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INVEST Act Passage by House of Representatives Could Bring Major Changes to Capital Markets

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On December 11, 2025, the House of Representatives passed a package of 22 bills that aim to lower regulatory requirements relating to several different aspects of the securities and capital markets in the United States — including public companies, private fundraising, venture capital funds, and retirement funds. The combined bill is styled as the Incentivizing New Ventures and Economic Strength Through Capital Formation Act of 2025, or the INVEST Act of 2025. All Republicans in the House of Representatives voted for the bill, as did 87 Democratic House members. The INVEST Act contains several changes that, if passed into law, could strongly impact public and private capital formation. Troutman Pepper Locke's Capital Markets attorneys are actively monitoring the progress of the legislation and assessing the potential impact. Most immediately notable for public companies and aspiring public companies are the following:

Change to EGC Rules. In a similar effort to revitalize the then-moribund IPO market, Congress passed the JOBS Act in 2012, which, among other things, created the concept of the "emerging growth company" for newly public companies. Emerging growth companies are exempt from many rules impacting larger public companies, most notably the requirement that a public company's internal controls over financial reporting be subject to an attestation report by a registered public accounting firm. The INVEST Act would add additional benefits to qualifying as an emerging growth company.

- First, financial statements of acquired businesses would not be required for any period prior to the earliest audited period of the emerging growth company presented in connection with its IPO.
- Second, an emerging growth company would only be required to provide the previous two years of profit and loss statements when applying to list on a national securities exchange (*e.g.*, the NYSE, the Nasdaq, or the TXSE), instead of the current three years.

Confidential Registration Statements and "Testing the Waters." The INVEST Act would also codify existing Securities and Exchange Commission (SEC) accommodations regarding the confidential filing of draft registration statements (DRS) with the SEC. The JOBS Act first permitted confidential filing of registration statements by companies undertaking IPOs that qualified as emerging growth companies. The SEC subsequently broadened this framework through regulatory accommodation, rather than formal rulemaking, to first permit confidential submissions during the first year following a company becoming a public reporting company and then, in March of this year, to permit confidential submissions by all companies in connection with their initial filing of a new registration statement. The INVEST Act would effectively codify into law these SEC accommodations — the Securities Act of 1933 would contain provisions providing that *any* company with respect to an IPO, an initial

registration under Section 12(b) of the Exchange Act, or a follow-on offering may utilize the confidential, nonpublic review process. The DRS submissions would have to be made public (i) 10 days prior to effectiveness for IPOs, (ii) 10 days prior to listing on an exchange for an initial registration under Section 12(b) of the Exchange Act, and (iii) 48 hours before effectiveness for all other registration statements. Given the wide utilization of this process since its adoption, we expect companies will continue to find this to be an advantageous way of planning capital-raising without immediately notifying the markets of their intentions while they address any comments from the SEC, with added certainty.

The JOBS Act had previously permitted emerging growth companies to communicate with certain potential investors before or after filing a registration statement — a process known as "testing the waters." The SEC subsequently expanded this through rulemaking to allow all issuers, not just emerging growth companies, to engage in testing-the-waters communications with certain investors on a pre-filing basis. The INVEST Act would effectively codify this into law by amending the Securities Act of 1933.

Change to WKSI Eligibility Requirements. Under existing law, larger companies that qualify as "well-known seasoned issuers" (or WKSIs) are granted added flexibility to raise capital on the public markets, based principally on the idea that such companies are large, well established, and known to the markets. Specifically, WKSIs can file shelf registration statements on Form S-3 that become automatically effective upon filing without any SEC review or waiting period. Additionally, WKSIs are permitted to register the sale of an unspecified amount of securities and do not need to identify selling stockholders in their base prospectuses, among other benefits. Under the INVEST Act, public companies with $400 million or more in public float would qualify as WKSIs, a reduction from the current $700 million public float requirement. The effect of this proposal would increase the number of companies that qualify as WKSIs, thereby easing the ability of these companies to tap the public markets for additional capital.

Multi-Class Voting Structures. Unlike most of the INVEST Act, which aims to ease regulation, the provisions addressing multi-class share structures would enhance disclosure for investors. The INVEST Act would require the SEC to write rules that mandate issuers with multi-class share structures disclose in proxy and consent solicitation statements the following information with respect to securities held by a director, officer or 5% beneficial holder: (i) the number of shares of all classes of voting securities held by such person, and (ii) the total voting power held by such person, in each case expressed as a percentage of the total number of outstanding securities of all classes or total voting power of all classes entitled to vote, respectively. This would give investors a clearer picture of the true power of insiders holding shares with special voting rights over the election of directors and other matters subject to a stockholder vote.

Accredited Investor Definition. Finally, the INVEST Act proposes to create a new category of accredited investor for those persons that do not meet the current financial requirements or other criteria. Under the proposal, individuals could qualify by passing an exam or certification established by the SEC and administered and offered by a registered national securities association — presumably the Financial Industry Regulatory Authority (FINRA). If widely utilized, this could broaden and expand the type and number of individuals that could purchase securities in exempt, private placements. This would allow both private and public companies raising capital in nonpublic offerings access to a greater pool of potential investors, and therefore, a theoretically easier path to raising larger amounts of capital in the private markets.

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