

REOPENING AMERICAN CAPITAL MARKETS TO EMERGING
GROWTH COMPANIES ACT OF 2011

MARCH 1, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3606]

The Committee on Financial Services, to whom was referred the bill (H.R. 3606) to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reopening American Capital Markets to Emerging Growth Companies Act of 2012”.

SEC. 2. 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 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 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; or

- “(C) 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.”.
- (b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—
- (1) by redesignating paragraph (77), as added by section 941(a) of the Investor Protection and Securities 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 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 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; or
 - “(C) 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 Act, 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. 3. 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 common 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. 4. 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. 5. 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. 6. 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 securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for pur-

poses of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term “research report” means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.”

(b) SECURITIES ANALYST COMMUNICATIONS.—Section 15D of the Securities Exchange Act of 1934 (15 U.S.C. 78o–6) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) LIMITATION.—Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 15A may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity 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 participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities 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 subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) LIMITATION.—Notwithstanding any other provision 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 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. 7. 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 confiden-

tial 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 securities in penny increments. Not later than 90 days after the date of enactment of this paragraph, the Commission shall submit to Congress 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. 8. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this Act, or an amendment made by this Act, 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 3(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. 9. REVIEW OF REGULATION S-K.

(a) REVIEW.—The Securities and Exchange Commission shall conduct a review of its Regulation S-K (17 C.F.R. 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 than 180 days after the date of enactment of this Act, 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.

PURPOSE AND SUMMARY

H.R. 3606, the “Reopening American Capital Markets to Emerging Growth Companies Act of 2012,” amends the Securities Act of 1933 to establish a new category of issuers known as “Emerging Growth Companies” (EGCs), which are issuers that have total annual gross revenues of less than \$1 billion. H.R. 3606 exempts

EGCs from certain regulatory requirements until the earliest of three dates: (1) five years from the date of the EGC's initial public offering; (2) the date an EGC has \$1 billion in annual gross revenue; or (3) the date an EGC becomes a "large accelerated filer," which is defined by the Securities and Exchange Commission (SEC) as a company that has a worldwide public float of \$700 million or more. H.R. 3606 thus provides temporary regulatory relief to small companies, which encourages them to go public, yet ensures their eventual compliance with regulatory requirements as they grow larger.

H.R. 3606 adapts the SEC's scaled regulations for smaller companies by more slowly phasing in regulations that impose high costs on issuers, without compromising core investor protections or disclosures. EGCs would still be required to comply with SEC-mandated quarterly and annual disclosures, but they would be exempted from Section 404(b) of the Sarbanes-Oxley Act (P.L. 107-204) of 2002 for a longer transition period—up to five years—instead of the current transition period of two years. To ensure that investors are adequately protected, an EGC's management would still be required to establish and maintain internal controls over financial reporting, as mandated by Section 404(a) of the Sarbanes-Oxley Act, and its chief executive officer and chief financial officer would still have to certify the company's financial statements.

H.R. 3606 requires EGCs to provide audited financial statements for the two years prior to registration, rather than three years as is now required. This two-year period already applies to companies with a public float under \$75 million, which are known as "non-accelerated filers." Within a year of its initial public offering (IPO), the EGC would report three years' worth of financial statements, as larger companies are required to do.

H.R. 3606 exempts EGCs from any rules promulgated by the Public Company Accounting Oversight Board (PCAOB) that would require mandatory audit firm rotation, thereby allowing them to avoid the unnecessary costs of changing from an auditor familiar with the company to one that is not. H.R. 3606 gives EGCs the opportunity to "opt in" to certain regulations by complying with them before they lose their EGC status. However, if the Financial Accounting Standards Board adopts new accounting standards while a company is an EGC, the EGC must comply with either all or none of the new standards while it remains an EGC.

H.R. 3606 exempts EGCs from two new corporate governance requirements that were established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203). First, the bill exempts EGCs from Section 951's requirement that public companies hold a non-binding stockholder vote on executive compensation arrangements. Second, the bill exempts EGCs from Section 953(b)'s requirement that public companies calculate and disclose the median compensation of all employees compared to the CEO. EGCs would still comply with all stock exchange corporate governance and listing requirements, including board member independence rules.

