

118TH CONGRESS  
1ST SESSION

# H. R. 2793

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## AN ACT

To amend the Securities Act of 1933 to expand the ability to use testing the waters and confidential draft registration 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:

*Clerk.*

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