SECTION 1. SHORT TITLE.

This Act may be cited as the “Jumpstart Our Business Startups Act”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

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TITLE I—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 101. 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.”.


(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) 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.”.

(e) OTHER DEFINITIONS.—As used in this title, 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 state-
ment under the Securities Act of 1933 occurred on or be-
fore December 8, 2011.

SEC. 102. DISCLOSURE OBLIGATIONS.

(a) EXECUTIVE COMPENSATION.—

(1) EXEMPTION.—Section 14A(e) of the Securi-
ties 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 COM-
PANIES.—

“(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 TREAT-
MENT.—An issuer that was an emerging growth
company but is no longer an emerging growth
company shall include the first separate resolu-
tion 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”;

(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 com-
ply 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 re-
spect 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. 103. 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”.

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February 27, 2012 (6:53 p.m.)
SEC. 104. 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. 105. 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 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.”.

(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.”.

(e) 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 (e) 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 re-
spect to the securities of an emerging growth company,
either—

(1) within any prescribed period of time follow-

ing the initial public offering date of the emerg-

ing 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 as-

sociation 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. 106. 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 com-

pany, prior to its initial public offering date, may

confidentially submit to the Commission a draft reg-

istration 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 pro-
vided 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 con-
sidered a statute described in subsection (b)(3)(B)
of such section 552. Information described in or ob-
tained 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.”.

(b) TICK SIZE.—Section 11A(c) of the Securities Ex-
change 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 Commiss-
ion shall conduct a study examining the transi-
tion to trading and quoting securities in one
penny increments, also known as
decimalization. The study shall examine the im-
pact 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. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) In General.—With respect to an exemption provided to emerging growth companies under this title, or an amendment made by this title, 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 102(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. 108. 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 the 180 days after the date of enactment of this title, 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.

**TITLE II—ACCESS TO CAPITAL FOR JOB CREATORS**

**SEC. 201. MODIFICATION OF EXEMPTION.**

(a) **Removal of Restriction.**—Section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)) is amended by adding before the period the following: “, whether or not such transactions involve general solicitation or general advertising”.

(b) **Modification of Rules.**—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall revise its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of such title shall not apply to offers and sales of securities made pursuant to section 230.506, provided that all purchasers of the securities are accredited investors. Such rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission.
TITLE III—ENTREPRENEUR
ACCESS TO CAPITAL

SEC. 301. CROWDFUNDING EXEMPTION.

(a) Securities Act of 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) (as amended by section 201) is further amended by adding at the end the following:

“(6) transactions involving the offer or sale of securities by an issuer, provided that—

“(A) the aggregate amount sold within the previous 12-month period in reliance upon this exemption is—

“(i) $1,000,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, or less;

or

“(ii) if the issuer provides potential investors with audited financial statements, $2,000,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, or less;
“(B) the aggregate amount sold to any investor in reliance on this exemption within the previous 12-month period does not exceed the lesser of—

“(i) $10,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics; and

“(ii) 10 percent of such investor’s annual income;

“(C) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and

“(D) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).”.

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 is amended by inserting after section 4 the following:
SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

(a) REQUIREMENTS ON INTERMEDIARIES.—For purposes of section 4(6), a person acting as an intermediary in a transaction involving the offer or sale of securities shall comply with the requirements of this subsection if the intermediary—

“(1) warns investors, including on the intermediary’s website used for the offer and sale of such securities, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

“(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the intermediary’s physical address, website address, and the names of the intermediary and employees of the intermediary, and keep such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the intermediary’s website;
“(6) requires each potential investor to answer questions demonstrating—

“(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) an understanding of the risk of illiquidity; and

“(C) such other areas as the Commission may determine appropriate by rule or regulation;

“(7) requires the issuer to state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian described under paragraph (10) withholds offering proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

“(8) carries out a background check on the issuer’s principals;

“(9) provides the Commission and potential investors with notice of the offering, not later than the first day securities are offered to potential investors, including—

“(A) the issuer’s name, legal status, physical address, and website address;
“(B) the names of the issuer’s principals;

