

REGULATION AT IMPROVEMENT ACT OF 2017

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FEBRUARY 2, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4263]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4263) to amend the Securities Act of 1933 with respect to small company capital formation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On November 11, 2017, Representative Tom MacArthur introduced the “Regulation A+ Improvement Act” to increase the amount that companies can offer and sell under Securities and Exchange Commission (SEC) Regulation A, Tier 2 (aka Regulation A+) from \$50 million to \$75 million, to be adjusted for inflation by the SEC every 2 years to the nearest \$10,000.

BACKGROUND AND NEED FOR LEGISLATION

Despite the expansion of Regulation A+ to \$50 million has been a successful provision of the Jumpstart Our Business Startups or JOBS Act (P.L. 112-106), a further expansion of this exemption will alleviate disproportionate regulatory burdens on small and emerging businesses that are a key source of innovation and job creation in our economy.

Title IV of the JOBS Act directed the SEC to issue rules to update its Regulation A (Reg A), which exempted small offerings of up to \$5 million within a 12-month period from federal registration. Even though these small offerings are exempted under Reg A from federal registration, they remain subject to state securities law registration and qualification requirements. Historically, a limited number of issuers used the Reg A exemption. From 2009 through 2012, there were 19 qualified Reg A offerings for a total offering amount of approximately \$73 million. During the same period, there were approximately 27,870 offerings for a total offering amount of approximately \$26 billion that were eligible to take advantage of the Reg A exemption but did not.

The updated JOBS Act exemption, now known as Reg A+, increased the amount companies could offer from \$5 million to \$50 million within a 12-month period. Reg A+ would also preempt state registration and qualification requirements. The SEC proposed rules to implement Title IV on December 18, 2013, and the comment period closed on March 24, 2014. The SEC received more than 100 comment letters. On September 25, 2014, Representatives Scott Garrett and Patrick McHenry wrote the SEC to endorse its Reg A+ preemption proposal, pointing out that preemption “provides for a consistency of regulation for national offerings” and that it would allow “small and medium-sized businesses to undertake Reg A+ offerings while avoiding the prohibitively expensive complexities of complying with up to 50 different state regulators and associated regulations.”

On March 25, 2015, the SEC approved the final rule to implement Title IV of the JOBS Act. The final rule provides for two tiers of offerings: Tier 1, for offerings of securities of up to \$20 million in a 12-month period, with not more than \$6 million in offers by selling security-holders that are affiliates of the issuer; and Tier 2, for offerings of securities of up to \$50 million in a 12-month period, with not more than \$15 million in offers by selling security-holders that are affiliates of the issuer. Both tiers are subject to certain basic requirements, while Tier 2 offerings are also subject to additional disclosure and ongoing reporting requirements. The final rule also provides for the preemption of state securities law registration and qualification requirements for securities offered or sold to “qualified purchasers” in Tier 2 offerings. By May 2016, the SEC had qualified over 30 Reg A+ offerings for companies seeking over \$500 million in capital.

Title IV also requires the SEC to re-evaluate and increase the \$50 million offering threshold within two years of enactment and every two years thereafter and to explain to Congress if it chooses not to raise the offering threshold. On April 5, 2016, SEC staff informed the Financial Services Committee that the \$50 million threshold would remain in place through 2018 because of a lack of information available on Reg A+ offerings since the rule was finalized in 2015.

This delay is unnecessary. Since the amendments to Reg A became effective in June 2015, the rate of Reg A+ securities offerings has increased. As of October 2016, prospective issuers have publicly filed offering statements for 147 Regulation A+ offerings, seeking up to \$2.6 billion in financing. Of these, the SEC qualified approximately 81 offerings seeking up to \$1.5 billion, and \$190 million has

been reported raised, though this understates the true amount raised due to reporting time frames. As a comparison, in the 12 months leading up to June 18, 2015, there were approximately 51 filings seeking to raise \$159 million, including 12 qualified filings seeking to raise up to \$34 million. Average issuers were seeking \$18 million in a given, qualified offering, the average for Tier 2 was \$26 million and the average for Tier 1 was \$10 million, still well below the thresholds for each Tier. Despite the increase in offerings after the adoption of Reg A+, companies making Reg A+ offerings sought significantly lower amounts of capital than companies making use of other exemptions, such as Regulation D.

During the comment period for Reg A+, the SEC received comments that Reg A+ should be expanded beyond the \$50 million threshold. Former SEC Commissioner Dan Gallagher also expressed disappointment that the Tier 2 offering threshold was not raised from the statutory floor of \$50 million provided in the JOBS Act, stating, “Three years after the [JOBS Act] was enacted, [the SEC] should have exercised our clear authority under the JOBS Act to raise the offering limit to \$75 million.”

