

COMMITTEE ON CAPITAL MARKETS REGULATION

March 26, 2012

The Honorable John Boehner
Speaker
U.S. House of Representatives
H-232 Th Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204 The Capitol
Washington, D.C. 20515

Re.: The Jumpstart Our Business Startups Act (JOBS Act)

Dear Mr. Speaker and Leader Pelosi:

The Committee on Capital Markets Regulation (Committee) is writing to express our support for many of the proposals contained in the Jumpstart Our Business Startups Act (JOBS Act). H.R. 3606 was passed in the House of Representatives on March 8 with a 390-23 vote, and elicited the support of President Obama.¹ It was then passed in the Senate on March 22 with a 73-26 vote, together with an amendment, S. 2190 (Merkley Amendment), which addresses crowdfunded securities.² The JOBS Act reflects several of the recommendations made by the IPO Task Force to the Department of the Treasury last October.³ We support this important legislation, which will facilitate an increase in public and private offerings in the United States, and in turn will make venture investments in new companies, that fuel employment in the United States, more attractive.⁴

Since 2005, the Committee, composed of 31 members, has been dedicated to improving the regulation of U.S. capital markets. Our research has provided an independent and empirical foundation for public policy. In November 2006, the Committee released an interim report on the competitiveness of the U.S. capital markets (Report). The Report highlighted the fact that approximately 40% of U.S. employment in publicly traded firms was in firms that had been nurtured by venture capital investments.⁵ Furthermore, the Report found that a main factor contributing to the loss of competitiveness of U.S. public and private markets is the differences in legal rules and regulations governing U.S. public markets and foreign and private alternatives. It concluded that improving the regulation of U.S. public markets is critical to better attract venture investments.

¹ Jumpstart Our Business Startups Act, H.R. 3606, 112th Cong. (as passed by House of Representatives, Mar. 8, 2012); Statement of Administration Policy, Executive Office of the President, H.R. 3606 – Jumpstart Our Business Startups Act (Mar. 6, 2012),

http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr3606h_20120306.pdf.

² CROWDFUND Act, S. 2190, 112th Cong. (as passed by Senate, Mar. 22, 2012).

³ IPO Task Force, *Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth* (Oct. 20, 2011).

⁴ One member of the Committee does not support the statements in this letter.

⁵ Comm. on Capital Mkts. Reg., *Interim Report of the Committee on Capital Markets Regulation 1* (November 2006), /2006/11/interim-report/.

The JOBS Act contains various proposals aimed to facilitate capital raising, in both the public and private markets, by growth companies. Regarding capital raising in the public markets, Title I of the JOBS Act—“Reopening American Capital Markets to Emerging Growth Companies”—proposes a definition of “emerging growth company” (EGC). EGC’s are new public issuers with total annual revenues of less than \$1 billion and less than \$700 million in market value after their IPOs. Under the JOBS Act, EGCs are eligible for exemptions from requirements that would otherwise apply to newly-public companies. These include reduced disclosure obligations regarding executive compensation, reduced financial disclosure requirements, an extended compliance period for certain audit standards, an extended compliance period regarding internal control audits required by The Sarbanes-Oxley Act (SOX), exemptions from certain restrictions on provision of research on EGCs, expanded permissible communications with investors, the ability to confidentially file draft registration statements, and a requirement for a study and report on “tick size,” among other issues.

Various objections have been raised to these proposals, and we will address several of the more commonly voiced objections here. First, certain critics of the JOBS Act have argued that the thresholds in the definition of “emerging growth company” are too high and that a very significant percentage of public offerings will be eligible for exemptions under the JOBS Act. While we do not disagree that a significant number of new offerings may qualify for these exemptions, we regard this as good, not bad—the point is to get more public offerings of EGCs. Critics have also expressed concern that the exemption of EGCs from certain audit and accounting requirements could be confusing to investors. Any such confusion could be easily addressed with disclosure in the EGCs’ financials informing investors of the exemptions being utilized and the limitations on the disclosure presented. Concerns have also been raised over the proposed delayed compliance with SOX; arguments have been made that existing SEC rules already provide a two-year compliance period, and furthermore, it may be more costly for EGCs to begin reporting after a compliance period, and to retrofit internal audit controls on their existing reporting systems after their IPO, than it would be to comply from the start. According to an SEC survey, SOX cost the average public company more than \$2 million in direct costs alone in 2009; the ability to delay incurrance of these costs would certainly benefit growth companies immediately following their IPOs. Further, the JOBS Act provides an opt-in right for EGCs that decide they would prefer not to take advantage of exemptions offered under the act.

We strongly support the proposed requirement for a study and report on decimalization or “tick size.” Permitting flexibility in determining the increments at which growth companies can trade will make trading in these companies more appealing to market-makers, who stand to earn more profit on these trades despite the relatively small size of the companies. More trading will add to the liquidity of these investments which in turn will encourage their offerings. We believe a study into the potential benefits of such a change is a step in the right direction. We would similarly support the inclusion in the JOBS Act of a requirement for a study on whether to allow growth companies to compensate broker-dealers to make markets in their stock, as this might also enhance liquidity.

The JOBS Act also seeks to make private offerings more attractive. More attractive private markets for shares can also lead to more venture investment. Thus, the JOBS Act removes the ban on general solicitation and advertising for offerings of securities to accredited investors. This is

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warranted because even with expanded solicitation, in the end private offerings can only be sold to “accredited investors.” While critics suggest the potential for fraud, this argument is hard to defend as fraudsters by their nature are not observant of SEC marketing limitations.

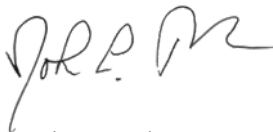
Many commenters have also raised the issue that the existing “accredited investor” definition, and the process by which such status is determined by broker-dealers selling the securities, needs improvement. This may be true but this is not an argument against broader solicitation—it would be a problem without any reform.

The JOBS Act would also expand the current exemption from registration under the Securities Exchange Act of 1934 to cover companies with 2,000 investors or 500 non-accredited investors. Critics argue that by reducing public reporting requirements, the JOBS Act will limit the ability of shareholders to make informed investment decisions. We understand the SEC is currently engaged in a study on various capital formation issues including thresholds for reporting requirements. We believe that further inquiry into this subject is warranted, and should include an analysis of the impact of expansion of the exemption from public reporting on large public companies. We note the JOBS Act does not raise the limit for de-registration, or the threshold at which public reporting companies can elect to “go dark” and cease providing public reporting, other than for banks. This threshold remains at 300 investors in most cases. We believe that any study of the impact of an expanded exemption should also consider the impact of an increase in the de-registration threshold which would seem to be a logical corollary.


Finally, the JOBS Act proposes an exemption from the Securities Act registration requirements for “crowdfunding,” which would permit issuers to sell securities to large numbers of non-retail investors, subject to certain limitations including the size of the offerings, individual investor contribution limits, and other limits. Objections to this proposal include that proposed contribution limits are too high, intermediaries who may facilitate these offerings on behalf of issuers should be subject to further oversight, and that issuers themselves should be subject to increased disclosure requirements. The Merkley Amendment, which addresses these concerns, might be a better approach.

Thank you for considering our concerns. Please do not hesitate to contact us at (617) 384-5364 if we can be of any further assistance.

Respectfully submitted,



John L. Thornton
CO-CHAIR



Hal S. Scott
PRESIDENT



R. Glenn Hubbard
CO-CHAIR