AN ACT

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Jumpstart Our Business Startups Act”.

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TITLE I—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 101. DEFINITIONS.

(a) Securities Act of 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

“(19) The term ‘emerging growth company’ means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

“(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer
Price Index for All Urban Consumers published
by the Bureau of Labor Statistics, setting the
threshold to the nearest 1,000,000) or more;

“(B) the last day of the fiscal year of the
issuer following the fifth anniversary of the date
of the first sale of common equity securities of
the issuer pursuant to an effective registration
statement under this title;

“(C) the date on which such issuer has,
during the previous 3-year period, issued more
than $1,000,000,000 in non-convertible debt; or

“(D) the date on which such issuer is
deemed to be a ‘large accelerated filer’, as de-
defined in section 240.12b–2 of title 17, Code of
Federal Regulations, or any successor thereto.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section
78c(a)) is amended—

(1) by redesignating paragraph (77), as added
by section 941(a) of the Investor Protection and Se-
curities Reform Act of 2010 (Public Law 111–203,
124 Stat. 1890), as paragraph (79); and

(2) by adding at the end the following:

“(80) EMERGING GROWTH COMPANY.—The
term ‘emerging growth company’ means an issuer
that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

“(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

“(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;
“(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or
“(D) the date on which such issuer is deemed to be a ‘large accelerated filer’, as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.”.

(c) Other Definitions.—As used in this title, the following definitions shall apply:

(1) Commission.—The term “Commission” means the Securities and Exchange Commission.

(2) Initial Public Offering Date.—The term “initial public offering date” means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.

(d) Effective Date.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section 3(a)(80) of the Securities Exchange Act of 1934, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before December 8, 2011.
SEC. 102. DISCLOSURE OBLIGATIONS.

(a) EXECUTIVE COMPENSATION.—

(1) EXEMPTION.—Section 14A(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78n–1(e)) is amended—

(A) by striking “The Commission may” and inserting the following:

“(1) IN GENERAL.—The Commission may”;

(B) by striking “an issuer” and inserting “any other issuer”; and

(C) by adding at the end the following:

“(2) TREATMENT OF EMERGING GROWTH COMPANIES.—

“(A) IN GENERAL.—An emerging growth company shall be exempt from the requirements of subsections (a) and (b).

“(B) COMPLIANCE AFTER TERMINATION OF EMERGING GROWTH COMPANY TREATMENT.—An issuer that was an emerging growth company but is no longer an emerging growth company shall include the first separate resolution described under subsection (a)(1) not later than the end of—

“(i) in the case of an issuer that was an emerging growth company for less than 2 years after the date of first sale of com-
mon equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933, the 3-year period beginning on such date; and

“(ii) in the case of any other issuer, the 1-year period beginning on the date the issuer is no longer an emerging growth company.”.

(2) PROXIES.—Section 14(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(i)) is amended by inserting “, for any issuer other than an emerging growth company,” after “including”.

(3) COMPENSATION DISCLOSURES.—Section 953(b)(1) of the Investor Protection and Securities Reform Act of 2010 (Public Law 111–203; 124 Stat. 1904) is amended by inserting “, other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934,” after “require each issuer”.

(b) FINANCIAL DISCLOSURES AND ACCOUNTING PRONOUNCEMENTS.—

(1) SECURITIES ACT OF 1933.—Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)) is amended—
(A) by striking “(a) The registration” and inserting the following:

“(a) INFORMATION REQUIRED IN REGISTRATION STATEMENT.—

“(1) IN GENERAL.—The registration”; and

(B) by adding at the end the following:

“(2) TREATMENT OF EMERGING GROWTH COMPANIES.—An emerging growth company—

“(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

“(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the
Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.”.

(2) Securities Exchange Act of 1934.—Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended by adding at the end the following: “In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this Act or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.”.
(c) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations, or any successor thereto, by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations, or any successor thereto, by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000.

SEC. 103. INTERNAL CONTROLS AUDIT.

Section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) is amended by inserting “, other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934),” before “shall attest to”.

SEC. 104. AUDITING STANDARDS.

Section 103(a)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)(3)) is amended by adding at the end the following:

“(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board
requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any additional rules adopted by the Board after the date of enactment of this subparagraph shall not apply to an audit of any emerging growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.”.

SEC. 105. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES.

