US

Morrison & Foerster

Private capital formation

For years, business leaders and commentators have observed that the regulatory requirements to be met to finance companies in the United States have become overly burdensome and discourage entrepreneurship. These observations tended to fall on deaf Congressional ears that were more attuned to hearing lurid details of corporate misdeeds, stock option backdating and insider trading.

What a difference four years and severe disruption in the financial markets seems to be making. Congress is now listening and there are at least two significant legislative proposals that would ease the regulatory burden on smaller companies.

One measure would change Regulation A under the Securities Act to permit companies to conduct offerings to raise up to $50 million through a mini-registration process. Regulation A has not been used much in recent years because of the low threshold ($5 million) but many smaller companies would find Reg A offerings a helpful capital-raising alternative.

There also are a number of bills pending that would modify the triggers for SEC reporting obligations. Section 12(g) mandates SEC reporting (even in the absence of a company having conducted a public offering) once a company has 500 or more shareholders of record and the company has total assets exceeding $10 million. With more companies choosing to stay private longer and defer IPOs, this threshold, which was adopted in the 1960s, often constrains their activities.

Finally, the SEC is considering the utility of the prohibition against general solicitations in connection with private placement in light of the prevalence of the internet and other forms of communication. Together, these measures hold the prospect of making a difference for emerging companies in the United States.

Anna Pinedo and James Tanenbaum

Contacts:
1290 Avenue of the Americas
New York, NY 10104-0050
United States

Tel: +1 212 468 8000
Fax: +1 212 468 7900
Web: www.mofo.com