

PROVIDING FOR CONSIDERATION OF 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

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MARCH 6, 2012.—Referred to the House Calendar and ordered to be printed

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Mr. SESSIONS, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 572]

The Committee on Rules, having had under consideration House Resolution 572, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The resolution waives all points of order against consideration of the bill. The resolution provides that an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112-17 shall be considered as adopted and the bill, as amended, shall be considered as original text for the purpose of amendment and shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order only those further amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments print-

ed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII requiring the three-day layover of committee reports. While the Financial Services Committee filed H. Rept. 112–406, Part 1, on March 1, 2012, the cost estimate for H.R. 3606 prepared by the Congressional Budget Office (CBO) was not yet available. The Committee on Financial Services filed H. Rept. 112–406, Part 2, on March 6, 2012, which includes the CBO estimate. However, the resolution provides that an amendment in the nature of a substitute consisting of the text of Rules Committee Print 112–17 shall be considered as adopted. The complete cost estimate of Rules Committee Print 112–17 was made available on March 2, 2012.

Although the resolution waives all points of order against provisions in the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee record vote No. 197*

Motion by Mr. McGovern to report an open rule. Defeated: 4–7

Majority Members	Vote	Minority Members	Vote
Mr. Sessions .....	Nay	Ms. Slaughter .....	Yea
Ms. Foxx .....	Nay	Mr. McGovern .....	Yea
Mr. Woodall .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Nugent .....	Nay	Mr. Polis .....	Yea
Mr. Scott of South Carolina .....	Nay		
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

#### SUMMARY OF THE AMENDMENTS MADE IN ORDER

1. Fincher (TN), Carney (DE): **MANAGER'S AMENDMENT** Would make technical changes to the underlying bill. (10 minutes)

2. McIntyre (NC): Would adjust the Emerging Growth Company definition for inflation, resulting in providing more flexibility for businesses. (10 minutes)

3. Himes (CT), Capuano (MA): Would lower the gross annual revenue cap from \$1,000,000,000 to \$750,000,000 for emerging growth companies to remain eligible for the regulatory on-ramp and strike the public float requirement for the on-ramp. (10 minutes)

4. Jackson Lee (TX): Would add a requirement that a company not be considered an “emerging growth company” if it has issued more than \$1 billion in non-convertible debt over the prior three years. (10 minutes)

5. Ellison (MN), Capuano (MA), Lynch (MA): Would require Emerging Growth Companies to fully comply with say-on-pay and golden parachute shareholder votes. (10 minutes)

6. Waters (CA), Capuano (MA): Would provide that if a broker or dealer is underwriting an initial public offering (IPO) for an emerging growth company (EGC) and providing research to the public about such IPO, those research reports need to be filed with the SEC, and the broker or dealer shall be held to stricter liability for their comments. Would also provide that if EGCs are communicating, either orally or in writing, with potential investors before or following an offering, they need to file those communications with the SEC. (10 minutes)

7. Jackson Lee (TX): Would strike language that allows an emerging growth company or its underwriter to communicate with “institutions that are accredited investors.” (10 minutes)

8. Jackson Lee (TX): Would establish new filing fee for Reg S-K Forms to discourage frivolous filings. (10 minutes)

9. Connolly (VA): Would require the Securities and Exchange Commission to perform a study, in consultation with the Commodities Futures Trading Commission, of the effects on emerging growth companies of financial speculation on domestic oil and gasoline prices and to forward the results of that study to Congress. (10 minutes)

10. McCarthy, Kevin (CA): Would clarify that general advertising under this provision should only apply to Regulation D rule 506 offerings, allow for general solicitation in the secondary sale of these securities so long as only qualified institutional buyers purchase the securities, and provide consistency in interpretation that general advertising should not cause these offerings to be considered public offerings. (10 minutes)

11. McHenry (NC): Would, for Rule 506 of Regulation D, provide an exemption from registration as a broker or dealer for trading platforms that do not charge a fee in connection with the purchase or sale of the security or permit general solicitations, general advertisements, or similar or related activities by issuers of such securities. Would also enable the marketing of private shares to accredited investors through platforms. (10 minutes)

12. Miller, Brad (NC), Schweikert (AZ): Would increase the total number of investors and limit the number of non-accredited investors allowed to be holders of record before registration is required. (10 minutes)

13. Schweikert (AZ): Would authorize the Securities and Exchange Commission to study whether or not it has the authority to enforce anti-evasion provisions associated with the shareholder threshold. (10 minutes)