(a) Provision of Research.—Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended by adding at the end the following: “The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity
1 securities of such emerging growth company pursuant to 2 a registration statement that the issuer proposes to file, 3 or has filed, or that is effective shall be deemed for pur- 4 poses of paragraph (10) of this subsection and section 5(e) 5 not to constitute an offer for sale or offer to sell a security, 6 even if the broker or dealer is participating or will partici- 7 pate in the registered offering of the securities of the 8 issuer. As used in this paragraph, the term ‘research re- 9 port’ means a written, electronic, or oral communication 10 that includes information, opinions, or recommendations 11 with respect to securities of an issuer or an analysis of 12 a security or an issuer, whether or not it provides informa- 13 tion reasonably sufficient upon which to base an invest- 14 ment decision.”.

(b) SECURITIES ANALYST COMMUNICATIONS.—Sec-
15 tion 15D of the Securities Exchange Act of 1934 (15
16 U.S.C. 78o–6) is amended—
17     (1) by redesignating subsection (c) as sub-
18         section (d); and
19     (2) by inserting after subsection (b) the fol-
20         lowing:
21     “(c) LIMITATION.—Notwithstanding subsection (a) 22 or any other provision of law, neither the Commission nor 23 any national securities association registered under section 24 15A may adopt or maintain any rule or regulation in con-
connection with an initial public offering of the common eq-

uity of an emerging growth company—

“(1) restricting, based on functional role, which
associated persons of a broker, dealer, or member of
a national securities association, may arrange for
communications between a securities analyst and a
potential investor; or

“(2) restricting a securities analyst from par-
ticipating in any communications with the manage-
ment of an emerging growth company that is also
attended by any other associated person of a broker,
dealer, or member of a national securities associa-
tion whose functional role is other than as a securi-
ties analyst.”.

(c) EXPANDING PERMISSIBLE COMMUNICATIONS.—
Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
is amended—

(1) by redesignating subsection (d) as sub-
section (e); and

(2) by inserting after subsection (c) the fol-
lowing:

“(d) LIMITATION.—Notwithstanding any other provi-
sion of this section, an emerging growth company or any
person authorized to act on behalf of an emerging growth
company may engage in oral or written communications
with potential investors that are qualified institutional buyers or institutions that are accredited investors, as such terms are respectively defined in section 230.144A and section 230.501(a) of title 17, Code of Federal Regulations, or any successor thereto, to determine whether such investors might have an interest in a contemplated securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).”.

(d) Post Offering Communications.—Neither the Commission nor any national securities association registered under section 15A of the Securities Exchange Act of 1934 may adopt or maintain any rule or regulation prohibiting any broker, dealer, or member of a national securities association from publishing or distributing any research report or making a public appearance, with respect to the securities of an emerging growth company, either—

(1) within any prescribed period of time following the initial public offering date of the emerging growth company; or

(2) within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities as-
association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

SEC. 106. OTHER MATTERS.

(a) DRAFT REGISTRATION STATEMENTS.—Section 6 of the Securities Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

“(e) EMERGING GROWTH COMPANIES.—

“(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto.

“(2) CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to
this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.”.

(b) Tick Size.—Section 11A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)) is amended by adding at the end the following new paragraph:

“(6) Tick Size.—

“(A) Study and report.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these secu-
rities in penny increments. Not later than 90
days after the date of enactment of this para-
graph, the Commission shall submit to Con-
gress a report on the findings of the study.

“(B) DESIGNATION.—If the Commission
determines that the securities of emerging
growth companies should be quoted and traded
using a minimum increment of greater than
$0.01, the Commission may, by rule not later
than 180 days after the date of enactment of
this paragraph, designate a minimum increment
for the securities of emerging growth companies
that is greater than $0.01 but less than $0.10
for use in all quoting and trading of securities
in any exchange or other execution venue.”.

SEC. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption pro-
vided to emerging growth companies under this title, or
an amendment made by this title, an emerging growth
company may choose to forgo such exemption and instead
comply with the requirements that apply to an issuer that
is not an emerging growth company.

(b) SPECIAL RULE.—Notwithstanding subsection (a),
with respect to the extension of time to comply with new
or revised financial accounting standards provided under section 7(a)(2)(B) of the Securities Act of 1933 and section 13(a) of the Securities Exchange Act of 1934, as added by section 102(b), if an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

(1) must make such choice at the time the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934 and notify the Securities and Exchange Commission of such choice;

(2) may not select some standards to comply with in such manner and not others, but must comply with all such standards to the same extent that a non-emerging growth company is required to comply with such standards; and

(3) must continue to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards for as long as the company remains an emerging growth company.
SEC. 108. REVIEW OF REGULATION S-K.

(a) Review.—The Securities and Exchange Commission shall conduct a review of its Regulation S-K (17 CFR 229.10 et seq.) to—

(1) comprehensively analyze the current registration requirements of such regulation; and

(2) determine how such requirements can be updated to modernize and simplify the registration process and reduce the costs and other burdens associated with these requirements for issuers who are emerging growth companies.

