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Senate

The Senate met at 2 p.m. and was called to order by the Honorable JEFF BINGAMAN, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God of love, give our lawmakers wisdom to know what they ought to do. Create in them a passion to seek the truth, the humility to accept advice, and the courage to act with integrity. Deliver them from the lack of resistance which too easily yields to temptation and from the procrastination which puts things off until it is too late. May Your wisdom motivate them to faithfully follow Your commands. Empower each of them with the grace to seek and to find, to know and to love, to obey and to live the truth.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEFF BINGAMAN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 19, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF BINGAMAN, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUE,
President pro tempore.

Mr. BINGAMAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following any leader remarks the Senate will be in morning business until 4:30 this afternoon. The filing deadline for all first-degree amendments to the substitute amendment to H.R. 3606 is 4 o'clock this afternoon.

Following morning business, the Senate will begin consideration of H.R. 3606, the capital formation/IPO bill.

There will be no votes today. We will have a couple of votes in the morning.

EXPORT-IMPORT BANK

Mr. REID. Mr. President, this week the Senate resumes debate on a measure to improve innovators' access to capital. This bill passed the House on a bipartisan vote and has President Obama's support. We could make this legislation even better by passing the modest consumer protections included in the substitute amendment we will consider tomorrow. But Members of both parties agree we should pass it quickly. We will finish work on this legislation this week.

It is nice to see Democrats and Republicans standing on common ground for a change. But while this IPO proposal will be good for business—helping to give startups the flexibility they need to hire and grow—experts agree its impact on job creation will be limited. The IPO bill is a good bill, but we all recognize its job creation impact will be fairly limited.

We want to do something with this legislation to increase the amount of

jobs that will be forthcoming soon, which we have done. So as part of this IPO bill, it is important Congress also reauthorize the Ex-Im Bank, and do it now.

Reauthorization of the Ex-Im Bank will help American exporters compete in a global economy and sell more of their products overseas. Last year, Ex-Im Bank financing helped 3,600 private companies and almost 300,000 jobs were added in more than 2,000 communities. That is why the Ex-Im Bank has always enjoyed broad bipartisan support.

The last time this measure came before the body, it was offered by a Republican Senator and was passed by unanimous consent. The reauthorization legislation we will vote on tomorrow is also bipartisan. It passed the Banking Committee unanimously. It has three Republican cosponsors and the strong backing of the U.S. Chamber of Commerce. Yet I read that some of my Republican colleagues don't want to advance this bipartisan measure.

Remember, it does not increase the debt whatsoever. Instead, I have been told that some Republicans want to start another drawn-out, knockdown fight over a proposal that passed unanimously the last time the Senate considered it. It doesn't make sense.

So let's review what is at stake. Unless Congress acts, Ex-Im Bank may hit its lending limit this month. American exporters could no longer rely on an even playing field with global competitors.

The Ex-Im Bank loans money to American businesses when private lending is not available. Its investments made \$41 billion in U.S. exports possible last year alone. That is why Ex-Im Bank Chairman Fred Hochberg says our competitors abroad "are licking their chops" at the idea that America would stop backing businesses that sell their products overseas.

Many of the businesses that are growing and hiring because of Export-Import Bank financing are small businesses. But the men and women who

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run large outfits such as Boeing, American Express, Johnson & Johnson, Caterpillar, GE, and Motorola are also on record in supporting the Ex-Im Bank.

American entrepreneurs can't afford Congress to give up on them now. China already provides three to four times as much financing as we do to help Chinese exporters. So we must help American exporters. We must continue to give American businesses a fair shot to compete in a global market. Since Ex-Im Bank doesn't add a penny to the deficit, there is no excuse for Republicans not to support it. The nonpartisan Congressional Budget Office says this commonsense legislation will actually reduce the deficit by about \$1 billion.

It is critical we pass the IPO bill to help businesses access capital, but it is even more important we reauthorize the job-creating Export-Import Bank which helps those companies compete abroad. This proposal will support hundreds of thousands of more jobs in the small business capital bill. Together it will be a real knockout. It will be great for America.

Democrats brought this measure to the floor in an effort to find more common ground, and passing it would be another major accomplishment of which both parties can be proud.

RESERVATION OF LEADER TIME

Mr. REID. Will the Chair announce the business of the day.

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 4:30 p.m. with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Rhode Island.

ORDER OF PROCEDURE

Mr. REED. Mr. President, I ask unanimous consent to speak for up to 45 minutes in morning business, and I will be prepared to yield back such time as I do not use.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

JOBS ACT

Mr. REED. Mr. President, today I rise to discuss H.R. 3606, the so-called JOBS Act. As chairman of the Subcommittee on Securities, Insurance, and Investment of the Senate Banking Committee, I wish all of my colleagues to know this legislation, as it is currently drafted, is not ready to become law—and if it does, it could have unintended consequences that will hurt investors, seniors, and average American families.

