

FEBRUARY 27, 2012

RULES COMMITTEE PRINT 112-17
TEXT OF H.R. 3606, THE REOPENING AMERICAN
CAPITAL MARKETS TO EMERGING GROWTH
COMPANIES ACT OF 2011

[Showing the text of H.R. 1070, H.R. 2930, and H.R. 2940 as passed by the House, H.R. 2167 as reported and H.R. 3606 as ordered reported by the Committee on Financial Services, and H.R. 4088 as introduced, along with necessary technical and conforming changes.]

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Jumpstart Our Busi-
3 ness Startups Act”.

4 SEC. 2. TABLE OF CONTENTS.

5 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**

Sec. 101. Definitions.
Sec. 102. Disclosure obligations.
Sec. 103. Internal controls audit.
Sec. 104. Auditing standards.
Sec. 105. Availability of information about emerging growth companies.
Sec. 106. Other matters.
Sec. 107. Opt-in right for emerging growth companies.
Sec. 108. Review of Regulation S-K.

TITLE II—ACCESS TO CAPITAL FOR JOB CREATORS

Sec. 201. Modification of exemption.

TITLE III—ENTREPRENEUR ACCESS TO CAPITAL

Sec. 301. Crowdfunding exemption.
Sec. 302. Exclusion of crowdfunding investors from shareholder cap.
Sec. 303. Preemption of State law.

TITLE IV—SMALL COMPANY CAPITAL FORMATION

- Sec. 401. Authority to exempt certain securities.
- Sec. 402. Study on the impact of State Blue Sky laws on Regulation A offerings.

TITLE V—PRIVATE COMPANY FLEXIBILITY AND GROWTH

- Sec. 501. Threshold for registration.
- Sec. 502. Employees.
- Sec. 503. Commission rulemaking.

TITLE VI—CAPITAL EXPANSION

- Sec. 601. Shareholder threshold for registration.
- Sec. 602. Rulemaking.

1 **TITLE I—REOPENING AMERICAN**
2 **CAPITAL MARKETS TO**
3 **EMERGING GROWTH COMPA-**
4 **NIES**

5 **SEC. 101. DEFINITIONS.**

6 (a) SECURITIES ACT OF 1933.—Section 2(a) of the
7 Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by
8 adding at the end the following:

9 “(19) The term ‘emerging growth company’
10 means an issuer that had total annual gross reve-
11 nues of less than \$1,000,000,000 during its most re-
12 cently completed fiscal year. An issuer that is an
13 emerging growth company as of the first day of that
14 fiscal year shall continue to be deemed an emerging
15 growth company until the earliest of—

16 “(A) the last day of the fiscal year of the
17 issuer during which it had total annual gross
18 revenues of \$1,000,000,000 or more;

1 “(B) the last day of the fiscal year of the
2 issuer following the fifth anniversary of the date
3 of the first sale of common equity securities of
4 the issuer pursuant to an effective registration
5 statement under this title; or

6 “(C) the date on which such issuer is
7 deemed to be a ‘large accelerated filer’, as de-
8 fined in section 240.12b-2 of title 17, Code of
9 Federal Regulations, or any successor thereto.”.

10 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
11 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)) is amended—

13 (1) by redesignating paragraph (77), as added
14 by section 941(a) of the Investor Protection and Se-
15 curities Reform Act of 2010 (Public Law 111-203,
16 124 Stat. 1890), as paragraph (79); and

17 (2) by adding at the end the following:

18 “(80) The term ‘emerging growth company’
19 means an issuer that had total annual gross reve-
20 nues of less than \$1,000,000,000 during its most re-
21 cently completed fiscal year. An issuer that is an
22 emerging growth company as of the first day of that
23 fiscal year shall continue to be deemed an emerging
24 growth company until the earliest of—

1 “(A) the last day of the fiscal year of the
2 issuer during which it had total annual gross
3 revenues of \$1,000,000,000 or more;

4 “(B) the last day of the fiscal year of the
5 issuer following the fifth anniversary of the date
6 of the first sale of common equity securities of
7 the issuer pursuant to an effective registration
8 statement under the Securities Act of 1933; or

9 “(C) the date on which such issuer is
10 deemed to be a ‘large accelerated filer’, as de-
11 fined in section 240.12b-2 of title 17, Code of
12 Federal Regulations, or any successor thereto.”.

13 (c) OTHER DEFINITIONS.—As used in this title, the
14 following definitions shall apply:

15 (1) COMMISSION.—The term “Commission”
16 means the Securities and Exchange Commission.

17 (2) INITIAL PUBLIC OFFERING DATE.—The
18 term “initial public offering date” means the date of
19 the first sale of common equity securities of an
20 issuer pursuant to an effective registration state-
21 ment under the Securities Act of 1933.