(b) Report.—Not later the 180 days after the date of enactment of this title, the Commission shall transmit to Congress a report of the review conducted under subsection (a). The report shall include the specific recommendations of the Commission on how to streamline the registration process in order to make it more efficient and less burdensome for the Commission and for prospective issuers who are emerging growth companies.

TITLE II—ACCESS TO CAPITAL FOR JOB CREATORS

SEC. 201. MODIFICATION OF EXEMPTION.

(a) Modification of Rules.—

(1) Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise its rules issued in section
230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission. Section 230.506 of title 17, Code of Federal Regulations, as revised pursuant to this section, shall continue to be treated as a regulation issued under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)).

(2) Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that securities sold under such revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities are sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.
(b) Consistency in Interpretation.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking “The provisions of section 5” and inserting “(a) The provisions of section 5”; and

(2) by adding at the end the following:

“(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.”.

(e) Explanation of Exemption.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking “The provisions of section 5” and inserting “(a) The provisions of section 5”; and

(2) by adding at the end the following:

“(b)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

“(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to secur-
rities, or permits general solicitations, general
advertisements, or similar or related activities
by issuers of such securities, whether online, in
person, or through any other means;

“(B) that person or any person associated
with that person co-invests in such securities; or

“(C) that person or any person associated
with that person provides ancillary services with
respect to such securities.

“(2) The exemption provided in paragraph (1) shall
apply to any person described in such paragraph if—

“(A) such person and each person associated
with that person receives no compensation in connec-
tion with the purchase or sale of such security;

“(B) such person and each person associated
with that person does not have possession of cus-
tomer funds or securities in connection with the pur-
chase or sale of such security; and

“(C) such person is not subject to a statutory
disqualification as defined in section 3(a)(39) of this
title and does not have any person associated with
that person subject to such a statutory disqualifica-
tion.

“(3) For the purposes of this subsection, the term
‘ancillary services’ means—
“(A) the provision of due diligence services, in
close connection with the offer, sale, purchase, or negotia-
tion of such security, so long as such services do not
include, for separate compensation, investment ad-
vice or recommendations to issuers or investors; and

“(B) the provision of standardized documents
to the issuers and investors, so long as such person
or entity does not negotiate the terms of the
issuance for and on behalf of third parties and
issuers are not required to use the standardized doc-
ments as a condition of using the service.”.

**TITLE III—ENTREPRENEUR ACCESS TO CAPITAL**

**SEC. 301. CROWDFUNDING EXEMPTION.**

(a) Securities Act of 1933.—Section 4 of the Se-
curities Act of 1933 (15 U.S.C. 77d) (as amended by sec-
tion 201) is further amended by adding at the end the
following:

“(6) transactions involving the offer or sale of
securities by an issuer, provided that—

“(A) the aggregate amount sold within the
previous 12-month period in reliance upon this
exemption is—

“(i) $1,000,000, as such amount is
adjusted by the Commission to reflect the
annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, or less; or

“(ii) if the issuer provides potential investors with audited financial statements, $2,000,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, or less;

“(B) the aggregate amount sold to any investor in reliance on this exemption within the previous 12-month period does not exceed the lesser of—

“(i) $10,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics; and

“(ii) 10 percent of such investor’s annual income;

“(C) in the case of a transaction involving an intermediary between the issuer and the in-
vestor, such intermediary complies with the re-
quirements under section 4A(a); and

“(D) in the case of a transaction not in-
volving an intermediary between the issuer and
the investor, the issuer complies with the re-
quirements under section 4A(b).”.

(b) REQUIREMENTS TO QUALIFY FOR
CROWDFUNDING EXEMPTION.—The Securities Act of
1933 is amended by inserting after section 4 the following:

“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN
SMALL TRANSACTIONS.

“(a) REQUIREMENTS ON INTERMEDIARIES.—For
purposes of section 4(6), a person acting as an inter-
mediary in a transaction involving the offer or sale of secu-
rities shall comply with the requirements of this subsection
if the intermediary—

“(1) warns investors, including on the
intermediary’s website used for the offer and sale of
such securities, of the speculative nature generally
applicable to investments in startups, emerging busi-
nesses, and small issuers, including risks in the sec-
ondary market related to illiquidity;

“(2) warns investors that they are subject to
the restriction on sales requirement described under
subsection (e);
“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the intermediary’s physical address, website address, and the names of the intermediary and employees of the intermediary, and keep such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the intermediary’s website;