14. Capuano (MA): Would require the SEC to conduct a study to address anti-evasion concerns and determine if the term “held of record” should mean beneficial owner of the security. (10 minutes)

15. Peters (MI): Would require publicly traded companies to disclose on an annual basis the total number of employees they have in each country and the percentage increase or decrease in employment in each country. (10 minutes)

16. Capps (CA): Would require the Securities and Exchange Commission to issue a report to the Congress one year after enactment on the increase in initial public offerings that resulted from the act,

including specific increases in filings by manufacturing and high-technology companies. (10 minutes)

17. Loeb sack (IA): Would require information to be made available online, and outreach to be conducted to small and medium-sized businesses, women-owned businesses, veteran-owned businesses, and minority-owned businesses to inform them about changes put in place by this legislation. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FINCHER OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 18, after “(80)” insert the following: “EMERGING GROWTH COMPANY.—”.

Page 9, line 3, strike “7201(a)” and insert “7201(a))”.

Page 37, line 3, strike “is amended” and insert the following: “, as amended by section 302, is amended in subparagraph (A)”.

Page 37, beginning on line 18, strike “holders of their securities are accredited investors or that”.

Page 38, line 16, strike “, as such term is defined in section 3(a)(6),”.

Page 38, line 18, strike “section (2)” and insert “section 2”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCINTYRE OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, line 11, insert after “\$1,000,000,000” the following: “(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)”.

Page 2, line 18, insert after “\$1,000,000,000” the following: “(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)”.

Page 3, line 20, insert after “\$1,000,000,000” the following: “(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)”.

Page 4, line 3, insert after “\$1,000,000,000” the following: “(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)”.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HIMES OF CONNECTICUT OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, line 11, strike “\$1,000,000,000” and insert “\$750,000,000”.

Page 2, line 18, strike “\$1,000,000,000” and insert “\$750,000,000”.

Page 2, line 18, add “or” at the end.  
Page 3, line 5, strike “; or” and insert a period.  
Page 3, strike lines 6 through 9.  
Page 3, line 20, strike “\$1,000,000,000” and insert “\$750,000,000”.  
Page 4, line 3, strike “\$1,000,000,000” and insert “\$750,000,000”.  
Page 4, line 3, add “or” at the end.  
Page 4, line 8, strike “; or” and insert a period.  
Page 4, strike lines 9 through 12.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 3, line 5, strike “or”.  
Page 3, after line 5, insert the following:  
“(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”.  
Page 3, line 6, strike “(C)” and insert “(D)”.  
Page 4, line 8, strike “or”.  
Page 4, after line 8, insert the following:  
“(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”.  
Page 4, line 9, strike “(C)” and insert “(D)”.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ELLISON OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, strike line 7 and all that follows through page 6, line 13 (and redesignate succeeding paragraphs accordingly).

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATERS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, line 12, strike “paragraph (10) of this subsection and”.  
Page 11, line 16, insert after the period the following: “Any such research report published or distributed by a broker or dealer that is participating or will participate in the registered offering of the securities of the issuer shall be filed with the Commission by the later of the date of the filing of such registration statement or the date such report is first published or distributed. Such research report shall be deemed a prospectus under paragraph (10).”.

Page 13, line 18, after the first period insert the following: “Any written communication (as such term is defined in section 203.405 of title 17, Code of Federal Regulations) provided to potential investors in accordance with this subsection shall be filed with the Commission by the later of the date of the filing of such registration statement or the date the written communication is first engaged in. Such written communication shall be deemed a prospectus under section 2(a)(10).”.

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 13, line 10, strike “or institutions that are accredited investors”.

Page 13, line 11, strike “terms are respectively” and insert “term is”.

Page 13, line 12, strike “and section 230.501(a)”.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 15, line 16, strike the quotation mark and final period and after such line insert the following:

(3) ADDITIONAL FILING FEE.—In order to discourage frivolous filings with the Commission, the Commission shall establish a fee that shall apply to any draft registration statement submitted to the Commission for confidential nonpublic review pursuant to paragraph (1).

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONNOLLY OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 19, after line 2, insert the following new section (and conform the table of contents accordingly):

**SEC. 109. STUDY ON THE EFFECTS OF MARKET SPECULATION ON EMERGING GROWTH COMPANIES.**

(a) STUDY.—The Securities and Exchange Commission, in consultation with the Commodity Futures Trading Commission, shall carry out an ongoing study on the ability of emerging growth companies to raise capital utilizing the exemptions provided under this title and the amendments made by this title, in light of—

(1) financial market speculation on domestic oil and gasoline prices; and

(2) business cost increases caused by such speculation.