H.R. 3606 also improves the flow of information about EGCs to investors by removing burdensome and outdated restrictions on communications between companies, research analysts, and investors. Existing SEC rules prohibit investment banks that under-

write a company's IPO from publishing research on companies that would be classified as EGCs under the bill. The bill allows investors to obtain research reports about an EGC before or at the same time as its IPO. The bill, however, maintains other investor protections, such as those set forth in Section 501 of the Sarbanes-Oxley Act, which address potential conflicts of interest that can arise when analysts recommend equity securities.

H.R. 3606 also permits EGCs to gauge the interest in potential IPOs by permitting greater pre-filing communications to institutional and qualified investors to determine whether an IPO is likely to be successful. All of the antifraud provisions of the securities laws still apply, however, and the delivery of a statutory prospectus before securities are sold in an IPO would still be required.

Finally, H.R. 3606 permits EGCs to pre-file confidential registration statements, thereby allowing them to begin the SEC review process without publicly revealing sensitive commercial and financial information to their competitors. Currently, only foreign companies are permitted to file confidential registration statements with the SEC. The bill requires an EGC to publicly file its initial confidential submission at least 21 days before it begins a pre-IPO "road show" for potential investors.

BACKGROUND AND NEED FOR LEGISLATION

Over the last decade, the number of companies entering the U.S. capital markets through IPOs has sharply declined, irrespective of economic conditions during the same period. In October 2011, the IPO Task Force issued a report which found that 791 companies went public in 1996, and that the U.S. averaged 530 IPOs per year from 1991 to 2000. By contrast, the U.S. averaged fewer than 157 IPOs per year from 2001 to 2008. In 2009, the U.S. had only 61 IPOs; in 2010, it had 153 IPOs. The IPO Task Force found that the number of IPOs in the last two years remains well below historic levels and is far below the number needed to replace the number of listed companies lost to mergers, acquisitions, de-listings, and bankruptcy during that period.

The falling number of IPOs has contributed to the decline of the U.S. as a global financial market. U.S. capital markets raised only 15% of global IPO proceeds in 2010, down from an average 28% over the preceding ten years. Nearly 10% of the U.S. companies that went public in 2010 did so outside the U.S., turning to capital markets in the United Kingdom, Taiwan, South Korea, and Canada. Since 2010, capital markets in China, Hong Kong, and Singapore have seen more than 700 companies pursue IPOs, compared to fewer than 300 in the U.S. during the same period.

The President's Council on Jobs and Competitiveness found that if the U.S. had maintained its 2007 level of start-up activity, nearly two million more Americans would be working today. Research indicates that 90% of the jobs that companies create are created after their IPO. Since 2009, the number of new businesses launched in the U.S. has fallen by 23%, and there were fewer venture-backed IPOs in 2008 and 2009 than in any year since 1985.

As the number of U.S. IPOs fell precipitously, fewer small companies have gone public. Small companies are critical to economic growth in the United States. In order to grow and create jobs, small companies must have access to capital. Unfortunately, the

IPO Task Force found that fewer and fewer small companies have gone public: the share of IPOs smaller than \$50 million fell from 80% in the 1990s to 20% in the 2000s. To encourage small companies to go public in the U.S., to spur economic growth, and to create jobs, Representatives Fincher and Carney introduced H.R. 3606 on December 8, 2011.

HEARING

On December 15, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on “Legislative Proposals to Bring Certainty to the Over-the-Counter Derivatives Market.” At that hearing, the Subcommittee considered H.R. 3606, the “Reopening American Capital Markets to Emerging Growth Companies Act of 2011.” The following witnesses testified:

- Mr. Joseph Brantuck, Head, U.S. New Listings and IPOs & Vice President, NASDAQ OMX
- Mr. Steven R. LeBlanc, Senior Managing Director of Private Markets, Teacher Retirement System of Texas
- Ms. Kate Mitchell, Chair, Initial Public Offering (IPO) Task Force, Former President of the National Venture Capital Association (NVCA); and Managing Director & Co-Founder, Scale Venture Partners
- Mr. Mike Selfridge, Head of Regional Banking, Silicon Valley Bank

