

## MIDDLE MARKET IPO UNDERWRITING COST ACT

AUGUST 3, 2018.—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

[To accompany H.R. 6324]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6324) to require the Securities and Exchange Commission to carry out a study of the direct and indirect underwriting fees, including gross spreads, for mid-sized initial public offerings, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Middle Market IPO Underwriting Cost Act”.

#### SEC. 2. STUDY ON IPO FEES.

(a) **STUDY.**—The Securities and Exchange Commission, in consultation with the Financial Industry Regulatory Authority, shall carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings (“IPOs”). In carrying out such study, the Commission shall—

(1) consider the direct and indirect costs of an IPO, including—

(A) fees, such as gross spreads paid to underwriters, IPO advisors, and other professionals;

(B) compliance with Federal and State securities laws at the time of the IPO; and

(C) such other IPO-related costs as the Commission determines appropriate;

(2) compare and analyze the costs of an IPO with the costs of obtaining alternative sources of financing and of liquidity;

(3) consider the impact of such costs on capital formation;

(4) analyze the impact of these costs on the availability of public securities of small- and medium-sized companies to retail investors; and

(5) analyze trends in IPOs over a time period the Commission determines is appropriate to analyze IPO pricing practices, considering—

(A) the number of IPOs;

(B) how costs for IPOs have evolved over time, including fees paid to underwriters, investment advisory firms, and other professions for services in connection with an IPO;

(C) the number of brokers and dealers active in underwriting IPOs;

(D) the different types of services that underwriters and related persons provide before and after a small- or medium-sized company IPO and the factors impacting underwriting costs;

(E) changes in the costs and availability of investment research for small- and medium-sized companies; and

(F) any other consideration the Commission considers necessary and appropriate.

(b) REPORT.—Not later than the end of the 360-day period beginning on the date of the enactment of this Act, the Commission shall issue a report to the Congress containing all findings and determinations made in carrying out the study required under subsection (a) and any administrative or legislative recommendations the Commission may have.

Amend the title so as to read:

A bill to require the Securities and Exchange Commission to carry out a study of the costs associated with small- and medium-sized companies to undertake initial public offerings.

#### PURPOSE AND SUMMARY

On July 10, 2018, Representative Jim Himes introduced H.R. 6324, the “Middle Market IPO Underwriting Cost Act”. H.R. 6324 requires the U.S. Securities and Exchange Commission (SEC), in consultation with the Financial Industry Regulatory Authority (FINRA), to study the costs associated with small- and medium-sized companies to undertake initial public offerings (“IPOs”) and to report to Congress with its findings and recommendations.

#### BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 6324 is to better understand the costs associated with small- and medium-sized companies to undertake IPOs and become public companies.

When a company decides to sell its securities to the public, they incur various costs to comply with the requirements to conduct the IPO, as well as to enhance the ability for the IPO to price and market successfully. Various studies have focused on the costs of being a public company, but recent data may be helpful to better understand the regulatory and professional services costs of actually undertaking the IPO and becoming a public company. The SEC itself has estimated that the average cost of just achieving regulatory compliance for going public is \$2.5 million, which may not include additional costs of hiring professionals to help undertake the IPO.

For example, companies looking to undertake an IPO often hire an underwriter to serve as the intermediary between the company and prospective investors. The underwriter helps prepare the IPO, to help decide the amount of capital to be raised and the type of securities to be issued. Additionally, the underwriter often helps with the company’s “road show” and other marketing efforts, as well as post-IPO support in the form of research coverage and preparations for investor meetings and earnings calls. For these services, an underwriter typically receives a “gross spread” as a form of compensation, which is the difference between the underwriting price and the actual price offered to the public. This compensation covers the underwriter’s expenses and fees. The underwriter, though, generally only receives a fee if the IPO occurs and ulti-

mately prices, which are far from a certainty considering that companies sometimes miss its earnings goal, decide to stay private, or accept an offer to sell.

According to some research, the gross spread for middle-market IPOs in recent history often has remained flat, whereas the gross spread for underwriting a larger IPO, where the company may have greater ability to negotiate for lower fees, is more likely to be a lesser percentage. This bill will provide a fuller understanding of such costs and trends by requiring the SEC to: (1) consider the direct and indirect costs of an IPO, including fees such as gross spreads paid to underwriters, IPO advisors, and other professional costs of complying with Federal and State securities laws at the time of the IPO, and other costs the SEC determines are relevant to undertaking an IPO; (2) compare and analyze the costs of an IPO with the costs of obtaining alternative sources of financing and of liquidity; (3) consider the impact of such costs on capital formation; and (4) analyze the impact of these costs on the availability of public securities of small- and medium-sized companies to retail investors. Further, to better understand the evolution of costs related to undertaking an IPO, the SEC must analyze trends in IPOs over a time period the SEC determines is appropriate and consider: (1) the number of IPOs; (2) how costs for IPOs have evolved over time, including fees paid to underwriters, investment advisory firms, and other professions for services in connection with an IPO—i.e., legal counsel and accounting; (3) the number of brokers and dealers active in underwriting IPOs; (4) the different types of services that underwriters and related persons provide before and after a small- or medium-sized company IPO and the factors impacting underwriting costs (which could include services and risks that must be priced into the underwriting activity); (5) changes in the costs and availability of investment research for small- and medium-sized companies; and (6) any other consideration the SEC considers necessary and appropriate.