One of the supposed premises behind this legislation is that if we just deregulate the securities market, then more companies will choose to issue public stock. The only reason they have been deterred from going to the public markets, according to this view, is the excessive regulatory burdens placed upon them.

The Banking Committee has been holding a series of hearings on different provisions in this legislation, and the reason we have discovered there have been fewer IPOs does not appear to be connected to regulatory burdens in any real way, but it appears to be more connected to economic and geographic factors. That being said, many of us hear on a daily basis, despite the recent financial crisis, about how the American regulatory system is making us less competitive, especially in the context of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In fact, in testimony before the Senate Banking Committee, Lynn Turner, a former SEC chief accountant, states that the data says otherwise. In his words:

The reason IPOs track the economy is that investors invest to earn a return. When the economy is growing, companies can grow. . . . However, when the economy has stalled or is declining, and companies are not growing, investors simply cannot achieve the types of return they need to justify making an investment. . . . As a result of the downturns in the economy that occurred during much of the 1970s brought on in part by withdrawal from Vietnam, the recession brought on by inflation at the beginning of the 1980s, the dot com bubble and the corporate scandals, and the most recent great recession, investors became concerned about returns that could be earned in the markets and IPOs declined. As the economy and employment have recovered after each of these downturns, so has the IPO market.

Mr. Turner went on to state when he served on a Colorado commission that was exploring why so many small companies were failing in Colorado, he said:

[W]e found that access to capital was not the primary cause of failure. Rather it was lack of sufficient expertise and management within the company including in such areas as marketing and operations. While access to sufficient capital for any company is important, I have found that those emerging companies with better management teams and proven products, or products with great growth potential are able to obtain it. Those are the types of companies VCs and private equities seek out.

VCs are venture capital companies.

As another securities expert, Professor Mercer Bullard, the Jessie D. Puckett, Jr. Lecturer and Associate Professor of Law at the University of Mississippi School of Law, wrote to me in a letter dated March 15 of this year:

The exemption for emerging growth companies would exempt so many companies from key investor protection provisions that the world-leading brand that is the "U.S. public company" would be substantially weakened.

So how do we find the balance between facilitating capital formation while maintaining fair, orderly, and ef-

ficient markets and protecting investors?

As chair of the Subcommittee on Securities, Insurance and Investment, I want all of my colleagues to know this legislation, as it is currently drafted, does not have that right balance.

We are getting inundated with letters and phone calls from securities experts from around the country saying: Please slow down and let this legislation be improved and amended. On Friday, Commissioner Luis Aguilar of the Securities and Exchange Commission stated:

It is clear to me that H.R. 3606 in its current form weakens or eliminated many regulations designed to safeguard investors. I must voice my concerns because as an SEC Commissioner, I cannot sit idly by when I see potential legislation that could harm investors. This bill seems to impose tremendous costs and potential harm on investors with little or no corresponding benefit.

The Chairman of the Securities and Exchange Commission, Mary Schapiro, wrote in a letter dated March 13, 2012:

While I recognize that H.R. 3606 is the product of a bipartisan effort designed to facilitate capital formation and includes certain promising approaches, I believe there are provisions that should be added or modified to improve investor protections that are worthy of Senate consideration.

In a Banking Committee hearing we held on March 6, 2012, Professor Jay Ritter, the Cordell Professor of Finance of the University of Florida, also testified that we should be careful because some of these bills could actually decrease capital formation and discourage job growth. He stated:

It is possible that by making it easier to raise money privately, creating some liquidity without being public, restricting information that stockholders have access to . . . restricting the ability of public market shareholders to constrain managers after investors contribute capital, and driving out independent research, the net effects of these bills might be to reduce capital formation and/or the number of small IPOs.

In a hearing before the Securities, Insurance, and Investment Subcommittee in December, Professor John Coates, the John F. Cogan Professor of Law and Economics at Harvard Law School told us some of the proposals in the House bill actually have the potential to harm job growth. He stated:

Whether the proposals will in fact increase job growth depends on how intensively they will lower offer costs, how extensively new offerings will take advantage of the new means of raising capital, how much more fraud can be expected to occur as a result of the changes, how serious the fraud will be, and how much the reduction in information verifiability will be as a result of these changes. . . . Thus, the proposals could not only generate front-page scandals, but reduce the very thing they are being promoted to increase: Job growth.

In other words, if these bills don't protect investors enough more fraud will occur, and it will actually decrease access to capital for smaller companies.

We have also heard from respected business commentators about the