

112TH CONGRESS
2^D SESSION

H. R. 3606

AN ACT

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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.
- Sec. 504. Commission study of enforcement authority under Rule 12g5-1.

TITLE VI—CAPITAL EXPANSION

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

TITLE VII—OUTREACH ON CHANGES TO THE LAW

- Sec. 701. Outreach by the Commission.

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 (as such amount
12 is indexed for inflation every 5 years by the Commis-
13 sion to reflect the change in the Consumer Price
14 Index for All Urban Consumers published by the
15 Bureau of Labor Statistics, setting the threshold to
16 the nearest 1,000,000) during its most recently com-
17 pleted fiscal year. An issuer that is an emerging
18 growth company as of the first day of that fiscal
19 year shall continue to be deemed an emerging
20 growth company until the earliest of—

21 “(A) the last day of the fiscal year of the
22 issuer during which it had total annual gross
23 revenues of \$1,000,000,000 (as such amount is
24 indexed for inflation every 5 years by the Com-
25 mission to reflect the change in the Consumer

1 Price Index for All Urban Consumers published
2 by the Bureau of Labor Statistics, setting the
3 threshold to the nearest 1,000,000) 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 this title;

9 “(C) the date on which such issuer has,
10 during the previous 3-year period, issued more
11 than \$1,000,000,000 in non-convertible debt; or

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

16 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
17 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
18 78c(a)) is amended—

19 (1) by redesignating paragraph (77), as added
20 by section 941(a) of the Investor Protection and Se-
21 curities Reform Act of 2010 (Public Law 111-203,
22 124 Stat. 1890), as paragraph (79); and

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

24 “(80) EMERGING GROWTH COMPANY.—The
25 term ‘emerging growth company’ means an issuer

1 that had total annual gross revenues of less than
2 \$1,000,000,000 (as such amount is indexed for in-
3 flation every 5 years by the Commission to reflect
4 the change in the Consumer Price Index for All
5 Urban Consumers published by the Bureau of Labor
6 Statistics, setting the threshold to the nearest
7 1,000,000) during its most recently completed fiscal
8 year. An issuer that is an emerging growth company
9 as of the first day of that fiscal year shall continue
10 to be deemed an emerging growth company until the
11 earliest of—

12 “(A) the last day of the fiscal year of the
13 issuer during which it had total annual gross
14 revenues of \$1,000,000,000 (as such amount is
15 indexed for inflation every 5 years by the Com-
16 mission to reflect the change in the Consumer
17 Price Index for All Urban Consumers published
18 by the Bureau of Labor Statistics, setting the
19 threshold to the nearest 1,000,000) or more;

20 “(B) the last day of the fiscal year of the
21 issuer following the fifth anniversary of the date
22 of the first sale of common equity securities of
23 the issuer pursuant to an effective registration
24 statement under the Securities Act of 1933;

1 “(C) the date on which such issuer has,
2 during the previous 3-year period, issued more
3 than \$1,000,000,000 in non-convertible debt; or

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

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

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

12 (2) INITIAL PUBLIC OFFERING DATE.—The
13 term “initial public offering date” means the date of
14 the first sale of common equity securities of an
15 issuer pursuant to an effective registration state-
16 ment under the Securities Act of 1933.

17 (d) EFFECTIVE DATE.—Notwithstanding section
18 2(a)(19) of the Securities Act of 1933 and section
19 3(a)(80) of the Securities Exchange Act of 1934, an issuer
20 shall not be an emerging growth company for purposes
21 of such Acts if the first sale of common equity securities
22 of such issuer pursuant to an effective registration state-
23 ment under the Securities Act of 1933 occurred on or be-
24 fore December 8, 2011.

1 **SEC. 102. DISCLOSURE OBLIGATIONS.**

2 (a) EXECUTIVE COMPENSATION.—

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

6 (A) by striking “The Commission may”
7 and inserting the following:

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

9 (B) by striking “an issuer” and inserting
10 “any other issuer”; and

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

12 “(2) TREATMENT OF EMERGING GROWTH COM-
13 PANIES.—

14 “(A) IN GENERAL.—An emerging growth
15 company shall be exempt from the requirements
16 of subsections (a) and (b).