“(C) the stated purpose and intended use
of the proceeds of the offering sought by the
issuer; and

“(D) the target offering amount and the
deadline to reach the target offering amount;

“(10) outsources cash-management functions to
a qualified third party custodian, such as a broker
or dealer registered under section 15(b)(1) of the
Securities Exchange Act of 1934 or an insured de-
pository institution;

“(11) maintains such books and records as the
Commission determines appropriate;

“(12) makes available on the intermediary’s
website a method of communication that permits the
issuer and investors to communicate with one an-
other;

“(13) provides the Commission with a notice
upon completion of the offering, which shall include
the aggregate offering amount and the number of
purchasers; and

“(14) does not offer investment advice.

“(b) REQUIREMENTS ON ISSUERS IF NO INTER-
MEDIARY.—For purposes of section 4(6), an issuer who
offers or sells securities without an intermediary shall
comply with the requirements of this subsection if the issuer—

“(1) warns investors, including on the issuer’s website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

“(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the issuer’s physical address, website address, and the names of the principals and employees of the issuers, and keeps such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the issuer’s website;

“(6) requires each potential investor to answer questions demonstrating—

“(A) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) an understanding of the risk of illiquidity; and
“(C) such other areas as the Commission may determine appropriate by rule or regulation;

“(7) states a target offering amount and ensures that the third party custodian described under paragraph (9) withholds offering proceeds until the aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

“(8) provides the Commission with notice of the offering, not later than the first day securities are offered to potential investors, including—

“(A) the stated purpose and intended use of the proceeds of the offering sought by the issuer; and

“(B) the target offering amount and the deadline to reach the target offering amount;

“(9) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 or an insured depository institution;

“(10) maintains such books and records as the Commission determines appropriate;
“(11) makes available on the issuer’s website a method of communication that permits the issuer and investors to communicate with one another;

“(12) does not offer investment advice;

“(13) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and

“(14) discloses to potential investors, on the issuer’s website, that the issuer has an interest in the issuance.

“(c) VERIFICATION OF INCOME.—For purposes of section 4(6), an issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor’s income.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9), (a)(13), (b)(8), and (b)(13) and the information described under subsections (a)(4) and (b)(4) available to the States.

“(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(6), a purchaser may not transfer such se-
securities during the 1-year period beginning on the date
of purchase, unless such securities are sold to—

“(1) the issuer of such securities; or

“(2) an accredited investor.

“(f) CONSTRUCTION.—

“(1) NO REGISTRATION AS BROKER.—With re-

spect to a transaction described under section 4(6)

involving an intermediary, such intermediary shall

not be required to register as a broker under section

15(a)(1) of the Securities Exchange Act of 1934

solely by reason of participation in such transaction.

“(2) NO PRECLUSION OF OTHER CAPITAL RAIS-

ING.—Nothing in this section or section 4(6) shall

be construed as preventing an issuer from raising

capital through methods not described under section

4(6).”.

(c) RULEMAKING.—Not later than 180 days after the
date of the enactment of this Act, the Securities and Ex-
change Commission shall issue such rules as may be nec-

essary to carry out section 4A of the Securities Act of

1933. In issuing such rules, the Commission shall consider

the costs and benefits of the action.

(d) DISQUALIFICATION.—Not later than 180 days

after the date of the enactment of this Act, the Securities

and Exchange Commission shall by rule or regulation es-
establish disqualification provisions under which an issuer shall not be eligible to utilize the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. The Commission shall also establish disqualification provisions under which an intermediary shall not be eligible to act as an intermediary in connection with an offering utilizing the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the intermediary or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. Such provisions 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).

SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended—

(1) by striking “(5) For the purposes” and inserting:

“(5) Definitions.—

“(A) In general.—For the purposes”; and
(2) by adding at the end the following:

“(B) Exclusion for persons holding certain securities.—For purposes of this subsection, securities held by persons who purchase such securities in transactions described under section 4(6) of the Securities Act of 1933 shall not be deemed to be ‘held of record’. “.

SEC. 303. PREEMPTION OF STATE LAW.