22 (d) EFFECTIVE DATE.—Notwithstanding section
23 2(a)(19) of the Securities Act of 1933 and section
24 3(a)(80) of the Securities Exchange Act of 1934, an issuer
25 shall not be an emerging growth company for purposes

1 of such Acts if the first sale of common equity securities
2 of such issuer pursuant to an effective registration state-
3 ment under the Securities Act of 1933 occurred on or be-
4 fore December 8, 2011.

5 **SEC. 102. DISCLOSURE OBLIGATIONS.**

6 (a) EXECUTIVE COMPENSATION.—

7 (1) EXEMPTION.—Section 14A(e) of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C. 78n–1(e)) is
9 amended—

10 (A) by striking “The Commission may”
11 and inserting the following:

12 “(1) IN GENERAL.— The Commission may”;

13 (B) by striking “an issuer” and inserting
14 “any other issuer”; and

15 (C) by adding at the end the following:

16 “(2) TREATMENT OF EMERGING GROWTH COM-
17 PANIES.—

18 “(A) IN GENERAL.—An emerging growth
19 company shall be exempt from the requirements
20 of subsections (a) and (b).

21 “(B) COMPLIANCE AFTER TERMINATION
22 OF EMERGING GROWTH COMPANY TREAT-
23 MENT.—An issuer that was an emerging growth
24 company but is no longer an emerging growth
25 company shall include the first separate resolu-

1 tion described under subsection (a)(1) not later
2 than the end of—

3 “(i) in the case of an issuer that was
4 an emerging growth company for less than
5 2 years after the date of first sale of com-
6 mon equity securities of the issuer pursu-
7 ant to an effective registration statement
8 under the Securities Act of 1933, the 3-
9 year period beginning on such date; and

10 “(ii) in the case of any other issuer,
11 the 1-year period beginning on the date the
12 issuer is no longer an emerging growth
13 company.”.

14 (2) PROXIES.—Section 14(i) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78n(i)) is amend-
16 ed by inserting “, for any issuer other than an
17 emerging growth company,” after “including”.

18 (3) COMPENSATION DISCLOSURES.—Section
19 953(b)(1) of the Investor Protection and Securities
20 Reform Act of 2010 (Public Law 111–203; 124
21 Stat. 1904) is amended by inserting “, other than
22 an emerging growth company, as that term is de-
23 fined in section 3(a) of the Securities Exchange Act
24 of 1934,” after “require each issuer”.

1 (b) FINANCIAL DISCLOSURES AND ACCOUNTING
2 PRONOUNCEMENTS.—

3 (1) SECURITIES ACT OF 1933.—Section 7(a) of
4 the Securities Act of 1933 (15 U.S.C. 77g(a)) is
5 amended—

6 (A) by striking “(a) The registration” and
7 inserting the following:

8 “(a) INFORMATION REQUIRED IN REGISTRATION
9 STATEMENT.—

10 “(1) IN GENERAL.—The registration”; and

11 (B) by adding at the end the following:

12 “(2) TREATMENT OF EMERGING GROWTH COM-
13 PANIES.—An emerging growth company—

14 “(A) need not present more than 2 years
15 of audited financial statements in order for the
16 registration statement of such emerging growth
17 company with respect to an initial public offer-
18 ing of its common equity securities to be effec-
19 tive, and in any other registration statement to
20 be filed with the Commission, an emerging
21 growth company need not present selected fi-
22 nancial data in accordance with section 229.301
23 of title 17, Code of Federal Regulations, for
24 any period prior to the earliest audited period

1 presented in connection with its initial public
2 offering; and

3 “(B) may not be required to comply with
4 any new or revised financial accounting stand-
5 ard until such date that a company that is not
6 an issuer (as defined under section 2(a) of the
7 Sarbanes-Oxley Act of 2002 (15 U.S.C.
8 7201(a)) is required to comply with such new
9 or revised accounting standard, if such stand-
10 ard applies to companies that are not issuers.”.

11 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
12 tion 13(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78m(a)) is amended by adding at the
14 end the following: “In any registration statement,
15 periodic report, or other reports to be filed with the
16 Commission, an emerging growth company need not
17 present selected financial data in accordance with
18 section 229.301 of title 17, Code of Federal Regula-
19 tions, for any period prior to the earliest audited pe-
20 riod presented in connection with its first registra-
21 tion statement that became effective under this Act
22 or the Securities Act of 1933 and, with respect to
23 any such statement or reports, an emerging growth
24 company may not be required to comply with any
25 new or revised financial accounting standard until

1 such date that a company that is not an issuer (as
2 defined under section 2(a) of the Sarbanes-Oxley
3 Act of 2002 (15 U.S.C. 7201(a)) is required to com-
4 ply with such new or revised accounting standard, if
5 such standard applies to companies that are not
6 issuers.”.

