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[H.R. 1675, Encouraging Employee Ownership Act of 2015](#)

FLOOR SITUATION

On Wednesday, February 3, 2016, the House will consider [H.R. 1675](#), the Encouraging Employee Ownership Act of 2015, under a [structured rule](#). The bill was introduced on March 26, 2015, by Rep. Randy Hultgren (R-IL) and was referred to the Committee on Financial Services, which ordered the bill reported by a vote of 45 to 15 on May 20, 2015. The Rule combines the text of [H.R. 1675](#), [H.R. 686](#), the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015; [H.R. 1965](#), the Small Company Disclosure Simplification Act; [H.R. 2354](#), Streamlining Excessive and Costly Regulations Review Act; and, [H.R. 2356](#), Fair Access to Investment Research Act of 2015, as reported by the Committee, with conforming changes.

SUMMARY

H.R. 1675 provides for various financial services related reforms in an attempt to alleviate burdens on employers by repealing or amending outdated Securities and Exchange Commission (SEC) regulations, among other provisions. Major provisions of the bill include:

Title I— The Encouraging Employee Ownership Act of 2015 (H.R. 1675, as reported by the Financial Services Committee)

Under current law as required by SEC Rule 701, all private companies must disclose certain information to employee investors if the value of certain securities issued by the company exceeds \$5 million. The bill directs the SEC to raise that amount from \$5 million to \$10 million and to adjust the threshold every five years for inflation.¹

Title II—The Fair Access to Investment Research Act of 2015 (H.R. 2356)

Under current law, the SEC's rules generally prohibit an issuer from offering securities for sale to the public without filing a registration statement with the agency. The bill establishes a safe harbor that would allow broker-dealers to issue research reports that cover Exchange Traded Funds (ETFs), so

¹ See [House Report 114-398](#) at 2.

that these reports are not considered “offers” under the securities law. The research reports would need to meet certain requirements to be eligible for this safe harbor.²

The title requires the SEC to revise applicable regulations within 120 days of enactment and provides that an interim safe harbor will take effect until the SEC’s rules are finalized.³

Title III— The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (H.R. 686)

The title simplifies small business mergers, acquisitions, and sales by exempting merger and acquisition (M&A) brokers that perform services in connection with the transfer of ownership of smaller privately held companies, from SEC registration, with certain exceptions.⁴

Title IV—The Small Company Disclosure Simplification Act (H.R. 1965)

The title provides for both a voluntary and time-limited exemption for all Emerging Growth Companies⁵ (EGCs) and other issuers known as smaller reporting companies with annual gross revenues under \$250 million from the SEC’s requirements to file their financial statements in an interactive data format known as eXtensible Business Reporting Language (XBRL). The reporting exemption would last up to five years, although the bill would allow EGCs to submit information in XBRL format if they so desired. H.R. 1965 would direct the SEC to conduct an analysis of the costs and benefits of requiring EGCs to file reports using XBRL and report the results to the Congress.⁶

Title V—The Streamlining Excessive and Costly Regulations Review Act (H.R. 2354)

The title requires the SEC to engage in a retrospective review of significant regulations within the first five years after enactment, and every ten years thereafter, to identify regulations that are outmoded, ineffective, insufficient, excessively burdensome, or no longer necessary in the public interest. The bill requires that the SEC Commissioners vote to amend or repeal any regulation identified as having met such criteria and provides for certain public disclosure and commenting.⁷

The title defines “significant regulations” as those with (1) an annual economic impact of \$100 million or more as defined by the Office of Management and Budget, or that (2) result in a major increase in costs or prices for consumers, individual industries, federal, state, or local governments, or geographic regions, or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete against their foreign counterparts.⁸

BACKGROUND

Background on Title I (H.R. 1675)

In 1988, the SEC adopted Rule 701 under the Securities Act to allow private companies to sell securities to their employees without filing a registration statement, as public companies do. In 1999,

² See [House Report 114-401](#) at 2.

³ Id.

⁴ See [House Report 114-400](#) at 2

⁵ An EGC is a company that has issued or proposes to issue stock and had gross revenues of less than \$1 billion during its most recently completed fiscal year; companies can retain that designation from the SEC for up to five years.

⁶ See [House Report 114-399](#) at 1.

⁷ See House Report 114-403 at 2.

⁸ Id.

the SEC added certain investor disclosure requirements for sales exceeding \$5 million in a 12-month period. According to the Committee, by increasing the Rule 701 threshold, from \$5 million to \$10 million, private companies will have increased flexibility to reward and retain employees with a company's securities and permits private companies to keep valuable employees without having to use other methods to compensate them, such as borrowing money or selling securities.⁹

Background on Title II (H.R. 2356)

An ETF is an investment company whose shares are traded intraday on stock exchanges at market-determined prices. Investors may buy or sell ETF shares through a broker or in a brokerage account just as they would the shares of any publicly traded company. Investor interest in ETFs has increased significantly in recent years, with 5.7 million U.S. households holding ETF shares in 2013. Yet despite their growing popularity and increasing importance to retail investors, anomalies in the SEC's safe harbor rules have discouraged most broker-dealers from publishing research regarding ETFs. The bill grants certain reports on ETFs safe-harbor status.