The Subcommittee received testimony from participants in the financial markets, all of whom spoke favorably on H.R. 3606. Ms. Kate Mitchell, Managing Director & Co-Founder, Scale Venture Partners, and Chair of the IPO Task Force, testified that H.R. 3606 would “help restore effective access to the public markets for EGCs without compromising investor protection,” which would “spur U.S. job creation and economic growth at a time when we desperately need both.” Mike Selfridge, Head of Regional Banking, Silicon Valley Bank, testified that “[b]y providing an ‘on-ramp’ to public markets, H.R. 3606 will meaningfully improve growing companies’ ability to obtain the capital necessary to fund continued growth.” Joseph Brantuck, Head of U.S. Listings and IPOs & Vice President, NASDAQ OMX, testified that H.R. 3606 “would begin the process of reducing the barriers to strong and effective capital markets for companies across the United States.” Finally, Steven LeBlanc, Senior Managing Director of Private Markets, Teachers Retirement System of Texas, testified that “H.R. 3606’s scaling of regulations for newly public companies presents a workable approach to facilitating small and emerging growth companies’ access to capital.”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on February 16, 2012, and ordered H.R. 3606, as amended, favorably reported to the House by a record vote of 54 yeas and 1 nay (Record vote no. FC-57).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. On February 16,

2012, the Committee on Financial Services met in open session and ordered H.R. 3606, as amended, favorably reported to the House by a record vote of 54 yeas and 1 nay (Record vote no. FC-57). The names of Members voting for and against follow:

RECORD VOTE NO. FC-57

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X			Mr. Frank (MA)	X		
Mr. Hensarling	X			Ms. Waters	X		
Mr. King (NY)				Mrs. Maloney			
Mr. Royce	X			Mr. Gutierrez	X		
Mr. Lucas	X			Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo	X			Mr. Ackerman	X		
Mr. Jones	X			Mr. Sherman	X		
Mrs. Biggert	X			Mr. Meeks	X		
Mr. Gary G. Miller (CA)				Mr. Capuano		X	
Mrs. Capito	X			Mr. Hinojosa	X		
Mr. Garrett	X			Mr. Clay	X		
Mr. Neugebauer	X			Mrs. McCarthy (NY)	X		
Mr. McHenry	X			Mr. Baca	X		
Mr. Campbell				Mr. Lynch	X		
Mrs. Bachmann	X			Mr. Miller (NC)	X		
Mr. McCotter	X			Mr. David Scott (GA)	X		
Mr. McCarthy (CA)	X			Mr. Al Green (TX)	X		
Mr. Pearce	X			Mr. Cleaver			
Mr. Posey	X			Ms. Moore	X		
Mr. Fitzpatrick	X			Mr. Ellison	X		
Mr. Westmoreland	X			Mr. Perlmutter	X		
Mr. Luetkemeyer	X			Mr. Donnelly	X		
Mr. Huizenga	X			Mr. Carson	X		
Mr. Duffy	X			Mr. Himes	X		
Ms. Hayworth	X			Mr. Peters	X		
Mr. Renacci	X			Mr. Carney	X		
Mr. Hurt	X						
Mr. Dold	X						
Mr. Schweikert	X						
Mr. Grimm	X						
Mr. Canseco	X						
Mr. Stivers	X						
Mr. Fincher	X						

During consideration of H.R. 3606 by the Committee, the following amendments were considered:

1. An amendment offered by Mr. Himes, no. 7, to reduce the total annual gross revenue test to qualify as an EGC from \$1 billion to \$750 million and eliminate the large accelerated filer test, was not agreed to by a record vote of 23 yeas and 31 nays (Record vote no. FC-55).

RECORD VOTE NO. FC-55

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)				Mrs. Maloney			
Mr. Royce		X		Mr. Gutierrez	X		
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		

RECORD VOTE NO. FC-55—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Capito		X	.....	Mr. Hinojosa	X	.....	.....
Mr. Garrett		X	.....	Mr. Clay	X	.....	.....
Mr. Neugebauer		X	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. McHenry		X	.....	Mr. Baca	X	.....	.....
Mr. Campbell	Mr. Lynch	X	.....	.....
Mrs. Bachmann		X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter		X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)		X	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce		X	.....	Mr. Cleaver .....		.....	.....
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland		X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy	Mr. Himes	X	.....	.....
Ms. Hayworth		X	.....	Mr. Peters .....		.....	.....
Mr. Renacci		X	.....	Mr. Carney		X	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers		X	.....			
Mr. Fincher		X	.....			