“(6) requires each potential investor to answer questions demonstrating—

“(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) an understanding of the risk of illiquidity; and

“(C) such other areas as the Commission may determine appropriate by rule or regulation;

“(7) requires the issuer to state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian described under paragraph (10) withholds offering proceeds until aggregate capital raised from investors
other than the issuer is no less than 60 percent of
the target offering amount;

“(8) carries out a background check on the
issuer’s principals;

“(9) provides the Commission and potential in-
vestors with notice of the offering, not later than the
first day securities are offered to potential investors,
including—

“(A) the issuer’s name, legal status, phys-
ical address, and website address;

“(B) the names of the issuer’s principals;

“(C) the stated purpose and intended use
of the proceeds of the offering sought by the
issuer; and

“(D) the target offering amount and the
deadline to reach the target offering amount;

“(10) outsources cash-management functions to
a qualified third party custodian, such as a broker
or dealer registered under section 15(b)(1) of the
Securities Exchange Act of 1934 or an insured de-
positary institution;

“(11) maintains such books and records as the
Commission determines appropriate;

“(12) makes available on the intermediary’s
website a method of communication that permits the
issuer and investors to communicate with one another;

“(13) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

“(14) does not offer investment advice.

“(b) REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.—For purposes of section 4(6), an issuer who offers or sells securities without an intermediary shall comply with the requirements of this subsection if the issuer—

“(1) warns investors, including on the issuer’s website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

“(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the issuer’s physical address, website address, and the names of
the principals and employees of the issuers, and keeps such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the issuer’s website;

“(6) requires each potential investor to answer questions demonstrating—

“(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) an understanding of the risk of illiquidity; and

“(C) such other areas as the Commission may determine appropriate by rule or regulation;

“(7) states a target offering amount and ensures that the third party custodian described under paragraph (9) withholds offering proceeds until the aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

“(8) provides the Commission with notice of the offering, not later than the first day securities are offered to potential investors, including—
“(A) the stated purpose and intended use
of the proceeds of the offering sought by the
issuer; and

“(B) the target offering amount and the
deadline to reach the target offering amount;

“(9) outsources cash-management functions to
a qualified third party custodian, such as a broker
or dealer registered under section 15(b)(1) of the
Securities Exchange Act of 1934 or an insured de-
pository institution;

“(10) maintains such books and records as the
Commission determines appropriate;

“(11) makes available on the issuer’s website a
method of communication that permits the issuer
and investors to communicate with one another;

“(12) does not offer investment advice;

“(13) provides the Commission with a notice
upon completion of the offering, which shall include
the aggregate offering amount and the number of
purchasers; and

“(14) discloses to potential investors, on the
issuer’s website, that the issuer has an interest in
the issuance.

“(c) VERIFICATION OF INCOME.—For purposes of
section 4(6), an issuer or intermediary may rely on certifi-
cations as to annual income provided by the person to whom the securities are sold to verify the investor's income.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9), (a)(13), (b)(8), and (b)(13) and the information described under subsections (a)(4) and (b)(4) available to the States.

“(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(6), a purchaser may not transfer such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

“(1) the issuer of such securities; or

“(2) an accredited investor.

“(f) CONSTRUCTION.—

“(1) NO REGISTRATION AS BROKER.—With respect to a transaction described under section 4(6) involving an intermediary, such intermediary shall not be required to register as a broker under section 15(a)(1) of the Securities Exchange Act of 1934 solely by reason of participation in such transaction.

“(2) NO PRECLUSION OF OTHER CAPITAL RAISING.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising
capital through methods not described under section 4(6).”.

(c) RULEMAKING.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue such rules as may be necessary to carry out section 4A of the Securities Act of 1933. In issuing such rules, the Commission shall consider the costs and benefits of the action.

(d) DISQUALIFICATION.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall by rule or regulation establish disqualification provisions under which an issuer shall not be eligible to utilize the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. The Commission shall also establish disqualification provisions under which an intermediary shall not be eligible to act as an intermediary in connection with an offering utilizing the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the intermediary or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. Such provisions shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926
SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended—

(1) by striking “(5) For the purposes” and inserting:

“(5) DEFINITIONS.—

“(A) IN GENERAL.—For the purposes”; and

(2) by adding at the end the following:

“(B) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—For purposes of this subsection, securities held by persons who purchase such securities in transactions described under section 4(6) of the Securities Act of 1933 shall not be deemed to be ‘held of record’.”.

SEC. 303. PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively; and

(2) by inserting after subparagraph (B) the following:
“(C) section 4(6);”.

(b) Clarification of the Preservation of State Enforcement Authority.—

(1) In General.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person or entity using the exemption from registration provided by section 4(6) of such Act.