(a) In General.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (E) and (F), respectively; and

(2) by inserting after subparagraph (B) the following:

“(C) section 4(6);”.

(b) Clarification of the Preservation of State Enforcement Authority.—

(1) In General.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any
other person or entity using the exemption from registration provided by section 4(6) of such Act.

(2) Clarification of State Jurisdiction

Over Unlawful Conduct of Intermediaries, Issuers, and Custodians.—Section 18(c)(1) of the Securities Act of 1933 is amended by striking “with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.” and inserting the following: “in connection with securities or securities transactions, with respect to—

“(A) fraud or deceit;
“(B) unlawful conduct by a broker or dealer; and
“(C) with respect to a transaction described under section 4(6), unlawful conduct by an intermediary, issuer, or custodian.”.

Title IV—Small Company Capital Formation

Sec. 401. Authority to Exempt Certain Securities.

(a) In General.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking “(b) The Commission” and inserting the following:

“(b) Additional Exemptions.—
“(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—

The Commission”; and

(2) by adding at the end the following:

“(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.

“(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 Commis-
sion 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 substan-
tially 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 review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, 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.”.

(b) TREATMENT AS COVERED SECURITIES FOR PURPOSES OF NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (as amended by section 303) (15 U.S.C. 77r(b)(4)) is further amended by inserting after subparagraph (C) (as added by such section) the following:

“(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

“(i) offered or sold on a national securities exchange; or

“(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;”.
(c) CONFORMING AMENDMENT.—Section 4(5) of the
Securities Act of 1933 is amended by striking “section
3(b)” and inserting “section 3(b)(1)”.

SEC. 402. STUDY ON THE IMPACT OF STATE BLUE SKY
LAWS ON REGULATION A OFFERINGS.

The Comptroller General shall conduct a study on the
impact of State laws regulating securities offerings, or
“Blue Sky laws”, on offerings made under Regulation A
(17 C.F.R. 230.251 et seq.). The Comptroller General
shall transmit a report on the findings of the study to the
Committee on Financial Services of the House of Rep-
resentatives, and the Committee on Banking, Housing,
and Urban Affairs of the Senate not later than 3 months
after the date of enactment of this Act.

TITLE V—PRIVATE COMPANY
FLEXIBILITY AND GROWTH

SEC. 501. THRESHOLD FOR REGISTRATION.

Section 12(g)(1)(A) of the Securities Exchange Act
of 1934 (15 U.S.C. 78l(g)(1)(A)) is amended to read as
follows:

“(A) within 120 days after the last day of its
first fiscal year ended on which the issuer has total
assets exceeding $10,000,000 and a class of equity
security (other than an exempted security) held of
record by 1,000 persons, and”.
SEC. 502. EMPLOYEES.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: “For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of ‘held of record’ shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.”

SEC. 503. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall revise the definition of “held of record” pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to implement the amendment made by section 502. The Commission shall also adopt safe harbor provisions that issuers can follow when determining whether holders of their securities are accredited investors or that holders of their securities received the securities pursuant to an employee compensation plan in transactions that were exempt from the registration requirements of section 5 of the Securities Act of 1933.

TITLE VI—CAPITAL EXPANSION

SEC. 601. SHAREHOLDER THRESHOLD FOR REGISTRATION.

(a) Amendments to Section 12 of the Securities Exchange Act of 1934.—Section 12(g) of the Se-
The Securities Exchange Act of 1934 (15 U.S.C. 78l (g)) is further amended—

(1) in paragraph (1), by amending subparagraph (B) to read as follows:

“(B) in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons,”; and

(2) in paragraph (4), by striking “three hundred” and inserting “300 persons, or, in the case of a bank, as such term is defined in section 3(a)(6), or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons”.

(b) Amendments to Section 15 of the Securities Exchange Act of 1934.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended, in the third sentence, by striking “three hundred” and inserting “300 persons, or, in the case of bank or a bank holding company, as such term is defined in

SEC. 602. RULEMAKING.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations to implement this title and the amendments made by this title.