By answering these calls to expand Reg A+, H.R. 4263 will make it possible for even more small issuers to reap of the benefits of reduced registration requirements. Hester Peirce, a Senior Fellow at the Mercatus Center, stated during a Financial Services Committee hearing on the Financial CHOICE Act that:

The CHOICE Act’s changes to the JOBS Act would increase the options to companies seeking capital privately or through public offerings, and the changes would expand opportunities for investors and employees to participate in companies’ prosperity. Examples include making available to more companies the JOBS Act’s balanced approach to capital-raising under Regulation A and its test-the-waters provision. Prior to the JOBS Act’s changes to Regulation A, that provision languished unused by companies, so it is important to revisit different avenues for raising capital frequently to ensure their continued usefulness. In its October 2017 report on Capital Markets, the Department of the Treasury included a recommendation that the Tier 2 offering limit be increased to \$75 million, which would allow private companies to consider a “mini-IPO” under Reg A+ as a potentially less costly alternative to raise capital.

Finally, H.R. 4263 is consistent with the Department of Treasury’s recommendation in its October 2017 report on Capital Markets, issued pursuant to President Trump’s February 3, 2017 Executive Order 13772, that the Tier 2 offering limit be increased to \$75 million because such would allow private companies to consider a “mini-IPO” under regulation A+ as a potentially less costly alternative to raise capital.

#### HEARINGS

The Committee on Financial Services held hearings examining matters relating to H.R. 4263 on April 26, 2017, April 28, 2017, March 22, 2017, July 18, 2017 and November 3, 2017.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2017, November, 15, 2017, and ordered H.R. 4263 to be reported favorably to the House without amendment by a recorded vote of 37 yeas to 23 nays (Record vote no. FC-111), a quorum being present.

## 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. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 37 yeas to 23 nays (Record vote no. FC-111), a quorum being present.

## Record vote no. FC-111

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....	X			Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....	X			Ms. Velázquez .....		X	
Mr. Royce (CA) .....	X			Mr. Sherman .....		X	
Mr. Lucas .....	X			Mr. Meeks .....		X	
Mr. Pearce .....	X			Mr. Capuano .....		X	
Mr. Posey .....	X			Mr. Clay .....		X	
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....		X	
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....	X			Mr. Cleaver .....		X	
Mr. Hultgren .....	X			Ms. Moore .....		X	
Mr. Ross .....	X			Mr. Ellison .....		X	
Mr. Pittenger .....	X			Mr. Perlmutter .....	X		
Mrs. Wagner .....	X			Mr. Himes .....		X	
Mr. Barr .....	X			Mr. Foster .....		X	
Mr. Rothfus .....	X			Mr. Kildee .....		X	
Mr. Messer .....	X			Mr. Delaney .....		X	
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....		X	
Mr. Poliquin .....	X			Mr. Heck .....		X	
Mrs. Love .....	X			Mr. Vargas .....		X	
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....		X	
Mr. Zeldin .....	X			Mr. Crist .....		X	
Mr. Trott .....	X			Mr. Kihuen .....		X	
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	X						

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of 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 states that H.R. 4263 will allow small business to have greater access to the capital that they need to grow by increasing the offering amount that companies can offer under Tier 2 of Regulation A.

## 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 adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 31, 2018.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4263, the Regulation At Improvement Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 4263—Regulation At Improvement Act of 2017*

Under current law, certain companies offering less than \$50 million in securities over a 12-month period are exempt from some disclosure and registration requirements enforced by the Securities and Exchange Commission (SEC). Securities offered under that exemption also are exempt from state registration requirements. H.R. 4263 would raise to \$75 million the maximum amount companies

can offer and sell under that exemption and would direct the SEC to adjust that amount for inflation every two years.

Using information from the SEC, CBO estimates that implementing H.R. 4263 would cost less than \$500,000 for the agency to amend its rules. Moreover, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 4263 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4263 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4263 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the SEC increases fees to offset the costs of amending its rules as required by the bill, H.R. 4263 would increase the cost of an existing mandate on private entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 4263 as the “Regulation At Improvement Act of 2017”

##### *Section 2. Jobs Act-Related Exemption*

This section amends section 3(b) of the Securities Act of 1933 to increase the eligible offerings amount from \$50,000,000 to \$75,000,000 while being adjusted for inflation for every 2 years to the nearest \$10,000.

