



May 2018

Follow @Paul\_Hastings



## *Dodd-Frank Relief Bill Includes Provisions to Encourage Capital Formation*

By [Keith D. Pisani](#), [Gary D. Rawitz](#), [Dina Ellis Rochkind](#) & [Melissa B. Fishkin](#)

On May 24, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Relief Bill") was enacted into law.<sup>1</sup> The Relief Bill represents the first significant statutory modification to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") since the Dodd-Frank Act was adopted in 2010. While most of the Relief Bill is intended to tame restrictions in existing federal banking law, Title V of the Relief Bill, among other things, amends certain provisions of the federal securities laws to encourage capital formation. The following is a summary of the provisions of Title V of the Relief Bill relating to capital formation. For information on the Relief Bill's impact on bank regulation, please see our separate Paul Hastings *Stay Current* publication entitled "Reports of Dodd-Frank's Death Are Greatly Exaggerated."

### **Expansion of Exemption from Certain State Securities Laws**

The Relief Bill amends Section 18 of the Securities Act of 1933, as amended (the "Securities Act") to expand the exemption from state securities laws relating to the registration or qualification of securities or transactions (collectively, "State Registration/Qualification Laws") to include securities listed or authorized for listing on any "national securities exchange." Formerly, this exemption only applied to securities listed or authorized for listing on (i) the New York Stock Exchange, The Nasdaq Stock Market, and NYSE American (the "Three Enumerated Exchanges") and (ii) certain national securities exchanges that the Securities and Exchange Commission (the "SEC") determined by rule had listing standards substantially similar to the Three Enumerated Exchanges. This amendment provides certainty for national securities exchanges other than the Three Enumerated Exchanges as well as issuers of exchange-traded funds that list on those national securities exchanges as to the availability of the exemption from State Registration/Qualification Laws provided by Section 18 of the Securities Act.

### **Expansion of Regulation A+ Offerings to Reporting Companies**

Regulation A promulgated under the Securities Act, commonly referred to as Regulation A+ since it was amended and expanded in 2015, provides an exemption from the registration requirements of the Securities Act for offerings of up to \$50 million, provided certain conditions are met. The Relief Bill requires the SEC to amend its rules to expand the availability of Regulation A+ to include companies that currently are subject to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, i.e., companies required to file Forms 10-K, 10-Q, and 8-K with the SEC ("Reporting Companies"). Currently, Regulation A+ provides that it may not be used by Reporting Companies.



## **Increase in Amount of Securities that May be Sold Under Rule 701 in a 12-Month Period Without Having to Provide Additional Disclosures**

Rule 701 promulgated under the Securities Act provides an exemption from the registration requirements of the Securities Act for securities issued by companies to employees, directors, and certain other persons for compensatory purposes. Within 60 days after the date of enactment of the Relief Bill, the SEC is required to increase from \$5 million to \$10 million the aggregate sales price or amount of securities that may be sold in a 12-month period without having to provide certain additional disclosures, such as financial statements of the company. The new \$10 million limit will be indexed for inflation every five years.

## **Investment Company Act Registration Exemption for “Qualifying Venture Capital Funds”**

The Relief Bill amends the Investment Company Act of 1940, as amended (the “Investment Company Act”) to create a new category of venture capital funds called a “qualifying venture capital fund,” which is defined as a venture capital fund that has not more than \$10 million in aggregate capital contributions and uncalled committed capital. These “qualifying venture capital funds” are exempt from the registration requirements of the Investment Company Act if they have no more than 250 beneficial owners. This amendment supplements the current Section 3(c)(1) exemption, which provides that investment companies are exempt from the registration requirements of the Investment Company Act if they have no more than 100 beneficial owners. The \$10 million limit on capital contributions and uncalled committed capital in the definition of “qualifying venture capital fund” is to be indexed to inflation every five years.

## **Elimination of Investment Company Act Exemption for U.S. Possessions**

The Relief Bill eliminates a long-standing exemption from regulation under the Investment Company Act for investment companies organized in Puerto Rico, the Virgin Islands, or any other U.S. possession, with a three-year delayed effectiveness for investment companies relying on the former exemption on the day before enactment of the Relief Bill. The SEC can further delay effectiveness of Investment Company Act regulation for these investment companies organized in U.S. possessions for three additional years.