(b) REPORT.—Not later than the end of the 60-year period beginning on the date of the enactment of this Act, and annually thereafter, the Securities and Exchange Commission shall issue a report to the Congress containing all findings and determinations made in carrying out the study required under subsection (a).

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCCARTHY OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 19, beginning on line 6, strike “(a) REMOVAL OF RESTRICTION.—” and all that follows through line 11 and insert the following:

(a) MODIFICATION OF RULES.—

(1) Not later than 90

Page 19, line 23, insert after the period the following: “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)).”

Page 19, after line 23, insert the following:

(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.

(c) 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.”.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCHENRY OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 19, after line 23, insert the following:

(c) 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 securities, 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 connection with the purchase or sale of such security;

“(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase 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 disqualification.

“(3) For the purposes of this subsection, the term ‘ancillary services’ means—

“(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice 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 documents as a condition of using the service.”

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MILLER OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 36, line 25, strike “by 1,000 persons, and” and insert “by either—

“(i) 2,000 persons, or

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

13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHWEIKERT OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 37, after line 22, insert the following:

**SEC. 504. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12G5-1.**

The Securities and Exchange Commission shall examine 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.

The table of contents in section 2 of the bill is amended by inserting after the item relating to section 503 the following new item:

**Sec. 504. Commission study of enforcement authority under Rule 12g5-1**

14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPUANO OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 37, after line 22, insert the following (and amend the table of contents accordingly):

**SEC. 504. STUDY, REPORT, AND RULEMAKING.**

(a) **STUDY.**—The Securities and Exchange Commission shall conduct a study regarding whether the term “held of record” (as defined pursuant to section 12(g)(5) of the Securities Exchange Act of 1934) should be changed—



- (1) to mean the beneficial owner of the security; and
- (2) to address anti-evasion concerns, such as those described under section 240.12g5-1(b)(3) of title 17, Code of Federal Regulations.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Commission shall submit a report to the Congress containing the conclusions of the study carried out under subsection (a).

(c) RULEMAKING.—If, based on the study conducted pursuant to subsection (a), the Commission concludes that a change to the definition of the term “held of record” is necessary and appropriate in the public interest and for the protection of investors, then, not later than 1 year after the date of the enactment of this Act, the Commission shall revise such definition.

15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERS OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill insert the following:

## **TITLE VII—REQUIRED DISCLOSURE OF NUMBER OF DOMESTIC AND FOREIGN EMPLOYEES**

### **SEC. 701. REQUIRED DISCLOSURE OF NUMBER OF DOMESTIC AND FOREIGN EMPLOYEES.**

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

“(r) DISCLOSURE OF NUMBER OF DOMESTIC AND FOREIGN EMPLOYEES.—

“(1) IN GENERAL.—Beginning the first full fiscal year that begins after the date of enactment of this subsection, each issuer required to file reports with the Commission pursuant to subsection (a) shall disclose annually to the Commission and to shareholders—

“(A) the total number of employees of the issuer and each consolidated subsidiary of the issuer who are domiciled in the United States and listed by number in each State;

“(B) the total number of such employees physically working in and domiciled in any country other than the United States, listed by number in each country; and

“(C) the percentage increase or decrease in the numbers required under subparagraphs (A) and (B) from the previous reporting year.

“(2) EXEMPTIONS.—

“(A) NEWER PUBLIC COMPANIES.—An issuer shall not be subject to the requirement under paragraph (1) for the first 5 years after the issuer is first required to file reports with the Commission pursuant to subsection (a).

“(B) EMERGING GROWTH COMPANIES.—An issuer that is an emerging growth company shall not be subject to the requirement under paragraph (1).

“(3) REGULATIONS.—The Commission may promulgate such regulations as it considers necessary to implement the requirement set forth in paragraph (1).”

Amend the table of contents in section 2 by adding at the end the following new items:

TITLE VII—REQUIRED DISCLOSURE OF NUMBER OF DOMESTIC AND FOREIGN EMPLOYEES

Sec. 701. Required disclosure of number of domestic and foreign employees

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAPPAS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following (and conform the table of contents accordingly):

**TITLE VII—REPORT ON IPOS AND MANUFACTURING**

**SEC. 701. REPORT.**

After the end of the 1-year period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall issue a report to the Congress on the increase in initial public offerings that resulted from this Act and the amendments made by this Act, including the specific increases in offerings by companies in the manufacturing industry and the high technology industry.

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOEBSACK OF IOWA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following (and conform the table of contents accordingly):

**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.