17 “(B) COMPLIANCE AFTER TERMINATION
18 OF EMERGING GROWTH COMPANY TREAT-
19 MENT.—An issuer that was an emerging growth
20 company but is no longer an emerging growth
21 company shall include the first separate resolu-
22 tion described under subsection (a)(1) not later
23 than the end of—

24 “(i) in the case of an issuer that was
25 an emerging growth company for less than
26 2 years after the date of first sale of com-

1 mon equity securities of the issuer pursu-
2 ant to an effective registration statement
3 under the Securities Act of 1933, the 3-
4 year period beginning on such date; and

5 “(ii) in the case of any other issuer,
6 the 1-year period beginning on the date the
7 issuer is no longer an emerging growth
8 company.”.

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

13 (3) COMPENSATION DISCLOSURES.—Section
14 953(b)(1) of the Investor Protection and Securities
15 Reform Act of 2010 (Public Law 111–203; 124
16 Stat. 1904) is amended by inserting “, other than
17 an emerging growth company, as that term is de-
18 fined in section 3(a) of the Securities Exchange Act
19 of 1934,” after “require each issuer”.

20 (b) FINANCIAL DISCLOSURES AND ACCOUNTING
21 PRONOUNCEMENTS.—

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

1 (A) by striking “(a) The registration” and
2 inserting the following:

3 “(a) INFORMATION REQUIRED IN REGISTRATION
4 STATEMENT.—

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

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

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

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

22 “(B) may not be required to comply with
23 any new or revised financial accounting stand-
24 ard until such date that a company that is not
25 an issuer (as defined under section 2(a) of the

1 Sarbanes-Oxley Act of 2002 (15 U.S.C.
2 7201(a)) is required to comply with such new
3 or revised accounting standard, if such stand-
4 ard applies to companies that are not issuers.”.

5 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
6 tion 13(a) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78m(a)) is amended by adding at the
8 end the following: “In any registration statement,
9 periodic report, or other reports to be filed with the
10 Commission, an emerging growth company need not
11 present selected financial data in accordance with
12 section 229.301 of title 17, Code of Federal Regula-
13 tions, for any period prior to the earliest audited pe-
14 riod presented in connection with its first registra-
15 tion statement that became effective under this Act
16 or the Securities Act of 1933 and, with respect to
17 any such statement or reports, an emerging growth
18 company may not be required to comply with any
19 new or revised financial accounting standard until
20 such date that a company that is not an issuer (as
21 defined under section 2(a) of the Sarbanes-Oxley
22 Act of 2002 (15 U.S.C. 7201(a))) is required to
23 comply with such new or revised accounting stand-
24 ard, if such standard applies to companies that are
25 not issuers.”.

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

14 **SEC. 103. INTERNAL CONTROLS AUDIT.**

15 Section 404(b) of the Sarbanes-Oxley Act of 2002
16 (15 U.S.C. 7262(b)) is amended by inserting “, other than
17 an issuer that is an emerging growth company (as defined
18 in section 3 of the Securities Exchange Act of 1934),”
19 before “shall attest to”.

20 **SEC. 104. AUDITING STANDARDS.**

21 Section 103(a)(3) of the Sarbanes-Oxley Act of 2002
22 (15 U.S.C. 7213(a)(3)) is amended by adding at the end
23 the following:

24 (C) TRANSITION PERIOD FOR EMERGING
25 GROWTH COMPANIES.—Any rules of the Board

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

18 **SEC. 105. AVAILABILITY OF INFORMATION ABOUT EMERG-**
19 **ING GROWTH COMPANIES.**

20 (a) PROVISION OF RESEARCH.—Section 2(a)(3) of
21 the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is
22 amended by adding at the end the following: “The publica-
23 tion or distribution by a broker or dealer of a research
24 report about an emerging growth company that is the sub-
25 ject of a proposed public offering of the common equity

1 securities of such emerging growth company pursuant to
2 a registration statement that the issuer proposes to file,
3 or has filed, or that is effective shall be deemed for pur-
4 poses of paragraph (10) of this subsection and section 5(c)
5 not to constitute an offer for sale or offer to sell a security,
6 even if the broker or dealer is participating or will partici-
7 pate in the registered offering of the securities of the
8 issuer. As used in this paragraph, the term ‘research re-
9 port’ means a written, electronic, or oral communication
10 that includes information, opinions, or recommendations
11 with respect to securities of an issuer or an analysis of
12 a security or an issuer, whether or not it provides informa-
13 tion reasonably sufficient upon which to base an invest-
14 ment decision.”.

