BOOSTING IPOs IN AMERICA

To help promote policy solutions that would build off the success of the JOBS Act, eight organizations – the American Securities Association, Biotechnology Innovation Organization, Equity Dealers of America, Nasdaq, National Venture Capital Association, Securities Industry and Financial Markets Association, TechNet, and the U.S. Chamber – recently released a report entitled *Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public*. This report includes 22 recommendations that encompass five general categories:

ENHANCEMENTS TO THE JOBS ACT

1. Extend certain JOBS Act Title I "on-ramp" provisions (e.g. streamlined financial disclosure, exemptions from Dodd-Frank executive compensation requirements, allowance for confidential reviews of registration statements) from 5 years to 10 years.
2. Amend Section 5(d) of the Securities Act of 1933 to permit all issuers to "test the waters" with potential investors that are qualified institutional buyers (QIBs) or institutional accredited investors to determine interest in a securities offering.
3. Extend the JOBS Act exemption from Section 404(b) mandates of the Sarbanes-Oxley Act from 5 years to 10 years for emerging growth companies (EGCs) that have less than $50 million in revenue and less than $700 million in public float.
4. Remove counterproductive "phase out" rules that increase the complexity and uncertainty regarding EGC status.

RECOMMENDATIONS TO ENCOURAGE MORE RESEARCH OF EGCS AND OTHER SMALL PUBLIC COMPANIES

1. Amend Rule 139 under the 1933 Securities Act to provide that continuing coverage by research analysts of any issuer (as opposed to only those that qualify for Form S-3/F-3) would not be deemed to constitute an offer or sale of a security of such issuer before, during or after an offering by such issuers.
2. Allow investment banking and research analysts to jointly attend "pitch" meetings in order to have open and direct dialogue with EGCs. A holistic review of the Global Research Analyst Settlement should also be conducted.
3. The SEC should examine why pre-IPO research has not materialized following passage of the JOBS Act and develop recommendations to help more companies gain research coverage.

IMPROVEMENTS TO CERTAIN CORPORATE GOVERNANCE, DISCLOSURE, AND OTHER REGULATORY REQUIREMENTS

1. Institute reasonable and effective SEC oversight of proxy advisory firms.
2. Reform shareholder proposal rules under Rule 14a-8 of the Securities Exchange Act, in particular by raising the "resubmission thresholds."
3. Simplify quarterly reporting requirements and give EGCs the option to issue a press released with earnings results in lieu of a 10-Q.
4. Policymakers should continue efforts to modernize corporate disclosure, scale certain requirements for EGCs, and maintain the longstanding "materiality" standard.
5. Allow purchases of EGC shares to be qualifying investment for purposes of Registered Investment Adviser exemption determinations.
6. Amend Form S-3 to eliminate the "baby-shelf" restrictions and allow all issuers to use shelf registration Forms S-3 and F-3.
7. The SEC should address abuses or unlawful activity related to short sales.
8. Amend Rule 163 under the 1933 Securities Act to allow prospective underwriters to make offers of well-known seasoned issuer securities in advance of filing any registration.
9. Make XBRL compliance optional for EGCs, smaller reporting companies (SRCs), and non-accelerated filers.[1]
10. Increase the threshold for mutual funds to take positions in companies before triggering diversified fund limits from current 10% of voting shares to 15%.
11. Allow disclosure of selling stockholders to be done on a group basis under Rule 507 of Regulation S-K even if each selling stockholder is not a director or named executive officer of the registrant and holds less than 1% of outstanding shares.

RECOMMENDATIONS RELATED TO FINANCIAL REPORTING

1. The SEC should consider aligning the SRC definition with the definition of a non-accelerated filer after the careful study of the costs and benefits of such an approach that the rulemaking process affords. The SEC should also institute a revenue-only test for pre or low revenue companies that may be highly valued.
2. Modernize the Public Company Accounting Oversight Board (PCAOB) inspection process related to internal control over financial reporting (ICFR).

RECOMMENDATIONS RELATED TO EQUITY MARKET STRUCTURE

1. Intelligent tick sizes should be examined as a way to help improve trading for EGCs and small capitalization stocks.
2. Allow EGCs or small issuers with distressed liquidity the choice to opt out of unlisted trading privileges (UTP) to help concentrate liquidity and reduce fragmentation.

---

[1] This recommendation supported by U.S. Chamber, Biotechnology Innovation Organization, Equity Dealers of America, American Securities Association, National Venture Capital Association, Nasdaq, TechNet