

ACCELERATING ACCESS TO CAPITAL ACT OF 2015

APRIL 19, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2357]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2357) to direct the Securities and Exchange Commission to revise Form S-3 so as to add listing and registration of a class of common equity securities on a national securities exchange as an additional basis for satisfying the requirements of General Instruction I.B.1. of such form and to remove such listing and registration as a requirement of General Instruction I.B.6. of such form, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Wagner on May 15, 2015, H.R. 2357, the Accelerating Access to Capital Act of 2015, amends the Securities and Exchange Commission's (SEC's) Form S-3 registration statement (a simplified registration form for companies that have met prior reporting requirements) for smaller reporting companies that have a class of common equity securities listed and registered on a national securities exchange. By amending the Form S-3, the legislation would allow companies to register primary securities offerings exceeding one-third of the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant. H.R. 2357 would also allow smaller reporting companies without a class of common equity securities listed and reg-

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istered on a national securities exchange to register primary securities offerings up to one-third of their public float.

BACKGROUND AND NEED FOR LEGISLATION

The cost of securities regulation continues to fall heaviest on smaller companies, many of which still having difficulty to access capital to grow their businesses and create jobs. Beyond the costs that directly burden smaller companies, the stifling regulatory environment resulting from the regulatory overreaction to the financial crisis has restricted bank and other traditional financing options for these smaller companies. As a result, the number of smaller companies, which are those with less than 500 employees, has declined over the five years since the financial crisis, the first time that has happened since the U.S. Census Bureau began keeping data on the subject. Investors can benefit when the regulatory regime is tailored to provide smaller companies with sensible relief from regulatory demands; efficient capital formation not only benefits the companies to raise funds but also can provide investors with more attractive investment opportunities.

H.R. 2357 eliminates unnecessary costs that impede the growth of small businesses. The Accelerating Access to Capital Act reduces the burdens of SEC registration by amending the SEC's Form S-3 registration statement to allow smaller reporting companies with a class of common equity securities listed and registered on a national securities exchange to register primary securities offerings exceeding one-third of the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant. H.R. 2357 also allows smaller reporting companies without a class of common equity securities listed and registered on a national securities exchange to register primary securities offerings up to one-third of their public float.

The SEC's Government-Business Forum on Small Business Capital Formation Final Report for 2012 included the recommendation to modernize and expand the utility of the Form S-3 for a greater number of public companies. Simplifying this disclosure regime will lower compliance costs associated with filing redundant paperwork, which allows eligible companies to direct more resources to growing their business.

On May 2, 2014, the Chief Executive Officer of Fuel Performance Solutions, a small technology company from St. Louis, Missouri, wrote to the Committee on Financial Services in support of legislation to expand the utility of the Form S-3, noting that:

"I would be in favor of allowing any SEC reporting company that is current with its 1934 Act filings access to SEC form S-3, irrelevant of how long they have been a filer. Once full disclosure is achieved any and all potential investors should have a fair and equal ability to make an investment. That is the only way to level the playing field for the small investor verses the current system that effectively favors the large investor by excluding the small investor."

At a Capital Markets and Government Sponsored Enterprises Subcommittee hearing on April 9, 2014, Brian Hahn, the Chief Financial Officer of GlycoMimetics, Inc. testified that legislation simi-

lar to H.R. 2357 “would increase the pool of companies eligible to use Form S-3 to register for an offering. Form S-3 is the most simplified SEC registration form, and utilizing it to conduct an offering contributes to the cost-savings goals of emerging companies. . . . These expansions to Form S-3 eligibility would increase small companies’ access to public funds in an efficient and cost-effective manner that will stimulate capital formation.”

The quickest way to access the public capital markets is to have an effective shelf registration statement. Registering a new securities issue in advance—so that later it can be quickly offered to the public during favorable market conditions—is a benefit that all public companies should enjoy. At a May 13, 2015 Capital Markets and Government Sponsored Enterprises Subcommittee hearing, David Weild, CEO of Weild & Co., testified that, “the flexibility, speed and costs savings afforded by Form S-3 ‘Shelf Registrations’ helps corporate issuers to improve their cost of equity capital. We would also support the expansion of Form S-3 and other shelf registration approaches to improve access to capital for smaller public companies that are current with their SEC filings.”

HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 2357 on May 13, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 20, 2015 and ordered H.R. 2357 to be reported favorably to the House without amendment by a recorded vote of 33 yeas to 24 nays (recorded vote no. FC-42), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in Committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 33 yeas to 24 nays (record vote no. FC-42), a quorum being present.

Record vote no. FC-42

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)				Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman		X	
Mr. Garrett	X			Mr. Meeks		X	
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)		X	
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver			
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher	X			Mr. Carney		X	
Mr. Stutzman	X			Ms. Sewell (AL)		X	
Mr. Mulvaney	X			Mr. Foster		X	
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)		X	
Mr. Pittenger	X			Mr. Delaney		X	
Mrs. Wagner	X			Ms. Sinema		X	
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)			
Mr. Messer	X			Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2357 will improve access to capital for small businesses by requiring the SEC to amend Form S-3 to enable greater numbers of smaller companies to conduct lower cost securities offerings.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 2015.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2357, the Accelerating Access to Capital Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Ben Christopher.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2357—Accelerating Access to Capital Act of 2015

H.R. 2357 would make it easier for businesses to file registration statements with the Securities and Exchange Commission (SEC) in

order to sell securities to the public. Specifically, the bill would remove certain limitations on the use of a simplified form for filing a registration statement.

Based on information from the SEC, CBO estimates that implementing H.R. 2357 would cost about \$1 million in fiscal year 2016 to complete a rulemaking process as required under the bill. Under current law the SEC is authorized to collect fees sufficient to offset its appropriation each year; therefore, we estimate that the net cost to the SEC would be negligible, assuming appropriation action consistent with that authority. CBO estimates that enacting H.R. 2357 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2357 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 2357 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the incremental cost of the mandate would amount to about \$1 million in 2016 and would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2015, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie and Ben Christopher (for federal costs) and Logan Smith (for the private-sector impact). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2357 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 2357 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Con-

gress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 2357 contains one directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1: Short title

This section cites H.R. 2357 as the “Accelerating Access to Capital Act of 2015.”

Section 2: Expanded eligibility for use of Form S–3

Revises SEC Form S–3 to permit securities to be registered if the primary securities offerings exceed one-third of the aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant and would also permit smaller reporting companies without a class of common equity securities listed and registered on a national securities exchange to register primary securities offerings up to one-third of their public float.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2357 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.

MINORITY VIEWS ON H.R. 2357

H.R. 2357 would revise SEC Form S-3 by: 1) allowing microcap companies traded on an exchange to issue an unlimited number of shares using shelf registration in a 12-month period; and 2) permitting unlisted microcap companies, including those listed on the “pink sheets,” with less than \$75 million in common equity to sell up to 1/3 of the market value of its common equity using shelf registration in a 12-month period. The bill, therefore, would enable microcap companies to take advantage of favorable conditions by quickly issuing shares without prior notice to the SEC.

However, speedy access to the markets also leads to accounting fraud, market manipulation, insider trading and sales of artificially inflated stock. In fact, studies have found that 80% of manipulation cases involved non-exchange traded stocks and a positive correlation between lower disclosure requirements and the likelihood of manipulation. According to Democratic witnesses who testified on this bill, allowing companies with securities traded in the illiquid over-the-counter markets, such as Pink Sheets, to issue up to 1/3 of their total outstanding shares a year only increases this concern. In addition, these companies would be exempt from certain exchange protections, such as corporate governance requirements, and stock liquidity assurances that come with exchange listing.

Previously, the Consumer Federation of America wrote a letter to the Committee stating that “the most likely, and perhaps the best outcome, if this legislation is adopted, is that the market simply will not accept such offerings, and thus it will do nothing to promote capital formation.” It is important to remember that capital formation involves two actors, the company raising the capital and the investor providing the capital. In an effort to promote capital formation by reducing disclosures and certain restrictions for these companies, the bill would affect the quality or availability of information investors need to make investment decisions. Consequently, investors may decide not to invest in these companies or demand a higher rate of return, negating any supposed benefits to capital formation.

For these reasons, we oppose H.R. 2357.

MAXINE WATERS.
DENNY HECK.
JOHN C. CARNEY.
AL GREEN.
RUBÉN HINOJOSA.
STEPHEN F. LYNCH.
GREGORY W. MEEKS.
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WM. LACY CLAY.
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