



## Reg A A-Okay – House Approves the Small Company Capital Formation Act

On November 2, 2011, the House of Representatives (the “House”) overwhelmingly approved the Small Company Capital Formation Act of 2011, as amended (the “Small Company Capital Formation Act”) by a vote of 421 to 1.<sup>1</sup> The Small Company Capital Formation Act increases the offering threshold from \$5 million to \$50 million for offerings exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”) pursuant to Regulation A.<sup>2</sup> The House also passed legislation that modifies the threshold for registration and deregistration under the Securities Exchange Act of 1934 for bank and bank holding companies.<sup>3</sup>

Representative David Schweikert (R-AZ), Vice Chairman of the House Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises and sponsor of the Small Company Capital Formation Act, said: “Small businesses are the backbone of job growth in our country....This bill ... will assist them in efficiently raising funds.”<sup>4</sup>

### The Approved Legislation

The Small Company Capital Formation Act, as approved, contains a few modifications to the version approved by the House Financial Services Committee on June 22, 2011.<sup>5</sup> The Small Company Capital Formation Act subjects prospectus disclosures used in a Regulation A offering to the civil liability provision in section 12(a)(2) liability (not Section 11 liability).<sup>6</sup> In addition, the Small Company Capital Formation Act amends Section 18(b)(4) of the Securities Act to include in the definition of “covered security” (for blue sky law purposes) a security that is (i)

<sup>1</sup> This bill is H.R. 1070. See <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1070eh/pdf/BILLS-112hr1070eh.pdf>. The House approved a motion to suspend the rules and pass H.R. 1070, a procedural shortcut used for bills that are not controversial.

<sup>2</sup> For a discussion of the background for and elements of the Small Company Capital Formation Act, see our Client Alerts “Small Company Capital Formation Act of 2011; Regulation A Revival?” dated March 30, 2011, available at <http://www.mofo.com/files/Uploads/Images/110330-Small-Company-Capital-Formation-Act-2011.pdf> and “House Financial Services Committee Approves the Small Company Capital Formation Act; Regulation A Revival Closer?” dated June 24, 2011, available at <http://www.mofo.com/files/Uploads/Images/110624-HSFC-Approves-Small-Company.pdf>.

<sup>3</sup> This bill is H.R. 1965. See press release issued by the House Financial Services Committee regarding both bills, available at <http://financialservices.house.gov/News/DocumentSingle.aspx?DocumentID=267321>.

<sup>4</sup> See press release issued by Representative David Schweikert’s office, available at <http://schweikert.house.gov/News/DocumentSingle.aspx?DocumentID=267319>.

<sup>5</sup> See Small Company Capital Formation Act as approved on June 22, 2011, by the House Financial Services Committee, available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1070rh/pdf/BILLS-112hr1070rh.pdf> and our Client Alert “House Financial Services Committee Approves the Small Company Capital Formation Act; Regulation A Revival Closer?” dated June 24, 2011, available at <http://www.mofo.com/files/Uploads/Images/110624-HSFC-Approves-Small-Company.pdf>.

<sup>6</sup> See Id.

offered or sold on a national securities exchange; or (ii) offered or sold to a qualified purchaser...,<sup>7</sup> but not a security offered or sold through a broker or dealer.<sup>8</sup> The bill mandates that the Comptroller General conduct a study on the impact of state blue sky laws on offerings made under Regulation A and report to Congress on the results of the study within three months of enactment of this legislation. State blue sky considerations clearly remain a concern.<sup>9</sup>

## Next Steps

House approval of the Small Company Capital Formation Act is a step in the right direction. The Senate received H.R. 1070 on November 3, 2011. Senate Committee referrals are still pending. However, the strong bipartisan support on the House side bodes well for action on the Senate side.

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<sup>7</sup> See Small Company Capital Formation Act of 2011, H.R. 1070, as approved by the House on November 2, 2011, available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1070eh/pdf/BILLS-112hr1070eh.pdf>.

<sup>8</sup> See Id.

<sup>9</sup> Towards the end of the debate, Mr. Peters said: "Finally, the gentleman from Arizona [Mr. Schweikert] has also worked with Democrats on the remaining issue of contention, and that was the preemption of State law. The gentleman from Arizona's substitute amendment to H.R. 1070 removes the exemption from State level review that was previously provided to an issuer using a broker-dealer to distribute and issue. Regulation A securities can be high-risk offerings that may also be susceptible to fraud, making protections provided by the State regulators an essential future." See the Congressional Record, available at <http://www.gpo.gov/fdsys/pkg/CREC-2011-11-02/pdf/CREC-2011-11-02-pt1-PgH7229.pdf>.