7 (c) OTHER DISCLOSURES.—An emerging growth
8 company may comply with section 229.303(a) of title 17,
9 Code of Federal Regulations, or any successor thereto, by
10 providing information required by such section with re-
11 spect to the financial statements of the emerging growth
12 company for each period presented pursuant to section
13 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)). An
14 emerging growth company may comply with section
15 229.402 of title 17, Code of Federal Regulations, or any
16 successor thereto, by disclosing the same information as
17 any issuer with a market value of outstanding voting and
18 nonvoting common equity held by non-affiliates of less
19 than \$75,000,000.

20 **SEC. 103. INTERNAL CONTROLS AUDIT.**

21 Section 404(b) of the Sarbanes-Oxley Act of 2002
22 (15 U.S.C. 7262(b)) is amended by inserting “, other than
23 an issuer that is an emerging growth company (as defined
24 in section 3 of the Securities Exchange Act of 1934),”
25 before “shall attest to”.

1 **SEC. 104. AUDITING STANDARDS.**

2 Section 103(a)(3) of the Sarbanes-Oxley Act of 2002
3 (15 U.S.C. 7213(a)(3)) is amended by adding at the end
4 the following:

5 “(C) TRANSITION PERIOD FOR EMERGING
6 GROWTH COMPANIES.—Any rules of the Board
7 requiring mandatory audit firm rotation or a
8 supplement to the auditor’s report in which the
9 auditor would be required to provide additional
10 information about the audit and the financial
11 statements of the issuer (auditor discussion and
12 analysis) shall not apply to an audit of an
13 emerging growth company, as defined in section
14 3 of the Securities Exchange Act of 1934. Any
15 additional rules adopted by the Board after the
16 date of enactment of this subparagraph shall
17 not apply to an audit of any emerging growth
18 company, unless the Commission determines
19 that the application of such additional require-
20 ments is necessary or appropriate in the public
21 interest, after considering the protection of in-
22 vestors and whether the action will promote ef-
23 ficiency, competition, and capital formation.”.

1 **SEC. 105. AVAILABILITY OF INFORMATION ABOUT EMERG-**
2 **ING GROWTH COMPANIES.**

3 (a) PROVISION OF RESEARCH.—Section 2(a)(3) of
4 the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is
5 amended by adding at the end the following: “The publica-
6 tion or distribution by a broker or dealer of a research
7 report about an emerging growth company that is the sub-
8 ject of a proposed public offering of the common equity
9 securities of such emerging growth company pursuant to
10 a registration statement that the issuer proposes to file,
11 or has filed, or that is effective shall be deemed for pur-
12 poses of paragraph (10) of this subsection and section 5(c)
13 not to constitute an offer for sale or offer to sell a security,
14 even if the broker or dealer is participating or will partici-
15 pate in the registered offering of the securities of the
16 issuer. As used in this paragraph, the term ‘research re-
17 port’ means a written, electronic, or oral communication
18 that includes information, opinions, or recommendations
19 with respect to securities of an issuer or an analysis of
20 a security or an issuer, whether or not it provides informa-
21 tion reasonably sufficient upon which to base an invest-
22 ment decision.”.

23 (b) SECURITIES ANALYST COMMUNICATIONS.—Sec-
24 tion 15D of the Securities Exchange Act of 1934 (15
25 U.S.C. 78o–6) is amended—

1 (1) by redesignating subsection (c) as sub-
2 section (d); and

3 (2) by inserting after subsection (b) the fol-
4 lowing:

5 “(c) LIMITATION.—Notwithstanding subsection (a)
6 or any other provision of law, neither the Commission nor
7 any national securities association registered under section
8 15A may adopt or maintain any rule or regulation in con-
9 nection with an initial public offering of the common eq-
10 uity of an emerging growth company—

11 “(1) restricting, based on functional role, which
12 associated persons of a broker, dealer, or member of
13 a national securities association, may arrange for
14 communications between a securities analyst and a
15 potential investor; or

16 “(2) restricting a securities analyst from par-
17 ticipating in any communications with the manage-
18 ment of an emerging growth company that is also
19 attended by any other associated person of a broker,
20 dealer, or member of a national securities associa-
21 tion whose functional role is other than as a securi-
22 ties analyst.”.

23 (c) EXPANDING PERMISSIBLE COMMUNICATIONS.—
24 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
25 is amended—

1 (1) by redesignating subsection (d) as sub-
2 section (e); and

3 (2) by inserting after subsection (c) the fol-
4 lowing:

5 “(d) LIMITATION.—Notwithstanding any other provi-
6 sion of this section, an emerging growth company or any
7 person authorized to act on behalf of an emerging growth
8 company may engage in oral or written communications
9 with potential investors that are qualified institutional
10 buyers or institutions that are accredited investors, as
11 such terms are respectively defined in section 230.144A
12 and section 230.501(a) of title 17, Code of Federal Regu-
13 lations, or any successor thereto, to determine whether
14 such investors might have an interest in a contemplated
15 securities offering, either prior to or following the date of
16 filing of a registration statement with respect to such se-
17 curities with the Commission, subject to the requirement
18 of subsection (b)(2).”.