(2) Clarification of State Jurisdiction over Unlawful Conduct of Intermediaries, Issuers, and Custodians.—Section 18(c)(1) of the Securities Act of 1933 is amended by striking “with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.” and inserting the following: “,
in connection with securities or securities transactions, with respect to—
“(A) fraud or deceit;
“(B) unlawful conduct by a broker or dealer; and
“(C) with respect to a transaction described under section 4(6), unlawful conduct by an intermediary, issuer, or custodian.”.

TITLE IV—SMALL COMPANY CAPITAL FORMATION

SEC. 401. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

(a) In General.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking “(b) The Commission” and inserting the following:

“(b) ADDITIONAL EXEMPTIONS.—

“(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—

The Commission”; and

(2) by adding at the end the following:

“(2) ADDITIONAL ISSUES.—The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

“(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed $50,000,000.
“(B) The securities may be offered and sold publicly.

“(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

“(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities.

“(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

“(F) The Commission shall require the issuer to file audited financial statements with the Commission annually.

“(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

“(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related
documents, in such form and with such content as prescribed by the Commission, including audited financial statements, a description of the issuer’s business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

“(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

“(3) LIMITATION.—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.
“(4) Periodic disclosures.—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

“(5) Adjustment.—Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.”.
(b) Treatment as Covered Securities for Purposes of NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (as amended by section 303) (15 U.S.C. 77r(b)(4)) is further amended by inserting after subparagraph (C) (as added by such section) the following:

“(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

“(i) offered or sold on a national securities exchange; or

“(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;”.

(e) Conforming Amendment.—Section 4(5) of the Securities Act of 1933 is amended by striking “section 3(b)” and inserting “section 3(b)(1)”.

SEC. 402. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGULATION A OFFERINGS.

The Comptroller General shall conduct a study on the impact of State laws regulating securities offerings, or “Blue Sky laws”, on offerings made under Regulation A (17 CFR 230.251 et seq.). The Comptroller General shall transmit a report on the findings of the study to the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and
Urban Affairs of the Senate not later than 3 months after the date of enactment of this Act.

**TITLE V—PRIVATE COMPANY FLEXIBILITY AND GROWTH**

**SEC. 501. THRESHOLD FOR REGISTRATION.**

Section 12(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)(A)) is amended to read as follows:

“(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by either—

“(i) 2,000 persons, or

“(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and”.

**SEC. 502. EMPLOYEES.**

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)), as amended by section 302, is amended in subparagraph (A) by adding at the end the following: “For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of ‘held of record’ shall not include securities held by persons who received...
the securities pursuant to an employee compensation plan
in transactions exempted from the registration require-
ments of section 5 of the Securities Act of 1933.”.

SEC. 503. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall revise
the definition of “held of record” pursuant to section
12(g)(5) of the Securities Exchange Act of 1934 (15
U.S.C. 78l(g)(5)) to implement the amendment made by
section 502. The Commission shall also adopt safe harbor
provisions that issuers can follow when determining
whether holders of their securities received the securities
pursuant to an employee compensation plan in trans-
actions that were exempt from the registration require-
ments of section 5 of the Securities Act of 1933.

SEC. 504. COMMISSION STUDY OF ENFORCEMENT AUTHOR-
ITY UNDER RULE 12G5–1.

The Securities and Exchange Commission shall ex-
amine its authority to enforce Rule 12g5–1 to determine
if new enforcement tools are needed to enforce the anti-
evasion provision contained in subsection (b)(3) of the
rule, and shall, not later than 120 days after the date of
enactment of this Act transmit its recommendations to
Congress.
TITLE VI—CAPITAL EXPANSION

SEC. 601. SHAREHOLDER THRESHOLD FOR REGISTRATION.

(a) Amendments to Section 12 of the Securities Exchange Act of 1934.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is further amended—

(1) in paragraph (1), by amending subparagraph (B) to read as follows:

“(B) in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,”; and

(2) in paragraph (4), by striking “three hundred” and inserting “300 persons, or, in the case of a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons”.

(b) Amendments to Section 15 of the Securities Exchange Act of 1934.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is
amended, in the third sentence, by striking “three hundred” and inserting “300 persons, or, in the case of bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons”.

SEC. 602. RULEMAKING.
Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to implement this title and the amendments made by this title.

TITLE VII—OUTREACH ON CHANGES TO THE LAW

SEC. 701. OUTREACH BY THE COMMISSION.
The Securities and Exchange Commission shall provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act.

Passed the House of Representatives March 8, 2012.

Attest:

Clerk.
AN ACT

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.