

The SEC is Killing IPOs

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February 25, 2025


An initial public offering (IPO), through which a company goes public, allows regular investors [to buy into successful companies](#). This benefits [more than just investors](#).

There's a fundamentally American value present in our public markets: they're available to everyone. With public markets, we can all have a stake in our shared economy—and we all benefit when more people and entities can access the wealth-creation opportunities public markets provide.

Public securities markets are thus fundamental to our economy. They also have important advantages over private markets, [such as](#) equipping all investors, on an equitable basis, with the information they need to make informed decisions about how best to invest their hard-earned money; supplying public trading venues that generate more reliable share pricing and company valuations for the benefit of all market participants; and creating liquidity that makes investments more attractive and easier to enter and exit.

For these reasons, it is not surprising that public markets enable the most efficient capital formation and allocation for companies to grow and innovate. Indeed, a recent [study](#) shows that public markets allocate capital considerably more efficiently than private markets. According to the study, a dollar of capital allocated in public markets generates \$0.35 more in annual revenue over the next three years than a dollar allocated to a comparable firm via a private market deal. The study finds that the reason is better informational efficiency and governance mechanisms in public markets, which increase allocation efficiency by helping investors identify and direct capital to more productive projects. So [our public markets](#), which are deep, liquid, and the envy of the world, provide investment opportunities for investors worldwide and efficient capital formation to American and global businesses, which benefits the markets and the economy as a whole.

Despite these benefits, the Securities and Exchange Commission (SEC) has decimated the public markets through a [series of exemptions](#) from the federal securities laws that have allowed companies to continuously raise capital without undertaking an IPO. These exemptions have given companies [access to seemingly endless investor cash](#) through the private markets. The problem with this approach is that the private markets are [opaque](#)



[and unregulated](#), which can make it easier for firms to deceive investors—even investors who would have the resources to conduct their own due diligence. [For example](#),

Theranos and founder Elizabeth Holmes raised \$700 million from mostly wealthy investors without ever having to provide financial statements audited by an independent public accounting firm. . . . Holmes and Theranos, the blood-testing startup that was once valued by investors at \$9 billion, settled what the SEC characterized as ‘massive’ fraud charges.

This massive fraud is what hurt Theranos’s investors, but fraud is not the only risk that the private markets present. Private market investors currently have more than [\\$1 trillion](#) in value locked up in companies with dwindling prospects. Institutional investors, who can afford to invest in 100 companies and hope that one of them succeeds, can withstand the losses that the private markets entail, but this is not the case for retail investors.

Nonetheless, the SEC shows no signs of revising its approach of continually expanding the private offering exemptions. Instead, the ever-increasing ability to raise capital privately now means that capital raised in the private markets exceeds capital raised in the public markets. At the same time, over recent decades, the United States has experienced a significant decline in the number of IPOs annually, the number of firms listed on stock exchanges, and the aggregate contribution of listed firms to economic activity.

On February 26, 2025, the Capital Markets subcommittee of the House Financial Services Committee will hold a hearing entitled “The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation.” It is the public markets that Congress should focus on strengthening. The private markets have already been strengthened to the point that they now eclipse the public markets and allow companies to bypass the public markets entirely.

This harms both investors and capital formation. Investors receive [far fewer disclosures](#) in private securities offerings. And capital formation [is more efficient](#) in public offerings.

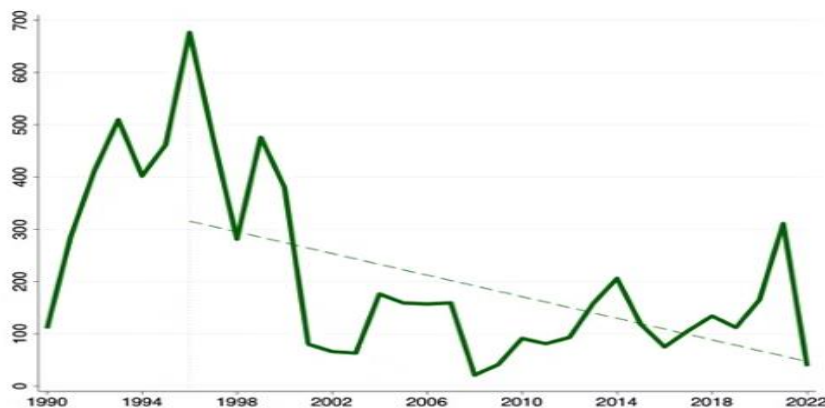
The [suggestion](#) that the private markets should be further expanded is exactly the wrong approach. The reason fewer disclosure requirements exist in the private markets is that companies may only use private offerings to solicit sophisticated market participants who theoretically have the ability to fend for themselves. Allowing companies to market private offerings to retail investors will leave the most vulnerable investors, who are least able to conduct their own due diligence, without the disclosures necessary to distinguish between good and bad investments. So significantly expanding private offering exemptions will only endanger retail investors, promote the inefficient allocation of capital, and cause the public markets to further contract. Instead, Congress should curtail the private offering exemptions and focus on increasing the number of IPOs and revitalizing public markets.