19 (d) POST OFFERING COMMUNICATIONS.—Neither
20 the Commission nor any national securities association
21 registered under section 15A of the Securities Exchange
22 Act of 1934 may adopt or maintain any rule or regulation
23 prohibiting any broker, dealer, or member of a national
24 securities association from publishing or distributing any
25 research report or making a public appearance, with re-

1 spect to the securities of an emerging growth company,
2 either—

3 (1) within any prescribed period of time fol-
4 lowing the initial public offering date of the emerg-
5 ing growth company; or

6 (2) within any prescribed period of time prior
7 to the expiration date of any agreement between the
8 broker, dealer, or member of a national securities as-
9 sociation and the emerging growth company or its
10 shareholders that restricts or prohibits the sale of
11 securities held by the emerging growth company or
12 its shareholders after the initial public offering date.

13 **SEC. 106. OTHER MATTERS.**

14 (a) DRAFT REGISTRATION STATEMENTS.—Section 6
15 of the Securities Act of 1933 (15 U.S.C. 77f) is amended
16 by adding at the end the following:

17 “(e) EMERGING GROWTH COMPANIES.—

18 “(1) IN GENERAL.—Any emerging growth com-
19 pany, prior to its initial public offering date, may
20 confidentially submit to the Commission a draft reg-
21 istration statement, for confidential nonpublic review
22 by the staff of the Commission prior to public filing,
23 provided that the initial confidential submission and
24 all amendments thereto shall be publicly filed with
25 the Commission not later than 21 days before the

1 date on which the issuer conducts a road show, as
2 such term is defined in section 230.433(h)(4) of title
3 17, Code of Federal Regulations, or any successor
4 thereto.

5 “(2) CONFIDENTIALITY.—Notwithstanding any
6 other provision of this title, the Commission shall
7 not be compelled to disclose any information pro-
8 vided to or obtained by the Commission pursuant to
9 this subsection. For purposes of section 552 of title
10 5, United States Code, this subsection shall be con-
11 sidered a statute described in subsection (b)(3)(B)
12 of such section 552. Information described in or ob-
13 tained pursuant to this subsection shall be deemed
14 to constitute confidential information for purposes of
15 section 24(b)(2) of the Securities Exchange Act of
16 1934.”.

17 (b) TICK SIZE.—Section 11A(c) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78k-1(c)) is amended by
19 adding at the end the following new paragraph:

20 “(6) TICK SIZE.—

21 “(A) STUDY AND REPORT.—The Commis-
22 sion shall conduct a study examining the transi-
23 tion to trading and quoting securities in one
24 penny increments, also known as
25 decimalization. The study shall examine the im-

1 pact that decimalization has had on the number
2 of initial public offerings since its implementa-
3 tion relative to the period before its implemen-
4 tation. The study shall also examine the impact
5 that this change has had on liquidity for small
6 and middle capitalization company securities
7 and whether there is sufficient economic incen-
8 tive to support trading operations in these secu-
9 rities in penny increments. Not later than 90
10 days after the date of enactment of this para-
11 graph, the Commission shall submit to Con-
12 gress a report on the findings of the study.

13 “(B) DESIGNATION.—If the Commission
14 determines that the securities of emerging
15 growth companies should be quoted and traded
16 using a minimum increment of greater than
17 \$0.01, the Commission may, by rule not later
18 than 180 days after the date of enactment of
19 this paragraph, designate a minimum increment
20 for the securities of emerging growth companies
21 that is greater than \$0.01 but less than \$0.10
22 for use in all quoting and trading of securities
23 in any exchange or other execution venue.”.

1 **SEC. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPA-**
2 **NIES.**

3 (a) IN GENERAL.—With respect to an exemption pro-
4 vided to emerging growth companies under this title, or
5 an amendment made by this title, an emerging growth
6 company may choose to forgo such exemption and instead
7 comply with the requirements that apply to an issuer that
8 is not an emerging growth company.

9 (b) SPECIAL RULE.—Notwithstanding subsection (a),
10 with respect to the extension of time to comply with new
11 or revised financial accounting standards provided under
12 section 7(a)(2)(B) of the Securities Act of 1933 and sec-
13 tion 13(a) of the Securities Exchange Act of 1934, as
14 added by section 102(b), if an emerging growth company
15 chooses to comply with such standards to the same extent
16 that a non-emerging growth company is required to com-
17 ply with such standards, the emerging growth company—

18 (1) must make such choice at the time the com-
19 pany is first required to file a registration state-
20 ment, periodic report, or other report with the Com-
21 mission under section 13 of the Securities Exchange
22 Act of 1934 and notify the Securities and Exchange
23 Commission of such choice;

24 (2) may not select some standards to comply
25 with in such manner and not others, but must com-
26 ply with all such standards to the same extent that

1 a non-emerging growth company is required to com-
2 ply with such standards; and

3 (3) must continue to comply with such stand-
4 ards to the same extent that a non-emerging growth
5 company is required to comply with such standards
6 for as long as the company remains an emerging
7 growth company.