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

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### **SECURITIES ACT OF 1933**

#### TITLE I

\* \* \* \* \*

## EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) Reserved.

(2) Any security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940; or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or

participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code (other than a person participating in a church plan who is described in section 414(e)(3)(B) of the Internal Revenue Code of 1986), or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code (other than a retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, to the extent that the interest or participation in such single trust fund or collective trust fund is issued to a church, a convention or association of churches, or an organization described in section 414(e)(3)(A) of such Code establishing or maintaining the retirement income account or to a trust established by any such entity in connection with the retirement income account). The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940;

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual, or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any

such institution; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1954, (ii) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code, or (iii) a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Except with respect to a security exchanged in a case under title 11, any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(12) Any equity security issued in connection with the acquisition by a holding company of a bank under section 3(a) of the Bank Holding Company Act of 1956 or a savings association under section 10(e) of the Home Owners' Loan Act, if—

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than se-

curities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive, after that reorganization, substantially the same proportional share interests in the holding company as they held in the bank or savings association, except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under State or Federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association prior to the transaction, other than as may be required by law; and

(D) the holding company has substantially the same assets and liabilities, on a consolidated basis, as the bank or savings association had prior to the transaction.

For purposes of this paragraph, the term "savings association" means a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(13) Any security issued by or any interest or participation in any church plan, company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(14) Any security futures product that is—

(A) cleared by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and

(B) traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(b) ADDITIONAL EXEMPTIONS.—

(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.

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

(A) The aggregate offering amount of all securities offered and sold within the prior 12-month period in reliance on the exemption added in accordance with this paragraph shall not exceed **[\$50,000,000]** *\$75,000,000, adjusted for inflation by the Commission every 2 years to the nearest \$10,000 to reflect the change in the Consumer Price Index*

*for All Urban Consumers published by the Bureau of Labor Statistics.*

(B) The securities may be offered and sold publicly.

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

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

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

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

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

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

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

(3) **LIMITATION.**—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

(4) **PERIODIC DISCLOSURES.**—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

(5) **ADJUSTMENT.**—Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission shall re-

view the offering amount limitation described in paragraph (2)(A) and shall increase **【such amount as】** *such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), as the Commission determines appropriate. If the Commission determines not to increase **【such amount, it】** such amount, in addition to the adjustment for inflation provided for under such paragraph (2)(A), it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.*

(c) The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.

\* \* \* \* \*

## MINORITY VIEWS

H.R. 4263 would increase the limit established by the Jump Start Our Business Startups (JOBS) Act for Regulation A+ offerings from \$50 million to \$75 million, and adjust it for inflation every two years. Such an increase is unnecessary, not supported by the data, and potentially harmful.

First, the SEC only recently implemented Regulation A+, which became effective in June 2015 to allow companies claiming Tier 2 status to raise \$50 million from the public with less regulatory requirements and oversight than a registered offering. The limited data so far suggests that there is no need to raise that \$50 million limit. An SEC study of Regulation A+ offerings between June 19, 2015 and October 31, 2016 found that the average issuer was only seeking up to approximately \$18 million and issuers were generally small, early stage companies with limited collateral, no revenue, and no net income. According to SEC staff, as of August 31, 2017 only thirty-six percent of the 144 issuers using Tier 2 sought the maximum amount. However, only 7 percent of the 44 issuers that have actually completed their Tier 2 offerings have raised the maximum amount.

Second, Congress specifically acknowledged that it may be appropriate to raise the Regulation A+ limit in the JOBS Act in the future by requiring the SEC to review the offering limit every two years, and if it determines not to increase the limit, to report its reasons to Congress. On April 5, 2016, the SEC sent Congress its report, which stated: “[g]iven the short period of time that the final rules have been in effect and in light of the limited number of Regulation A+ offerings qualified and completed to date, the Commission does not believe that the information currently reported by companies on the amount of capital raised pursuant to Regulation A+ is sufficient to determine whether it would be appropriate to propose an increase in the Tier 2 \$50 million offering limit.” The SEC is due to conduct additional analysis of the offering limit next April.

Finally, the bill arbitrarily increases the offering limit without any additional investor protections. According to Americans for Financial Reform, which opposes the bill, “[i]ncreasing the \$50 million cap will only further reduce incentives for companies to enter public markets, which is harmful since public markets offer greater investor protection and liquidity.” Indeed, under the current system, six Tier 2 issuers have already listed their shares on an exchange, becoming true public companies. This positive development suggests that Regulation A+ is working as intended and expanding it could discourage companies from becoming public. The bill is also opposed by Public Citizen and Consumer Federation of America.

For all of these reasons, we oppose H.R. 4263.

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