The Public Markets Have Declined Precipitously

There should be no question that we need to revitalize our public markets. The 2022 IPO market represented [a 32-year low](#), and the drought has [persisted](#). The decline and low number of U.S. IPOs over the past 25 years have raised [concerns](#) among entrepreneurs, investors, and policymakers. It should also be noted that, although some argue that increased regulation by virtue of laws such as the Sarbanes-Oxley Act of 2002 (SOX) is the cause of the decline in IPO activity, the [evidence](#) does not support that theory.

Despite the widespread belief that SOX and other regulations have contributed to the decline in public companies, some scholars have rebutted this view. They note that the number of public firms had been declining before SOX's passage, and IPO activity actually rose in the years immediately following its enactment.

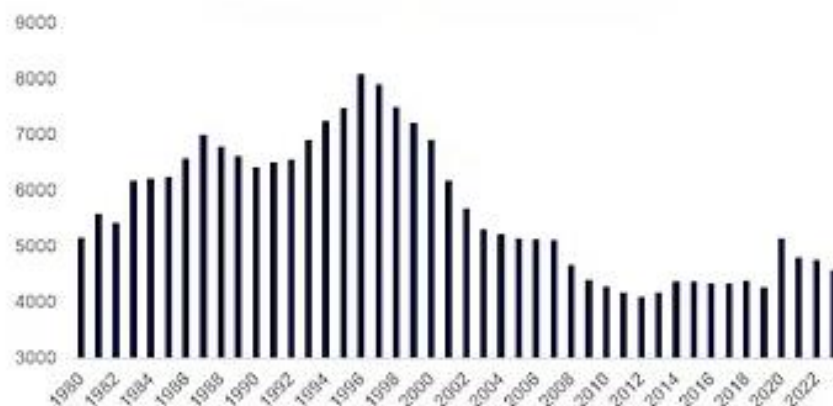
Declining Number of IPOs




Just as IPOs have decreased dramatically, there were [fewer](#) than 4,000 publicly traded companies in the United States last year, down from more than 7,000 companies in 1998.

The downward trend over the past few decades shows that this is not [a statistical anomaly](#).

U.S. LISTED COMPANIES





Indeed, the reduction in public companies has been [staggering](#) in its speed and scale.

Exemptions Allow Companies to Bypass Public Markets

Although there are likely several causes of the decline in IPOs and public companies, a main one is the [deregulation](#) of private securities offerings by the SEC. This deregulation, which has allowed the private markets to overtake the public markets, does not appear to be what Congress intended when it first enacted the federal securities laws. Instead, this deregulation has allowed the exceptions Congress envisioned to swallow the rule.


Congress enacted the federal securities in the 1930s after the stock market crash of 1929, and in doing so generally required that securities offerings be [registered](#). That is why, to avoid registration, companies must rely on an *exemption* from registration. In other words, the framework Congress originally created made the default a registered public offering.

Registered offerings include [a significant amount of disclosure](#) about the company, its financial status, and the funds that are being raised. As a result, registered offerings are available to all investors, which is why they are also referred to as public offerings. Conversely, private offerings require far fewer disclosures. So they are mainly [available](#) to financial institutions or other investors who are better positioned to absorb the risk of loss and make informed decisions with the reduced information disclosed in a private offering. For these reasons, the registration exemptions were originally limited in scope.