8 **SEC. 108. REVIEW OF REGULATION S-K.**

9 (a) REVIEW.—The Securities and Exchange Commis-
10 sion shall conduct a review of its Regulation S-K (17
11 C.F.R. 229.10 et seq.) to—

12 (1) comprehensively analyze the current reg-
13 istration requirements of such regulation; and

14 (2) determine how such requirements can be
15 updated to modernize and simplify the registration
16 process and reduce the costs and other burdens as-
17 sociated with these requirements for issuers who are
18 emerging growth companies.

19 (b) REPORT.—Not later the 180 days after the date
20 of enactment of this title, the Commission shall transmit
21 to Congress a report of the review conducted under sub-
22 section (a). The report shall include the specific rec-
23 ommendations of the Commission on how to streamline
24 the registration process in order to make it more efficient

1 and less burdensome for the Commission and for prospec-
2 tive issuers who are emerging growth companies.

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

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

6 (a) REMOVAL OF RESTRICTION.—Section 4(2) of the
7 Securities Act of 1933 (15 U.S.C. 77d(2)) is amended by
8 adding before the period the following: “, whether or not
9 such transactions involve general solicitation or general
10 advertising”.

11 (b) MODIFICATION OF RULES.—Not later than 90
12 days after the date of the enactment of this Act, the Secu-
13 rities and Exchange Commission shall revise its rules
14 issued in section 230.506 of title 17, Code of Federal Reg-
15 ulations, to provide that the prohibition against general
16 solicitation or general advertising contained in section
17 230.502(c) of such title shall not apply to offers and sales
18 of securities made pursuant to section 230.506, provided
19 that all purchasers of the securities are accredited inves-
20 tors. Such rules shall require the issuer to take reasonable
21 steps to verify that purchasers of the securities are accred-
22 ited investors, using such methods as determined by the
23 Commission.

1 **TITLE III—ENTREPRENEUR**
2 **ACCESS TO CAPITAL**

3 **SEC. 301. CROWDFUNDING EXEMPTION.**

4 (a) SECURITIES ACT OF 1933.—Section 4 of the Se-
5 curities Act of 1933 (15 U.S.C. 77d) (as amended by sec-
6 tion 201) is further amended by adding at the end the
7 following:

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

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

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

19 “(ii) if the issuer provides potential
20 investors with audited financial statements,
21 \$2,000,000, as such amount is adjusted by
22 the Commission to reflect the annual
23 change in the Consumer Price Index for
24 All Urban Consumers published by the Bu-
25 reau of Labor Statistics, or less;

1 “(B) the aggregate amount sold to any in-
2 vestor in reliance on this exemption within the
3 previous 12-month period does not exceed the
4 lesser of—

5 “(i) \$10,000, as such amount is ad-
6 justed by the Commission to reflect the an-
7 nual change in the Consumer Price Index
8 for All Urban Consumers published by the
9 Bureau of Labor Statistics; and

10 “(ii) 10 percent of such investor’s an-
11 nual income;

12 “(C) in the case of a transaction involving
13 an intermediary between the issuer and the in-
14 vestor, such intermediary complies with the re-
15 quirements under section 4A(a); and

16 “(D) in the case of a transaction not in-
17 volving an intermediary between the issuer and
18 the investor, the issuer complies with the re-
19 quirements under section 4A(b).”.

20 (b) REQUIREMENTS TO QUALIFY FOR
21 CROWDFUNDING EXEMPTION.—The Securities Act of
22 1933 is amended by inserting after section 4 the following:

1 **“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN**
2 **SMALL TRANSACTIONS.**

3 “(a) REQUIREMENTS ON INTERMEDIARIES.—For
4 purposes of section 4(6), a person acting as an inter-
5 mediary in a transaction involving the offer or sale of secu-
6 rities shall comply with the requirements of this subsection
7 if the intermediary—

8 “(1) warns investors, including on the
9 intermediary’s website used for the offer and sale of
10 such securities, of the speculative nature generally
11 applicable to investments in startups, emerging busi-
12 nesses, and small issuers, including risks in the sec-
13 ondary market related to illiquidity;

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

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

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

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

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

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

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

8 “(C) such other areas as the Commission
9 may determine appropriate by rule or regula-
10 tion;

11 “(7) requires the issuer to state a target offer-
12 ing amount and a deadline to reach the target offer-
13 ing amount and ensure the third party custodian de-
14 scribed under paragraph (10) withholds offering pro-
15 ceeds until aggregate capital raised from investors
16 other than the issuer is no less than 60 percent of
17 the target offering amount;

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

20 “(9) provides the Commission and potential in-
21 vestors with notice of the offering, not later than the
22 first day securities are offered to potential investors,
23 including—

24 “(A) the issuer’s name, legal status, phys-
25 ical address, and website address;

1 “(B) the names of the issuer’s principals;

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

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

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

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

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

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

22 “(14) does not offer investment advice.

