

“(B) *REPORT TO CONGRESS.*—Prior to any rulemaking described under subparagraph (A), the Commission shall submit to Congress a report containing a list of the findings supporting the basis of the rulemaking.”; and  
(2) in section 6(e) (15 U.S.C. 77f(e))—

(A) in the heading, by striking “*EMERGING GROWTH COMPANIES*” and inserting “*DRAFT REGISTRATION STATEMENTS*”;

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by striking paragraph (1) and inserting the following:

“(1) *PRIOR TO INITIAL PUBLIC OFFERING.*—Any issuer, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 15 days before the date on which the issuer conducts a road show, as defined in

1      *section 230.433(h) of title 17, Code of Federal Regula-*  
2      *tions, or, in the absence of a road show, at least 15*  
3      *days prior to the requested effective date of the reg-*  
4      *istration statement.*

5            *“(2) WITHIN 1 YEAR AFTER INITIAL PUBLIC OF-*  
6      *FERING OR EXCHANGE REGISTRATION.—Any issuer,*  
7      *within the 1-year period following its initial public*  
8      *offering or its registration of a security under section*  
9      *12(b) of the Securities Exchange Act of 1934 (15*  
10     *U.S.C. 78l(b)), may confidentially submit to the Com-*  
11     *mission a draft registration statement, for confiden-*  
12     *tial nonpublic review by the staff of the Commission*  
13     *prior to public filing, provided that the initial con-*  
14     *fidential submission and all amendments thereto shall*  
15     *be publicly filed with the Commission not later than*  
16     *15 days before the date on which the issuer conducts*  
17     *a road show, as defined in section 230.433(h) of title*  
18     *17, Code of Federal Regulations, or, in the absence of*  
19     *a road show, at least 15 days prior to the requested*  
20     *effective date of the registration statement.*

21            *“(3) ADDITIONAL REQUIREMENTS.—*

22            *“(A) REGULATIONS.—The Commission may*  
23     *promulgate regulations, subject to public notice*  
24     *and comment, to impose such other terms, condi-*  
25     *tions, or requirements on the submission of draft*

1       *registration statements described under this sub-*  
2       *section by an issuer other than an emerging*  
3       *growth company as the Commission determines*  
4       *appropriate.*

5               “(B) *REPORT TO CONGRESS.*—*Prior to any*  
6       *rulemaking described under subparagraph (A),*  
7       *the Commission shall submit to Congress a re-*  
8       *port containing a list of the findings supporting*  
9       *the basis of the rulemaking.”.*



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