2. An amendment offered by Mr. Ellison, no. 9, to strike the EGC exemption from the “say-on-pay” shareholder vote requirement, was not agreed to by a record vote of 24 yeas and 31 nays (Record vote no. FC-56).

RECORD VOTE NO. FC-56

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X	.....	Mr. Frank (MA)	X	.....	.....
Mr. Hensarling		X	.....	Ms. Waters	X	.....	.....
Mr. King (NY) .....			.....	Mrs. Maloney .....		.....	.....
Mr. Royce		X	.....	Mr. Gutierrez	X	.....	.....
Mr. Lucas		X	.....	Ms. Velázquez	X	.....	.....
Mr. Paul .....			.....	Mr. Watt	X	.....	.....
Mr. Manzullo		X	.....	Mr. Ackerman	X	.....	.....
Mr. Jones	X		.....	Mr. Sherman	X	.....	.....
Mrs. Biggert		X	.....	Mr. Meeks	X	.....	.....
Mr. Gary G. Miller (CA) .....			.....	Mr. Capuano	X	.....	.....
Mrs. Capito		X	.....	Mr. Hinojosa	X	.....	.....
Mr. Garrett		X	.....	Mr. Clay	X	.....	.....
Mr. Neugebauer		X	.....	Mrs. McCarthy (NY)	X	.....	.....
Mr. McHenry		X	.....	Mr. Baca	X	.....	.....
Mr. Campbell .....			.....	Mr. Lynch	X	.....	.....
Mrs. Bachmann		X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter		X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)		X	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce		X	.....	Mr. Cleaver .....		.....	.....
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland		X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy		X	.....	Mr. Himes		X	.....
Ms. Hayworth		X	.....	Mr. Peters	X	.....	.....
Mr. Renacci		X	.....	Mr. Carney		X	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			

RECORD VOTE NO. FC-56—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Grimm	X	.....			
Mr. Canseco	X	.....			
Mr. Stivers	X	.....			
Mr. Fincher	X	.....			

The following amendments and motion were also considered by the Committee:

1. An amendment offered by Messrs. Fincher and Carney, no. 1, to make technical corrections to the bill; to add an effective date to the bill; to strike Section 3(c) of the bill and replace it with language amending Section 7(a) of the Securities Act of 1933 and Section 13(a) of the Securities Exchange Act of 1934 to clarify that EGCs can take advantage of the timing provided by the Financial Accounting Standards Board to private companies for new accounting standards, if such new standards apply to private companies; to incorporate technical comments from the SEC on financial reporting in Section 3 and auditing standards in Section 5; and to add a new Section 8 to the bill that clarifies that EGCs can “opt-in” to regulations that they are exempted from by the bill, other than for accounting standards, where they must either choose to use the EGC treatment for accounting standards, or not at all, was agreed to by voice vote.

2. An amendment offered by Mr. Schweikert, no. 2, to require the SEC to study the transitional impact to fraction trading from penny trading, and provide the SEC authority to increase the trading increment for the class of securities created by the bill, was agreed to by voice vote.

3. An amendment offered by Mr. Renacci, no. 3, to allow an EGC to determine a period of time, following its initial public offering, when its stock can only be traded on the exchange where it chooses to list; to allow EGCs to designate a period of time during which trading on non-exchange venues would be limited; and to require that quotation and transaction information for EGCs must be made available by an entity that operates a national market system, was withdrawn.

4. An amendment offered by Mr. McHenry, no. 4, to promote development of “market quality incentive programs” on registered national securities exchanges, was withdrawn.

5. An amendment offered by Ms. Waters, no. 5, to require that the distribution of a research report by a broker or dealer or any oral or written communications to institutional or accredited investors be filed with the SEC and be deemed a prospectus, was not agreed to by voice vote.