The SEC will report to Congress with its findings and recommendations within 360 days of enactment, and in doing so, will provide the Congress and market participants a broader understanding of the regulatory and professional services costs associated with undertaking an IPO.

#### HEARINGS

The Committee on Financial Services or the Subcommittee on Capital Markets, Securities, and Investment held hearings where Members raised matters relating to H.R. 6324 on November 15, 2016, March 22, 2017, October 4, 2017, November 3, 2017, May 23, 2018 and June 21, 2018.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 11, 2018, and ordered H.R. 6324, as amended, to be reported favorably to the House by voice vote.

#### 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. A motion by Chairman Hensarling to adopt the amendment in the nature of substitute was adopted by voice vote. A subsequent motion by Chairman Hensarling to report the bill, as amended, favorably to the House was agreed to by a voice vote, a quorum being present.

#### 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. 6324 would direct the SEC to study the costs associated with small- and medium-sized companies to undertake IPOs and to report to Congress with its findings and recommendations.

#### 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.

#### 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, July 17, 2018.*

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. 3555, H.R. 6177, H.R. 6319, H.R. 6320, H.R. 6321, H.R. 6322, H.R. 6323, and H.R. 6324.

If you wish further details on these estimates, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

MARK P. HADLEY  
(For Keith Hall, Director).

Enclosure.

#### *Securities and Exchange Commission Legislation*

On July 11, the House Committee on Financial Services ordered eight bills to be reported related to the rules, regulations, and oper-

ations of the Securities and Exchange Commission (SEC). The bills are:

- H.R. 3555, the Exchange Regulatory Improvement Act, would require the Securities and Exchange Commission (SEC) to issue regulations regarding its definition of what constitutes a facility used by a national securities exchange;
- H.R. 6177, the Developing and Empowering our Aspiring Leaders Act of 2018, would direct the SEC to conduct a rulemaking to expand what types of asset acquisitions are considered qualifying investments for a venture capital fund;
- H.R. 6319, the Expanding Investment in Small Business Act, would require the SEC to conduct a study on the limitation on the amount of outstanding securities a closed-end fund may hold from a single issuer and still be classified as diversified;
- H.R. 6320, the Promoting Transparent Standards for Corporate Insiders Act, would require the SEC to conduct a study of various proposals to change agency rules regarding the use of written trading plans by certain securities traders;
- H.R. 6321, the Investment Adviser Regulatory Flexibility Improvement Act, would require the SEC to revise the definitions of a small business and small organization applicable for assessing the effect of the agency's rulemakings under the Investment Advisers Act of 1940 on those entities;
- H.R. 6322, the Enhancing Multi-Class Share Disclosures Act, would direct the SEC to issue a rule requiring securities issuers with multi-class stock structures to make disclosures regarding the voting power of certain individuals;
- H.R. 6323, the National Senior Investor Initiative Act of 2018, would direct the SEC to establish a taskforce to identify challenges that senior investors face and to report on its findings every two years; and
- H.R. 6324, the Middle Market IPO Underwriting Cost Act, would direct the SEC to study the costs associated with small and medium-sized companies undertaking an initial public offering and to report on its findings.

Using information from the SEC regarding the costs of similar activities, CBO estimates that implementing seven of those bills—H.R. 3555, H.R. 6177, H.R. 6319, H.R. 6320, H.R. 6321, H.R. 6322, and H.R. 6324—would each have a gross cost of about \$1 million for the agency to conduct the required studies and rulemakings and to issue reports. CBO estimates that implementing the eighth bill—H.R. 6323—would have a gross cost of \$7 million over the 2019–2023 period for the SEC to establish and carry out the functions of the taskforce established under the bill.

However, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending of implementing each of those bills would be negligible, assuming appropriation actions consistent with that authority. H.R. 6323 also would require the Government Accountability Office (GAO) to conduct a study on the economic costs of the financial exploitation of senior citizens and CBO estimates that implementing that section would cost GAO less than \$500,000; such spending would be subject to the availability of appropriated funds.

None of the bills would affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply for any of the eight bills.

None of the bills would increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029, CBO estimates.

None of the bills contain intergovernmental mandates as defined in the Unfunded Mandate Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. All of them would require the SEC to take actions that could raise the agency's administrative costs and the fees it collects to offset those costs. If the SEC increased fees, it would increase the cost of an existing mandate on private entities required to pay those fees. CBO estimates that none of the bills would increase fees in an amount that would exceed the annual threshold for private-sector mandates established in UMRA (\$160 million in 2018, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 6324 as the “Middle Market IPO Underwriting Cost Act.”

##### *Section 2. Study on IPO fees*

This section directs the SEC in consultation with the FINRA to carry out a study on the costs associated with small- and medium-sized companies that are conducting an IPO and to report to Congress with its findings and recommendations.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows: H.R. 6324 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.