But over the last several decades, the SEC has used the authority delegated to it by Congress to steadily expand the exemptions that permit private offerings free from the registration and disclosure requirements that govern public offerings. The most prominent of these [exemptions](#) are Regulation Crowdfunding, Regulation A, and Regulation D—which itself comprises Rule 504, Rule 506(b), and Rule 506(c). The exemptions from the registration requirement are now so numerous that the SEC has an 8x10 [chart](#) to explain all the different ways that companies can raise money privately. It is these expanded exemptions that have allowed capital raising in the private markets to surpass capital raising in the public markets. These exemptions are also the main reason there are fewer IPOs and fewer public companies today, as companies have less need to access the public markets since they are able to raise capital privately without required disclosures.

David Solomon, the chief executive of Goldman Sachs, [said](#) last month that one reason I.P.O activity had been slow was that start-ups could get the capital they needed from private investors. . . . Mr. Solomon said he has often told start-up founders there are three reasons to go public, and two of them—raising money and letting shareholders sell their stock—have been solved by the private markets.

In other words, [a big reason](#) for the decline in IPOs and public companies is more private financing, like private equity and venture capital. And this shift has real [consequences](#).



Publicly listed companies are subject to regulatory oversight and disclosure requirements, which help ensure transparency and maintain investor confidence. With fewer companies listed, there may be a decrease in overall transparency and investor trust in the market.

The decline in IPOs and public companies also limits who benefits from our markets. Unlike public markets, private securities offerings are not available to everyone, because they do not have the essential disclosures that protect investors. So by neglecting public markets, we are denying an [essential democratic component of our economic structure](#).

We Should Revitalize Public Markets, Not Expand Private Markets

Policymakers seem to have recognized that one of the main problems with expanding private markets and shrinking public markets is that ordinary investors are unable to participate in the private markets and therefore unable to participate in its opportunities. But their solution seems to be to [further expand private offering exemptions](#) so that private companies can solicit retail investors through private offerings. This is [misguided](#).


Retail investors already [fear](#) that the best opportunities are in the private markets.

The worry is that much of the good stuff has been scooped up in private deals, leaving public investors to rummage through what's left – often companies struggling to secure private funding or whose shareholders are racing for an exit. This raises the spectre of adverse selection, with private owners trying to offload unwanted inventory on to the stock market.

Expanding retail access to the private markets would exacerbate, not fix, this situation. Retail investors would not end up investing in the same opportunities as the institutional investors who access the private markets now. Instead, retail investors likely would end up investing in the offerings that those institutional and accredited investors reject.

Private firms have a seemingly [bottomless](#) supply of capital from institutional and high-net-worth individuals The notion that institutional investors may have passed over a large set of attractive private investments is therefore implausible. There is simply no evidence that issuers with reasonable prospects for growth and profitability currently lack capital in the private markets. . . . The private issuers that seek out direct investment from small-dollar retail investors are likely to be the smallest issuers with the worse prospects—the product of severe adverse selection, if not fraud. It would be ill-advised to steer retail investors towards these firms.

Indeed, retail investors would be in an even worse position than they are now, since they would not have the disclosures that exist in the public markets, and would likely lack the



ability to do their own due diligence, unlike the traditional private market investors who are better able to [fend for themselves](#). So retail investors in the private markets would face [a strikingly uneven playing field](#) relative to more sophisticated investors.

With limited funds to invest and limited opportunities in private securities, retail investors would almost certainly *increase* their overall risk

Encouraging investments in private securities would not only increase the risk for retail investors, it would also drain liquidity from public securities.

It would also prevent capital from being allocated efficiently. Some say that the reason for the decline in IPOs is public companies' increasing regulatory costs—[particularly disclosure costs](#). But disclosures allow investors to identify where capital is best directed. So a mandatory disclosure regime benefits companies by compelling them to disclose an [optimal](#) amount of information to the market, which reduces their collective cost of capital. The continued expansion of private markets, which would result in investors receiving far less information, would mean companies would face [a higher cost of capital](#).

All this means that we should not be further expanding the private markets. Instead, we should be finding ways to revitalize the public markets. More IPOs and more public companies would benefit investors, capital formation, and the economy as a whole.

Conclusion

It is time to reverse the shift from the public markets to the private markets. Otherwise, we will continue to see a decline in both the [quality and quantity of public offerings](#), to the detriment of the retail investors whose prosperity is tied to the success of those markets. There is no reason to continue down this road. It is [perverse](#) to make policy choices that impede public access to the best companies. Instead, our policy choices should focus on increasing IPOs and the number of public companies to bolster our public markets.



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Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

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