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

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

20 (2) by inserting after subsection (b) the fol-
21 lowing:

22 “(c) LIMITATION.—Notwithstanding subsection (a)
23 or any other provision of law, neither the Commission nor
24 any national securities association registered under section
25 15A may adopt or maintain any rule or regulation in con-

1 nection with an initial public offering of the common eq-
2 uity of an emerging growth company—

3 “(1) restricting, based on functional role, which
4 associated persons of a broker, dealer, or member of
5 a national securities association, may arrange for
6 communications between a securities analyst and a
7 potential investor; or

8 “(2) restricting a securities analyst from par-
9 ticipating in any communications with the manage-
10 ment of an emerging growth company that is also
11 attended by any other associated person of a broker,
12 dealer, or member of a national securities associa-
13 tion whose functional role is other than as a securi-
14 ties analyst.”.

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

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

20 (2) by inserting after subsection (e) the fol-
21 lowing:

22 “(d) LIMITATION.—Notwithstanding any other provi-
23 sion of this section, an emerging growth company or any
24 person authorized to act on behalf of an emerging growth
25 company may engage in oral or written communications

1 with potential investors that are qualified institutional
2 buyers or institutions that are accredited investors, as
3 such terms are respectively defined in section 230.144A
4 and section 230.501(a) of title 17, Code of Federal Regu-
5 lations, or any successor thereto, to determine whether
6 such investors might have an interest in a contemplated
7 securities offering, either prior to or following the date of
8 filing of a registration statement with respect to such se-
9 curities with the Commission, subject to the requirement
10 of subsection (b)(2).”.

11 (d) POST OFFERING COMMUNICATIONS.—Neither
12 the Commission nor any national securities association
13 registered under section 15A of the Securities Exchange
14 Act of 1934 may adopt or maintain any rule or regulation
15 prohibiting any broker, dealer, or member of a national
16 securities association from publishing or distributing any
17 research report or making a public appearance, with re-
18 spect to the securities of an emerging growth company,
19 either—

20 (1) within any prescribed period of time fol-
21 lowing the initial public offering date of the emerg-
22 ing growth company; or

23 (2) within any prescribed period of time prior
24 to the expiration date of any agreement between the
25 broker, dealer, or member of a national securities as-

1 society and the emerging growth company or its
2 shareholders that restricts or prohibits the sale of
3 securities held by the emerging growth company or
4 its shareholders after the initial public offering date.

5 **SEC. 106. OTHER MATTERS.**

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

9 “(e) EMERGING GROWTH COMPANIES.—

10 “(1) IN GENERAL.—Any emerging growth com-
11 pany, prior to its initial public offering date, may
12 confidentially submit to the Commission a draft reg-
13 istration statement, for confidential nonpublic review
14 by the staff of the Commission prior to public filing,
15 provided that the initial confidential submission and
16 all amendments thereto shall be publicly filed with
17 the Commission not later than 21 days before the
18 date on which the issuer conducts a road show, as
19 such term is defined in section 230.433(h)(4) of title
20 17, Code of Federal Regulations, or any successor
21 thereto.

22 “(2) CONFIDENTIALITY.—Notwithstanding any
23 other provision of this title, the Commission shall
24 not be compelled to disclose any information pro-
25 vided to or obtained by the Commission pursuant to

1 this subsection. For purposes of section 552 of title
2 5, United States Code, this subsection shall be con-
3 sidered a statute described in subsection (b)(3)(B)
4 of such section 552. Information described in or ob-
5 tained pursuant to this subsection shall be deemed
6 to constitute confidential information for purposes of
7 section 24(b)(2) of the Securities Exchange Act of
8 1934.”.

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

12 “(6) TICK SIZE.—

13 “(A) STUDY AND REPORT.—The Commis-
14 sion shall conduct a study examining the transi-
15 tion to trading and quoting securities in one
16 penny increments, also known as
17 decimalization. The study shall examine the im-
18 pact that decimalization has had on the number
19 of initial public offerings since its implementa-
20 tion relative to the period before its implemen-
21 tation. The study shall also examine the impact
22 that this change has had on liquidity for small
23 and middle capitalization company securities
24 and whether there is sufficient economic incen-
25 tive to support trading operations in these secu-

1 rities in penny increments. Not later than 90
2 days after the date of enactment of this para-
3 graph, the Commission shall submit to Con-
4 gress a report on the findings of the study.