6. An amendment offered by Mr. Royce, no. 6, to increase the exemption from compliance with Section 404(b) of the Sarbanes-Oxley Act of 2002 from \$75 million in public float to \$1 billion, was withdrawn.

7. An amendment offered by Mr. Himes, no. 8, to require the SEC, in consultation with the national securities exchanges, to establish a uniform system to easily identify EGCs for investors, was not agreed to by voice vote.

8. An amendment offered by Mr. Ellison, no. 10, to clarify that issuers who no longer qualify for EGC status before the five year

exemption ends, must comply with “say-on-pay” shareholder votes in the following fiscal year, was withdrawn.

9. An amendment offered by Mr. Ellison, no. 11, to strike the Dodd-Frank Act Section 953(b) pay ratio disclosure exemption for EGCs, was not agreed to by voice vote.

10. An amendment offered by Mr. Garrett, no. 12, to require the SEC to study the impact of regulation S-K and report to Congress within 180 days of enactment, was agreed to by voice vote.

11. An amendment offered by Mr. Ellison, no. 13, to clarify that issuers who no longer qualify for EGC status before the five year exemption ends, must comply with “say-on-pay” shareholder votes in the following fiscal year, was agreed to by voice vote.

12. A motion offered by Mr. Garrett to move the previous question on H.R. 3606 was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 3606 is to make it easier for small companies to raise capital in U.S. financial markets, thereby facilitating their growth and creating jobs. Because small companies are critical to the economic growth of the United States, H.R. 3606 establishes a new category of issuers, EGCs, and exempts them from certain regulatory requirements in order to encourage them to go public in the United States.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

A cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall

cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3606 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This short title of this bill is the “Reopening American Capital Markets to Emerging Growth Companies Act of 2012.”

Section 2. Definitions

This section would amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to establish a new category of issuers known as “Emerging Growth Companies” (EGCs) which are issuers that have total annual gross revenues of less than \$1 billion. An issuer that is an EGC as of the first day of a fiscal year shall continue to be deemed an EGC until: (1) the last day of the fiscal year during which the issuer had \$1 billion in annual gross revenues or more; (2) the last day of the fiscal year following the fifth anniversary of the issuer’s initial public offering date; or (3) the date in which the issuer is deemed to be a “large accelerated filer,” defined by the U.S. Securities and Exchange Commission (SEC) as an issuer with more than \$700 million in public float.

This section also would define the “initial public offering date” as 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. This section would establish the effective date for the bill as December 8, 2011, which is the date the bill was introduced.

Section 3. Disclosure obligations

This section would exempt EGCs from Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–

203), which requires publicly-traded companies to hold a non-binding shareholder vote at least once every three years on executive compensation and a shareholder vote on executive severance payments known as “golden parachutes.” This section also would exempt EGCs from Section 953(b) of the Dodd-Frank Act, which requires publicly-traded companies to disclose in every SEC filing the ratio of the CEO’s compensation to the median compensation of all other employees. This section also would require an issuer that loses its EGC status before its second anniversary as a public company to comply with the Dodd-Frank Act’s executive compensation disclosure requirements described above starting in its third year of being a public company. Further, this section would require an issuer that loses its EGC status after its second anniversary as a public company to comply with the Dodd-Frank Act’s executive compensation disclosure requirements beginning in the fiscal year after losing its status.

This section also would require that EGCs provide no more than two years of audited financial statements along with their SEC-filed registration statement. Additionally, this section would phase in the requirement to provide financial data to the SEC so that an EGC is not required to provide audited financial statements for periods prior to those provided with the registration statement.

This section also would provide EGCs with the same extended compliance period for new or revised accounting standards issued by the Financial Accounting Standards Board that are currently available to private companies, if such new or revised standards apply to companies that are not issuers.

This section would also require an EGC to present selected financial data in its periodic reports only for the earliest audited period presented in connection with its first registration statement. This section would also permit EGCs to follow the same executive compensation disclosure requirements followed by companies with less than \$75 million in public float.

Section 4. Internal controls audit

This section would allow EGCs to defer compliance with Section 404(b) of the Sarbanes-Oxley Act of 2002 until the company is no longer considered an EGC.