## **Parity for Closed-End Companies Regarding Offering and Proxy Rules**

The Relief Bill requires the SEC to propose within one year, and finalize within two years, of enactment of the Relief Bill rules permitting closed-end funds that are listed on a national securities exchange or that make periodic repurchase offers pursuant to Rule 23c-3 under the Investment Company Act to use securities offering and proxy rules that are available to other Reporting Companies. In adopting such rules, the SEC is directed to consider the availability of information to investors, including what disclosures constitute adequate information to be designated as a “well-known seasoned issuer.”

## **Miscellaneous Provisions under Title V of the Relief Bill**

- Not later than 18 months after the date of enactment of the Relief Bill, the staff of the SEC must submit a report to Congress on the risks and benefits of algorithmic trading in U.S. capital markets.
- The Relief Bill amends Section 503 of the Small Business Investment Incentive Act of 1980 to require the SEC to (i) review the findings and recommendations of the annual government–business forum on capital formation and (ii) promptly issue a public statement



assessing the findings and recommendations of the forum and disclosing what action, if any, the SEC intends to take with respect to such findings and recommendations.

- The Relief Bill requires the SEC, in certain circumstances, to offset future fees and assessments due from a national securities exchange by prior overpayments made by such national securities exchange.

## Conclusion

While the Relief Bill is primarily directed at easing certain restrictions in existing federal banking law, Title V of the Relief Bill provides some modest regulatory relief for both operating companies and investment companies, which may indeed help to facilitate capital formation.

◇ ◇ ◇

*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

### Atlanta

Elizabeth H. Noe  
1.404.815.2287  
[elizabethnoe@paulhastings.com](mailto:elizabethnoe@paulhastings.com)

### Houston

Douglas Getten  
1.713.860.7340  
[douggetten@paulhastings.com](mailto:douggetten@paulhastings.com)

### Los Angeles

Yousuf I. Dhamee  
1.213.683.6179  
[yousufdhamee@paulhastings.com](mailto:yousufdhamee@paulhastings.com)

Meagan S. Olsen  
1.213.683.6138  
[meaganolsen@paulhastings.com](mailto:meaganolsen@paulhastings.com)

Arthur Zwickel  
1.213.683.6161  
[artzwickel@paulhastings.com](mailto:artzwickel@paulhastings.com)

### New York

Yariv C. Katz  
1.212.318.6393  
[yarivkatz@paulhastings.com](mailto:yarivkatz@paulhastings.com)

Tram N. Nguyen  
1.212.318.6848  
[tramnguyen@paulhastings.com](mailto:tramnguyen@paulhastings.com)

Michael R. Rosella  
1.212.318.6800  
[mikerosella@paulhastings.com](mailto:mikerosella@paulhastings.com)

Michael L. Zuppone  
1.212.318.6906  
[michaelzuppone@paulhastings.com](mailto:michaelzuppone@paulhastings.com)

Gary D. Rawitz  
1.213.318.6877  
[garyrawitz@paulhastings.com](mailto:garyrawitz@paulhastings.com)

Keith D. Pisani  
1.213.318.6053  
[keithpisani@paulhastings.com](mailto:keithpisani@paulhastings.com)

### Orange County

Stephen D. Cooke  
1.714.668.6264  
[stephencooke@paulhastings.com](mailto:stephencooke@paulhastings.com)

### Palo Alto

Jeff Hartlin  
1.650.320.1804  
[jeffhartlin@paulhastings.com](mailto:jeffhartlin@paulhastings.com)

### San Diego

Teri E. O'Brien  
1.858.458.3031  
[teriobrien@paulhastings.com](mailto:teriobrien@paulhastings.com)

### San Francisco

David A. Hearth  
1.415.856.7007  
[davidhearth@paulhastings.com](mailto:davidhearth@paulhastings.com)

### Washington, D.C.

Dina Ellis Rochkind  
1.202.551.1938  
[dinaellis@paulhastings.com](mailto:dinaellis@paulhastings.com)

Melissa B. Fishkin  
1.202.551.1797  
[melissafishkin@paulhastings.com](mailto:melissafishkin@paulhastings.com)

---

<sup>1</sup> S. 2155, Economic Growth, Regulatory Relief, and Consumer Protection Act ("Relief Bill"). The Relief Bill is available at <https://www.congress.gov/bill/115th-congress/senate-bill/2155>.

## Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2018 Paul Hastings LLP.