5 “(B) DESIGNATION.—If the Commission
6 determines that the securities of emerging
7 growth companies should be quoted and traded
8 using a minimum increment of greater than
9 \$0.01, the Commission may, by rule not later
10 than 180 days after the date of enactment of
11 this paragraph, designate a minimum increment
12 for the securities of emerging growth companies
13 that is greater than \$0.01 but less than \$0.10
14 for use in all quoting and trading of securities
15 in any exchange or other execution venue.”.

16 **SEC. 107. OPT-IN RIGHT FOR EMERGING GROWTH COMPA-**
17 **NIES.**

18 (a) IN GENERAL.—With respect to an exemption pro-
19 vided to emerging growth companies under this title, or
20 an amendment made by this title, an emerging growth
21 company may choose to forgo such exemption and instead
22 comply with the requirements that apply to an issuer that
23 is not an emerging growth company.

24 (b) SPECIAL RULE.—Notwithstanding subsection (a),
25 with respect to the extension of time to comply with new

1 or revised financial accounting standards provided under
2 section 7(a)(2)(B) of the Securities Act of 1933 and sec-
3 tion 13(a) of the Securities Exchange Act of 1934, as
4 added by section 102(b), if an emerging growth company
5 chooses to comply with such standards to the same extent
6 that a non-emerging growth company is required to com-
7 ply with such standards, the emerging growth company—

8 (1) must make such choice at the time the com-
9 pany is first required to file a registration state-
10 ment, periodic report, or other report with the Com-
11 mission under section 13 of the Securities Exchange
12 Act of 1934 and notify the Securities and Exchange
13 Commission of such choice;

14 (2) may not select some standards to comply
15 with in such manner and not others, but must com-
16 ply with all such standards to the same extent that
17 a non-emerging growth company is required to com-
18 ply with such standards; and

19 (3) must continue to comply with such stand-
20 ards to the same extent that a non-emerging growth
21 company is required to comply with such standards
22 for as long as the company remains an emerging
23 growth company.

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

2 (a) REVIEW.—The Securities and Exchange Commis-
3 sion shall conduct a review of its Regulation S-K (17 CFR
4 229.10 et seq.) to—

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

7 (2) determine how such requirements can be
8 updated to modernize and simplify the registration
9 process and reduce the costs and other burdens as-
10 sociated with these requirements for issuers who are
11 emerging growth companies.

12 (b) REPORT.—Not later the 180 days after the date
13 of enactment of this title, the Commission shall transmit
14 to Congress a report of the review conducted under sub-
15 section (a). The report shall include the specific rec-
16 ommendations of the Commission on how to streamline
17 the registration process in order to make it more efficient
18 and less burdensome for the Commission and for prospec-
19 tive issuers who are emerging growth companies.

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

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

23 (a) MODIFICATION OF RULES.—

24 (1) Not later than 90 days after the date of the
25 enactment of this Act, the Securities and Exchange
26 Commission shall revise its rules issued in section

1 230.506 of title 17, Code of Federal Regulations, to
2 provide that the prohibition against general sollicita-
3 tion or general advertising contained in section
4 230.502(e) of such title shall not apply to offers and
5 sales of securities made pursuant to section 230.506,
6 provided that all purchasers of the securities are ac-
7 credited investors. Such rules shall require the issuer
8 to take reasonable steps to verify that purchasers of
9 the securities are accredited investors, using such
10 methods as determined by the Commission. Section
11 230.506 of title 17, Code of Federal Regulations, as
12 revised pursuant to this section, shall continue to be
13 treated as a regulation issued under section 4(2) of
14 the Securities Act of 1933 (15 U.S.C. 77d(2)).

15 (2) Not later than 90 days after the date of en-
16 actment of this Act, the Securities and Exchange
17 Commission shall revise subsection (d)(1) of section
18 230.144A of title 17, Code of Federal Regulations,
19 to provide that securities sold under such revised ex-
20 emption may be offered to persons other than quali-
21 fied institutional buyers, including by means of gen-
22 eral solicitation or general advertising, provided that
23 securities are sold only to persons that the seller and
24 any person acting on behalf of the seller reasonably
25 believe is a qualified institutional buyer.