Section 5. Auditing standards

This section would provide that any rules promulgated by the Public Company Accounting Oversight Board (PCAOB) that would require mandatory audit firm rotation or a supplement to the auditor’s report shall not apply to an EGC. In addition, this section would provide that any auditing standards adopted by the PCAOB after enactment would not apply to EGCs unless the SEC finds that the application of such rules to EGCs is necessary or appropriate after it considers investor protection, efficiency, competition, and capital formation.

Section 6. Availability of information about EGCs

This section would amend the Securities Act of 1933 to permit the publication or distribution by a broker or dealer of a research report about an EGC that is the subject of a proposed public offering, even if the broker or dealer is participating or will participate

in the offering. This section also would amend the Securities Act of 1933 to expand the range of permissible pre-filing communications to sophisticated institutional investors to allow EGCs to determine whether qualified institutional or accredited investors might have an interest in a contemplated securities offering.

This section would amend the Securities Exchange Act of 1934 to permit members of the investment banking team for a broker or dealer participating in an offering to arrange for communications between securities analysts and potential investors in EGCs, and to permit research analysts to participate in communications with management of the issuer that are also attended by other members of the broker or dealer.

This section would also permit the publication and distribution of research reports about EGCs during post-IPO quiet periods and lock-up periods established by the SEC or national securities associations under the Securities Exchange Act of 1934.

Section 7. Other matters

This section would permit U.S. companies to submit draft registration statements to the SEC on a confidential basis, as is currently permitted for non-U.S. companies. Final registration materials, including all amendments resulting from the SEC review process, will still be required to be made publicly available to investors with adequate time for review prior to an EGC's initial public offering.

This section also would require the SEC to study the effects of the transition from fraction trading to penny trading for securities, including the effect of the transition on initial public offerings and liquidity for small and mid-cap companies. The section would require the SEC to report to Congress about the impact of penny trading 90 days after enactment of the bill. The section also would authorize the SEC to increase the trading increment for EGCs to greater than \$.01 but less than \$.10 within 180 days of enactment.

Section 8. Opt-in right for emerging growth companies

This section would allow EGCs to forgo the regulatory exemptions afforded to EGCs and instead "opt-in" to certain regulatory requirements as they see fit. However, EGCs cannot selectively "opt-in" to comply with new or revised accounting standards. Instead, an EGC must declare in its SEC-filed registration statement whether it will or will not use the extension of time for all new or revised accounting standards applicable to EGCs.

Section 9. Review of regulation S-K.

This section would require the SEC to review Regulation S-K and determine how the registration process can be simplified for EGCs. This section requires the SEC to report to Congress on streamlining the registration process for prospective EGCs within 180 days of enactment of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

TITLE I—SHORT TITLE

* * * * *

DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) * * *

* * * * *

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. *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 securities of such emerging growth company pursuant to a registration statement that the issuer*

proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term “research report” means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

* * * * *

(19) The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 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 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; or

(C) 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.

* * * * *

PROHIBITIONS RELATING TO INTERSTATE COMMERCE AND THE MAILS

SEC. 5. (a) * * *

* * * * *

(d) LIMITATION.—Notwithstanding any other provision 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)] *(e) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract*

participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).

REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT

SEC. 6. (a) * * *

* * * * *

(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 non-public 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.

* * * * *

SEC. 7. [(a) The registration] (a) *INFORMATION REQUIRED IN REGISTRATION STATEMENT.*—

(1) *IN GENERAL.*—The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having

prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(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.

* * * * *

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * *

[(77)] (79) ASSET-BACKED SECURITY.—The term “asset-backed security”—

(A) * * *

* * * * *

(80) ECONOMIC GROWTH COMPANY.—The term “emerging growth company” means an issuer that had total annual gross revenues of less than \$1,000,000,000 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 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; or

(C) 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.

* * * * *

NATIONAL MARKET SYSTEM FOR SECURITIES; SECURITIES INFORMATION PROCESSORS

SEC. 11A. (a) * * *

* * * * *

(c)(1) * * *

* * * * *

(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 securities in penny increments. Not later than 90 days after the date of enactment of this paragraph, the Commission shall submit to Congress 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.