23 “(b) REQUIREMENTS ON ISSUERS IF NO INTER-
24 MEDIARY.—For purposes of section 4(6), an issuer who
25 offers or sells securities without an intermediary shall

1 comply with the requirements of this subsection if the
2 issuer—

3 “(1) warns investors, including on the issuer’s
4 website, of the speculative nature generally applica-
5 ble to investments in startups, emerging businesses,
6 and small issuers, including risks in the secondary
7 market related to illiquidity;

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

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

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

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

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

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

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

1 “(C) such other areas as the Commission
2 may determine appropriate by rule or regula-
3 tion;

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

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

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

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

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

23 “(10) maintains such books and records as the
24 Commission determines appropriate;

1 “(11) makes available on the issuer’s website a
2 method of communication that permits the issuer
3 and investors to communicate with one another;

4 “(12) does not offer investment advice;

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

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

12 “(c) VERIFICATION OF INCOME.—For purposes of
13 section 4(6), an issuer or intermediary may rely on certifi-
14 cations as to annual income provided by the person to
15 whom the securities are sold to verify the investor’s in-
16 come.

17 “(d) INFORMATION AVAILABLE TO STATES.—The
18 Commission shall make the notices described under sub-
19 sections (a)(9), (a)(13), (b)(8), and (b)(13) and the infor-
20 mation described under subsections (a)(4) and (b)(4)
21 available to the States.

22 “(e) RESTRICTION ON SALES.—With respect to a
23 transaction involving the issuance of securities described
24 under section 4(6), a purchaser may not transfer such se-

1 curities during the 1-year period beginning on the date
2 of purchase, unless such securities are sold to—

3 “(1) the issuer of such securities; or

4 “(2) an accredited investor.

5 “(f) CONSTRUCTION.—

6 “(1) NO REGISTRATION AS BROKER.—With re-
7 spect to a transaction described under section 4(6)
8 involving an intermediary, such intermediary shall
9 not be required to register as a broker under section
10 15(a)(1) of the Securities Exchange Act of 1934
11 solely by reason of participation in such transaction.

12 “(2) NO PRECLUSION OF OTHER CAPITAL RAIS-
13 ING.—Nothing in this section or section 4(6) shall
14 be construed as preventing an issuer from raising
15 capital through methods not described under section
16 4(6).”.

17 (c) RULEMAKING.—Not later than 180 days after the
18 date of the enactment of this Act, the Securities and Ex-
19 change Commission shall issue such rules as may be nec-
20 essary to carry out section 4A of the Securities Act of
21 1933. In issuing such rules, the Commission shall consider
22 the costs and benefits of the action.

23 (d) DISQUALIFICATION.—Not later than 180 days
24 after the date of the enactment of this Act, the Securities
25 and Exchange Commission shall by rule or regulation es-

1 tablish disqualification provisions under which an issuer
2 shall not be eligible to utilize the exemption under section
3 4(6) of the Securities Act of 1933 based on the discipli-
4 nary history of the issuer or its predecessors, affiliates,
5 officers, directors, or persons fulfilling similar roles. The
6 Commission shall also establish disqualification provisions
7 under which an intermediary shall not be eligible to act
8 as an intermediary in connection with an offering utilizing
9 the exemption under section 4(6) of the Securities Act of
10 1933 based on the disciplinary history of the intermediary
11 or its predecessors, affiliates, officers, directors, or persons
12 fulfilling similar roles. Such provisions shall be substan-
13 tially similar to the disqualification provisions contained
14 in the regulations adopted in accordance with section 926
15 of the Dodd-Frank Wall Street Reform and Consumer
16 Protection Act (15 U.S.C. 77d note).

17 **SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS**
18 **FROM SHAREHOLDER CAP.**

19 Section 12(g)(5) of the Securities Exchange Act of
20 1934 (15 U.S.C. 78l(g)(5)) is amended—

21 (1) by striking “(5) For the purposes” and in-
22 serting:

23 “(5) DEFINITIONS.—

24 “(A) IN GENERAL.—For the purposes”;

25 and

1 (2) by adding at the end the following:

2 “(B) EXCLUSION FOR PERSONS HOLDING
3 CERTAIN SECURITIES.—For purposes of this
4 subsection, securities held by persons who pur-
5 chase such securities in transactions described
6 under section 4(6) of the Securities Act of 1933
7 shall not be deemed to be ‘held of record.’”.