1 (b) CONSISTENCY IN INTERPRETATION.—Section 4
2 of the Securities Act of 1933 (15 U.S.C. 77d) is amend-
3 ed—

4 (1) by striking “The provisions of section 5”
5 and inserting “(a) The provisions of section 5”; and

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

7 “(b) Offers and sales exempt under section 230.506
8 of title 17, Code of Federal Regulations (as revised pursu-
9 ant to section 201 of the Jumpstart Our Business
10 Startups Act) shall not be deemed public offerings under
11 the Federal securities laws as a result of general adver-
12 tising or general solicitation.”.

13 (c) EXPLANATION OF EXEMPTION.—Section 4 of the
14 Securities Act of 1933 (15 U.S.C. 77d) is amended—

15 (1) by striking “The provisions of section 5”
16 and inserting “(a) The provisions of section 5”; and

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

18 “(b)(1) With respect to securities offered and sold in
19 compliance with Rule 506 of Regulation D under this Act,
20 no person who meets the conditions set forth in paragraph
21 (2) shall be subject to registration as a broker or dealer
22 pursuant to section 15(a)(1) of this title, solely because—

23 “(A) that person maintains a platform or
24 mechanism that permits the offer, sale, pur-
25 chase, or negotiation of or with respect to secu-

1 rities, or permits general solicitations, general
2 advertisements, or similar or related activities
3 by issuers of such securities, whether online, in
4 person, or through any other means;

5 “(B) that person or any person associated
6 with that person co-invests in such securities; or

7 “(C) that person or any person associated
8 with that person provides ancillary services with
9 respect to such securities.

10 “(2) The exemption provided in paragraph (1) shall
11 apply to any person described in such paragraph if—

12 “(A) such person and each person associated
13 with that person receives no compensation in connec-
14 tion with the purchase or sale of such security;

15 “(B) such person and each person associated
16 with that person does not have possession of cus-
17 tomer funds or securities in connection with the pur-
18 chase or sale of such security; and

19 “(C) such person is not subject to a statutory
20 disqualification as defined in section 3(a)(39) of this
21 title and does not have any person associated with
22 that person subject to such a statutory disqualifica-
23 tion.

24 “(3) For the purposes of this subsection, the term
25 ‘ancillary services’ means—

1 “(A) the provision of due diligence services, in
2 connection with the offer, sale, purchase, or negotia-
3 tion of such security, so long as such services do not
4 include, for separate compensation, investment ad-
5 vice or recommendations to issuers or investors; and

6 “(B) the provision of standardized documents
7 to the issuers and investors, so long as such person
8 or entity does not negotiate the terms of the
9 issuance for and on behalf of third parties and
10 issuers are not required to use the standardized doc-
11 uments as a condition of using the service.”.

12 **TITLE III—ENTREPRENEUR** 13 **ACCESS TO CAPITAL**

14 **SEC. 301. CROWDFUNDING EXEMPTION.**

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

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

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

24 “(i) \$1,000,000, as such amount is
25 adjusted by the Commission to reflect the

1 annual change in the Consumer Price
2 Index for All Urban Consumers published
3 by the Bureau of Labor Statistics, or less;
4 or

5 “(ii) if the issuer provides potential
6 investors with audited financial statements,
7 \$2,000,000, as such amount is adjusted by
8 the Commission to reflect the annual
9 change in the Consumer Price Index for
10 All Urban Consumers published by the Bu-
11 reau of Labor Statistics, or less;

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

16 “(i) \$10,000, as such amount is ad-
17 justed by the Commission to reflect the an-
18 nual change in the Consumer Price Index
19 for All Urban Consumers published by the
20 Bureau of Labor Statistics; and

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

23 “(C) in the case of a transaction involving
24 an intermediary between the issuer and the in-

1 investor, such intermediary complies with the re-
 2 quirements under section 4A(a); and

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

7 (b) REQUIREMENTS TO QUALIFY FOR
 8 CROWDFUNDING EXEMPTION.—The Securities Act of
 9 1933 is amended by inserting after section 4 the following:
 10 **“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN**
 11 **SMALL TRANSACTIONS.**