* * * * *

PERIODICAL AND OTHER REPORTS

SEC. 13. (a) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) * * *

* * * * *

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. *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.*

* * * * *

PROXIES

SEC. 14. (a) * * *

* * * * *

(i) **DISCLOSURE OF PAY VERSUS PERFORMANCE.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, *for any issuer other than an emerging growth company*, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

* * * * *

SEC. 14A. SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

(a) * * *

* * * * *

(e) **EXEMPTION.**—**[The Commission may]**

- (1) *IN GENERAL.*—*The Commission may*, by rule or order, exempt **[an issuer]** *any other issuer* or class of issuers from the requirement under subsection (a) or (b). In determining whether to make an exemption under this subsection, the Commission shall take into account, among other considerations, whether the requirements under subsections (a) and (b) disproportionately burdens small issuers.
- (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 common 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.

* * * * *

SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS.

(a) * * *

* * * * *

(c) LIMITATION.—Notwithstanding subsection (a) or any other provision of law, neither the Commission nor any national securities association registered under section 15A may adopt or maintain any rule or regulation in connection with an initial public offering of the common equity 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 participating in any communications with the management of an emerging growth company that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

[(c)] (d) DEFINITIONS.—In this section—

(1) * * *

* * * * *

INVESTOR PROTECTION AND SECURITIES REFORM ACT OF 2010

* * * * *

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

SEC. 901. SHORT TITLE.

This title may be cited as the “Investor Protection and Securities Reform Act of 2010”.

* * * * *

Subtitle E—Accountability and Executive Compensation

* * * * *

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) * * *

(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer, *other than an emerging growth company, as that term is defined in section 3(a) of the Securities Exchange Act of 1934*, to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

(A) * * *

* * * * *

SARBANES-OXLEY ACT OF 2002

* * * * *

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

* * * * *

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) * * *

* * * * *

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) * * *

* * * * *

(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.

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**TITLE IV—ENHANCED FINANCIAL
DISCLOSURES**

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SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) * * *

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer, *other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934)*, shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

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MINORITY VIEWS

H.R. 3606 encourages emerging growth companies (EGCs) to access the public capital markets by temporarily exempting EGCs from some registration procedures, prohibitions on initial public offering (IPO) communications, and independent audits of internal controls over financial reporting, among other exemptions. Democrats agree in principle that it is important to modernize and improve the ability of a company to raise capital in today's environment, but are concerned H.R. 3606 goes beyond what is necessary at the expense of protecting the investor.

During consideration of H.R. 3606, Democrats offered several amendments to strike the right balance between promoting capital formation of smaller businesses and guarding against bad actors, but each of these was rejected. Ms. Waters offered an amendment to ameliorate the conflicts between investors and the underwriters and their analysts, requiring that the research be subject to potential liability, to better prevent the kinds of fraudulent practices that were prevalent during the "dot.com" bubble. Mr. Ellison's amendment recognizes the importance of early compensation practices by empowering EGC shareholders to cast a nonbinding vote on executive compensation levels as well as golden parachutes. Mr. Himes proposed to better target H.R. 3606's exemptions for EGCs to truly small companies that may not be able to afford some public company requirements by reducing the exemption limit from \$1 billion to \$750 million, and to better identify those companies.

While we believe that additional changes must be made in H.R. 3606, Democrats worked with the Majority to improve the bill during the markup. One amendment was adopted that, among other things, prevents the politicization of the accounting standards setting process of the Federal Accounting Standards Board. Another amendment expedited the ability for shareholders to cast a vote on the executive compensation levels within one year instead of up to 3 years after the EGC's exemption expires. These improvements represent a first step in the right direction.

Democrats and Republicans share the desire to create an accessible, robust and efficient capital market for the benefit of small businesses and investors, alike. We expect that as H.R. 3606 moves forward, further refinements will be adopted to ensure that investor protections are not sacrificed.

BARNEY FRANK.
WM. LACY CLAY.
GWEN MOORE.
JAMES A. HIMES.
RUBÉN HINOJOSA.
KEITH ELLISON.
ED PERLMUTTER.
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GARY C. PETERS.
ANDRÉ CARSON.
GARY L. ACKERMAN.
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