According to the bill sponsor, "This commonsense bill, which mirrors other research safe harbors implemented by the SEC, will provide clarity to the law and allow investors to access useful information in this rapidly growing market. I appreciate the support of Congressman Carney and thank the Committee for its efforts to promote capital formation, remove unnecessary burdens, and grow jobs and the economy."¹⁰

Background on Title III (H.R. 686)

Mergers and Acquisition brokers educate business owners looking to sell their businesses on the selling process; help prepare the business for sale; analyze the company's financials and its business; perform or coordinate valuations; advise on potential capital sources and capital structures; prepare business offering information packages; identify, screen, and market the business to qualified potential buyers; assist in organizing and facilitating the buyer's due diligence; and coordinate with the parties' lawyers, accountants, and other consultants. The bill exempts these brokers from SEC registration requirements with certain exceptions.¹¹

Background on Title IV (H.R. 1965)

XBRL is an interactive data format developed specifically for business and financial reporting. In 2003, the SEC required reports of securities holdings and transactions under law to be submitted in an XBRL format. According to the Committee, "The XBRL requirements impose burdens on small businesses but yield little or no discernible value to investors. The burdens include cost, additional personnel, management and audit committee time and attention, liability for any misstatements that result from the miscoding of their data, and the need for extensive reviews, tests and additional documentation in order to submit their filing in XBRL format."¹² The bill provides for a voluntary and time-limited exemption for EGCs and smaller reporting companies from filing certain reports using XBRL.

Background on Title V (H.R. 2354)

⁹ See [House Report 114-398](#) at 2.

¹⁰ See Rep. French Hill Press Release, "[Hill, Carney Introduce Bipartisan Bill to Increase Consumer Access to Investment Information](#)," May 18, 2015.

¹¹ See [House Report 114-400](#) at 2.

¹² See [House Report 114-399](#) at 2.

The SEC is an independent, regulatory agency responsible for administering federal securities laws and has broad regulatory authority over significant parts of the securities industry, including stock exchanges, mutual funds, investment advisers, and brokerage firms.¹³ The bill requires the SEC to review and amend or repeal any regulation identified as being outmoded, ineffective, insufficient, excessively burdensome, or no longer necessary in the public interest.

According to the bill sponsor, “This bill will require the SEC to comprehensively review its regulations every ten years – a process that other financial regulatory bodies already perform – to streamline their rules and ensure they are all up-to-date. It’s a commonsense, good-government measure that will hold the Commission accountable and promote fair, efficient, and effective regulation.”¹⁴

COST

H.R. 1675—The Congressional Budget Office (CBO) [estimates](#) that enacting H.R. 1675, as reported by the Committee, estimates that implementing H.R. 1675 would cost less than \$500,000 over the 2016-2020 period. Under current law, the SEC is authorized to collect fees sufficient to offset its appropriation each year; therefore, CBO estimates that the net cost to the SEC would be negligible, assuming appropriation actions consistent with that authority. Enacting H.R. 1675 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 686—The CBO [estimates](#) that enacting H.R. 686 would lead to a small increase in spending by the SEC to clarify the applicability of regulations regarding registration requirements for brokers of mergers and acquisitions. Because this legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 1965—The CBO [estimates](#) that enacting H.R. 1965 would cost less than \$500,000 per year over the 2016-2020 period. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2356—The CBO [estimates](#) enacting H.R. 2356 would cost \$2 million over the 2016 to 2020 period, assuming appropriation of the necessary amounts. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net budgetary effect would be negligible. Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 2354—The CBO [estimates](#) that the new review and reporting activities required under the bill would not have a significant effect on the SEC’s workload. Therefore, CBO estimates that implementing H.R. 2354 would cost less than \$500,000 over the 2016 to 2020 period, assuming availability of the necessary amounts. Because the legislation does not affect direct spending or revenues, pay-as-you-go procedures do not apply.

AMENDMENTS

1. Rep. Mark DeSaulnier (D-CA) – The [amendment](#) directs the SEC to study and report to Congress the prevalence of employee ownership plans within companies that include a flexible

¹³ See CRS Report, “Introduction to Financial Services: The Securities and Exchange Commission (SEC),”

¹⁴ See Rep. Robert Hurt Press Release, [“Robert Hurt Introduces Bipartisan Legislation to Require SEC to Review Regulations.”](#) May 20, 2015.

or social benefit component in their articles of incorporation, as allowed under relevant state laws.

2. Rep. Bill Huizenga (R-MI) – The [amendment](#) clarifies the disqualification from the exemption of any broker or associated person who is subject to suspension or revocation of registration, and the in-applicability of the exemption to any M&A transaction where one party or more is a shell company.
3. Rep. Brad Sherman (D-CA) – The [amendment](#) provides exclusions for when a mergers and acquisitions broker is not exempt from registration with the SEC.
4. Rep. Keith Ellison (D-MN)– The [amendment](#) narrows the exemption to emerging growth companies and only for a period of three years. Nullifies that exemption if the Securities and Exchange Commission permits corporations to file their information using Inline XBRL formatting.
5. Rep. Darrell Issa (R-CA) – The [amendment](#) leaves intact the exemption from XBRL reporting for Emerging Growth Companies (EGCs,) while decreasing the exemption for other small companies with total annual gross revenues of less than \$250,000,000 from five years to two years and allowing the Securities and Exchange Commission to cancel the exemption within 180 days, instead of two years, if a cost-benefit analysis shows the benefits of XBRL reporting as outweighing the costs.
6. Rep. Darrell Issa (R-CA) – The [amendment](#) limits all exemptions granted therein only to companies obligated to begin submitting financial disclosures to the Securities and Exchange Commission after the date of enactment.
7. Rep. Keith Ellison (D-MN) – The [amendment](#) repeals the Small Company Disclosure Act (H.R. 1965) in its entirety from the bill thus preserving the S.E.C. requirement that public companies report their information related to corporate financial performance as searchable data.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.