

118TH CONGRESS
1ST SESSION

H. R. 2793

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2023

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Act of 1933 to expand the ability
to use testing the waters and confidential draft registra-
tion 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Encouraging Public
3 Offerings Act of 2023”.

4 **SEC. 2. EXPANDING TESTING THE WATERS.**

5 Section 5(d) of the Securities Act of 1933 (15 U.S.C.
6 77e(d)) is amended—

7 (1) by striking “Notwithstanding” and insert-
8 ing the following:

9 “(1) IN GENERAL.—Notwithstanding”;

10 (2) by striking “an emerging growth company
11 or any person authorized to act on behalf of an
12 emerging growth company” and inserting “an issuer
13 or any person authorized to act on behalf of an
14 issuer”; and

15 (3) by adding at the end the following:

16 “(2) ADDITIONAL REQUIREMENTS.—

17 “(A) IN GENERAL.—The Commission may
18 promulgate regulations, subject to public notice
19 and comment, to impose such other terms, con-
20 ditions, or requirements on the engaging in oral
21 or written communications described under
22 paragraph (1) by an issuer other than an
23 emerging growth company as the Commission
24 determines appropriate.

25 “(B) REPORT TO CONGRESS.—Prior to any
26 rulemaking described under subparagraph (A),

1 the Commission shall submit to Congress a re-
2 port containing a list of the findings supporting
3 the basis of the rulemaking.”.

4 **SEC. 3. CONFIDENTIAL REVIEW OF DRAFT REGISTRATION**
5 **STATEMENTS.**

6 Section 6(e) of the Securities Act of 1933 (15 U.S.C.
7 77f(e)) is amended—

8 (1) in the heading, by striking “EMERGING
9 GROWTH COMPANIES” and inserting “CONFIDEN-
10 TIAL REVIEW OF DRAFT REGISTRATION STATE-
11 MENTS”;

12 (2) by redesignating paragraph (2) as para-
13 graph (4); and

14 (3) by striking paragraph (1) and inserting the
15 following:

16 “(1) IN GENERAL.—Any issuer may, with re-
17 spect to an initial public offering, initial registration
18 of a security of the issuer under section 12(b) of the
19 Securities Exchange Act of 1934 (15 U.S.C. 78l(b)),
20 or follow-on offering, confidentially submit to the
21 Commission a draft registration statement, for con-
22 fidential nonpublic review by the staff of the Com-
23 mission prior to public filing, provided that the ini-
24 tial confidential submission and all amendments

1 thereto shall be publicly filed with the Commission
2 not later than—

3 “(A) in the case of an initial public offer-
4 ing, 10 days before the effective date of such
5 registration statement;

6 “(B) in the case of an initial registration
7 of a security of the issuer under such section
8 12(b), 10 days before listing on an exchange; or

9 “(C) in the case of a follow-on offering, 48
10 hours before the effective date of such registra-
11 tion statement.

12 “(2) FOLLOW-ON OFFERING DEFINED.—In this
13 subsection, the term ‘follow-on offering’ means an
14 offering by an issuer during the 12-month period be-
15 ginning on the effective date of the initial public of-
16 fering of the issuer or the initial registration of a se-
17 curity of the issuer under section 12(b) of the Secu-
18 rities Exchange Act of 1934 (15 U.S.C. 78l(b)).

19 “(3) ADDITIONAL REQUIREMENTS.—

20 “(A) IN GENERAL.—The Commission may
21 promulgate regulations, subject to public notice
22 and comment, to impose such other terms, con-
23 ditions, or requirements on the submission of
24 draft registration statements described under
25 this subsection by an issuer other than an

1 emerging growth company as the Commission
2 determines appropriate.

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

Passed the House of Representatives June 5, 2023.

Attest: CHERYL L. JOHNSON,
Clerk.