8 **SEC. 303. PREEMPTION OF STATE LAW.**

9 (a) IN GENERAL.—Section 18(b)(4) of the Securities
10 Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

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

13 (2) by inserting after subparagraph (B) the fol-
14 lowing:

15 “(C) section 4(6);”.

16 (b) CLARIFICATION OF THE PRESERVATION OF
17 STATE ENFORCEMENT AUTHORITY.—

18 (1) IN GENERAL.—The amendments made by
19 subsection (a) relate solely to State registration, doc-
20 umentation, and offering requirements, as described
21 under section 18(a) of Securities Act of 1933 (15
22 U.S.C. 77r(a)), and shall have no impact or limita-
23 tion on other State authority to take enforcement
24 action with regard to an issuer, intermediary, or any

1 other person or entity using the exemption from reg-
2 istration provided by section 4(6) of such Act.

3 (2) CLARIFICATION OF STATE JURISDICTION
4 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,
5 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the
6 Securities Act of 1933 is amended by striking “with
7 respect to fraud or deceit, or unlawful conduct by a
8 broker or dealer, in connection with securities or se-
9 curities transactions.” and inserting the following: “,
10 in connection with securities or securities trans-
11 actions, with respect to—

12 “(A) fraud or deceit;

13 “(B) unlawful conduct by a broker or deal-
14 er; and

15 “(C) with respect to a transaction de-
16 scribed under section 4(6), unlawful conduct by
17 an intermediary, issuer, or custodian.”.

18 **TITLE IV—SMALL COMPANY**

19 **CAPITAL FORMATION**

20 **SEC. 401. AUTHORITY TO EXEMPT CERTAIN SECURITIES.**

21 (a) IN GENERAL.—Section 3(b) of the Securities Act
22 of 1933 (15 U.S.C. 77c(b)) is amended—

23 (1) by striking “(b) The Commission” and in-
24 sserting the following:

25 “(b) ADDITIONAL EXEMPTIONS.—

1 “(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—
2 The Commission”;

3 (2) by adding at the end the following:

4 “(2) ADDITIONAL ISSUES.—The Commission
5 shall by rule or regulation add a class of securities
6 to the securities exempted pursuant to this section
7 in accordance with the following terms and condi-
8 tions:

9 “(A) The aggregate offering amount of all
10 securities offered and sold within the prior 12-
11 month period in reliance on the exemption
12 added in accordance with this paragraph shall
13 not exceed \$50,000,000.

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

16 “(C) The securities shall not be restricted
17 securities within the meaning of the Federal se-
18 curities laws and the regulations promulgated
19 thereunder.

20 “(D) The civil liability provision in section
21 12(a)(2) shall apply to any person offering or
22 selling such securities.

23 “(E) The issuer may solicit interest in the
24 offering prior to filing any offering statement,
25 on such terms and conditions as the Commis-

1 sion may prescribe in the public interest or for
2 the protection of investors.

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

6 “(G) Such other terms, conditions, or re-
7 quirements as the Commission may determine
8 necessary in the public interest and for the pro-
9 tection of investors, which may include—

10 “(i) a requirement that the issuer pre-
11 pare and electronically file with the Com-
12 mission and distribute to prospective inves-
13 tors an offering statement, and any related
14 documents, in such form and with such
15 content as prescribed by the Commission,
16 including audited financial statements, a
17 description of the issuer’s business oper-
18 ations, its financial condition, its corporate
19 governance principles, its use of investor
20 funds, and other appropriate matters; and

21 “(ii) disqualification provisions under
22 which the exemption shall not be available
23 to the issuer or its predecessors, affiliates,
24 officers, directors, underwriters, or other
25 related persons, which shall be substan-

1 tially similar to the disqualification provi-
2 sions contained in the regulations adopted
3 in accordance with section 926 of the
4 Dodd-Frank Wall Street Reform and Con-
5 sumer Protection Act (15 U.S.C. 77d
6 note).

7 “(3) LIMITATION.—Only the following types of
8 securities may be exempted under a rule or regula-
9 tion adopted pursuant to paragraph (2): equity secu-
10 rities, debt securities, and debt securities convertible
11 or exchangeable to equity interests, including any
12 guarantees of such securities.

13 “(4) PERIODIC DISCLOSURES.—Upon such
14 terms and conditions as the Commission determines
15 necessary in the public interest and for the protec-
16 tion of investors, the Commission by rule or regula-
17 tion may require an issuer of a class of securities ex-
18 empted under paragraph (2) to make available to in-
19 vestors and file with the Commission periodic disclo-
20 sures regarding the issuer, its business operations,
21 its financial condition, its corporate governance prin-
22 ciples, its use of investor funds, and other appro-
23 priate matters, and also may provide for the suspen-
24 sion and termination of such a requirement with re-
25 spect to that issuer.

1 “(5) ADJUSTMENT.—Not later than 2 years
2 after the date of enactment of the Small Company
3 Capital Formation Act of 2011 and every 2 years
4 thereafter, the Commission shall review the offering
5 amount limitation described in paragraph (2)(A) and
6 shall increase such amount as the Commission deter-
7 mines appropriate. If the Commission determines
8 not to increase such amount, it shall report to the
9 Committee on Financial Services of the House of
10 Representatives and the Committee on Banking,
11 Housing, and Urban Affairs of the Senate on its
12 reasons for not increasing the amount.”.

13 (b) TREATMENT AS COVERED SECURITIES FOR PUR-
14 POSES OF NSMIA.—Section 18(b)(4) of the Securities
15 Act of 1933 (as amended by section 303) (15 U.S.C.
16 77r(b)(4)) is further amended by inserting after subpara-
17 graph (C) (as added by such section) the following:

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

20 “(i) offered or sold on a national secu-
21 rities exchange; or

22 “(ii) offered or sold to a qualified pur-
23 chaser, as defined by the Commission pur-
24 suant to paragraph (3) with respect to that
25 purchase or sale;”.

1 (c) CONFORMING AMENDMENT.—Section 4(5) of the
2 Securities Act of 1933 is amended by striking “section
3 3(b)” and inserting “section 3(b)(1)”.

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

6 The Comptroller General shall conduct a study on the
7 impact of State laws regulating securities offerings, or
8 “Blue Sky laws”, on offerings made under Regulation A
9 (17 C.F.R. 230.251 et seq.). The Comptroller General
10 shall transmit a report on the findings of the study to the
11 Committee on Financial Services of the House of Rep-
12 resentatives, and the Committee on Banking, Housing,
13 and Urban Affairs of the Senate not later than 3 months
14 after the date of enactment of this Act.

15 **TITLE V—PRIVATE COMPANY**
16 **FLEXIBILITY AND GROWTH**

17 **SEC. 501. THRESHOLD FOR REGISTRATION.**

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

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

1 SEC. 502. EMPLOYEES.

2 Section 12(g)(5) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the
4 end the following: “For purposes of determining whether
5 an issuer is required to register a security with the Com-
6 mission pursuant to paragraph (1), the definition of ‘held
7 of record’ shall not include securities held by persons who
8 received the securities pursuant to an employee compensa-
9 tion plan in transactions exempted from the registration
10 requirements of section 5 of the Securities Act of 1933.”.

11 SEC. 503. COMMISSION RULEMAKING.

12 The Securities and Exchange Commission shall revise
13 the definition of “held of record” pursuant to section
14 12(g)(5) of the Securities Exchange Act of 1934 (15
15 U.S.C. 78l(g)(5)) to implement the amendment made by
16 section 502. The Commission shall also adopt safe harbor
17 provisions that issuers can follow when determining
18 whether holders of their securities are accredited investors
19 or that holders of their securities received the securities
20 pursuant to an employee compensation plan in trans-
21 actions that were exempt from the registration require-
22 ments of section 5 of the Securities Act of 1933.

23 TITLE VI—CAPITAL EXPANSION**24 SEC. 601. SHAREHOLDER THRESHOLD FOR REGISTRATION.**

25 (a) AMENDMENTS TO SECTION 12 OF THE SECURI-
26 TIES EXCHANGE ACT OF 1934.—Section 12(g) of the Se-

1 securities Exchange Act of 1934 (15 U.S.C. 78l (g)) is fur-
2 ther amended—

3 (1) in paragraph (1), by amending subpara-
4 graph (B) to read as follows:

5 “(B) in the case of an issuer that is a bank or
6 a bank holding company, as such term is defined in
7 section 2 of the Bank Holding Company Act of 1956
8 (12 U.S.C. 1841), not later than 120 days after the
9 last day of its first fiscal year ended after the effec-
10 tive date of this subsection, on which the issuer has
11 total assets exceeding \$10,000,000 and a class of eq-
12 uity security (other than an exempted security) held
13 of record by 2,000 or more persons,”; and

14 (2) in paragraph (4), by striking “three hun-
15 dred” and inserting “300 persons, or, in the case of
16 a bank, as such term is defined in section 3(a)(6),
17 or a bank holding company, as such term is defined
18 in section (2) of the Bank Holding Company Act of
19 1956 (12 U.S.C. 1841), 1,200 persons”.

20 (b) AMENDMENTS TO SECTION 15 OF THE SECURI-
21 TIES EXCHANGE ACT OF 1934.—Section 15(d) of the Se-
22 curities Exchange Act of 1934 (15 U.S.C. 78o(d)) is
23 amended, in the third sentence, by striking “three hun-
24 dred” and inserting “300 persons, or, in the case of bank
25 or a bank holding company, as such term is defined in

1 section 2 of the Bank Holding Company Act of 1956 (12
2 U.S.C. 1841), 1,200 persons”.

3 **SEC. 602. RULEMAKING.**

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