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

17 “(1) warns investors, including on the
 18 intermediary’s website used for the offer and sale of
 19 such securities, of the speculative nature generally
 20 applicable to investments in startups, emerging busi-
 21 nesses, and small issuers, including risks in the sec-
 22 ondary market related to illiquidity;

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

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

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

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

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

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

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

17 “(C) such other areas as the Commission
18 may determine appropriate by rule or regula-
19 tion;

20 “(7) requires the issuer to state a target offer-
21 ing amount and a deadline to reach the target offer-
22 ing amount and ensure the third party custodian de-
23 scribed under paragraph (10) withholds offering pro-
24 ceeds until aggregate capital raised from investors

1 other than the issuer is no less than 60 percent of
2 the target offering amount;

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

5 “(9) provides the Commission and potential in-
6 vestors with notice of the offering, not later than the
7 first day securities are offered to potential investors,
8 including—

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

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

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

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

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

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

24 “(12) makes available on the intermediary’s
25 website a method of communication that permits the

1 issuer and investors to communicate with one an-
2 other;

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

7 “(14) does not offer investment advice.

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

13 “(1) warns investors, including on the issuer’s
14 website, of the speculative nature generally applica-
15 ble to investments in startups, emerging businesses,
16 and small issuers, including risks in the secondary
17 market related to illiquidity;

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

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

23 “(4) provides the Commission with the issuer’s
24 physical address, website address, and the names of

1 the principals and employees of the issuers, and
2 keeps such information up-to-date;

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

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

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

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

12 “(C) such other areas as the Commission
13 may determine appropriate by rule or regula-
14 tion;

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

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

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

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

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

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

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

16 “(12) does not offer investment advice;

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

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

24 “(c) VERIFICATION OF INCOME.—For purposes of
25 section 4(6), an issuer or intermediary may rely on certifi-

1 cations as to annual income provided by the person to
2 whom the securities are sold to verify the investor's in-
3 come.

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

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

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

15 “(2) an accredited investor.

16 “(f) CONSTRUCTION.—

17 “(1) NO REGISTRATION AS BROKER.—With re-
18 spect to a transaction described under section 4(6)
19 involving an intermediary, such intermediary shall
20 not be required to register as a broker under section
21 15(a)(1) of the Securities Exchange Act of 1934
22 solely by reason of participation in such transaction.

23 “(2) NO PRECLUSION OF OTHER CAPITAL RAIS-
24 ING.—Nothing in this section or section 4(6) shall
25 be construed as preventing an issuer from raising

1 capital through methods not described under section
2 4(6).”.

3 (c) RULEMAKING.—Not later than 180 days after the
4 date of the enactment of this Act, the Securities and Ex-
5 change Commission shall issue such rules as may be nec-
6 essary to carry out section 4A of the Securities Act of
7 1933. In issuing such rules, the Commission shall consider
8 the costs and benefits of the action.

9 (d) DISQUALIFICATION.—Not later than 180 days
10 after the date of the enactment of this Act, the Securities
11 and Exchange Commission shall by rule or regulation es-
12 tablish disqualification provisions under which an issuer
13 shall not be eligible to utilize the exemption under section
14 4(6) of the Securities Act of 1933 based on the discipli-
15 nary history of the issuer or its predecessors, affiliates,
16 officers, directors, or persons fulfilling similar roles. The
17 Commission shall also establish disqualification provisions
18 under which an intermediary shall not be eligible to act
19 as an intermediary in connection with an offering utilizing
20 the exemption under section 4(6) of the Securities Act of
21 1933 based on the disciplinary history of the intermediary
22 or its predecessors, affiliates, officers, directors, or persons
23 fulfilling similar roles. Such provisions shall be substan-
24 tially similar to the disqualification provisions contained
25 in the regulations adopted in accordance with section 926

1 of the Dodd-Frank Wall Street Reform and Consumer
2 Protection Act (15 U.S.C. 77d note).

3 **SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS**
4 **FROM SHAREHOLDER CAP.**

5 Section 12(g)(5) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78l(g)(5)) is amended—

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

9 “(5) DEFINITIONS.—

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

11 and

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

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

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

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

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

24 (2) by inserting after subparagraph (B) the fol-
25 lowing:

1 “(C) section 4(6);”.

2 (b) CLARIFICATION OF THE PRESERVATION OF
3 STATE ENFORCEMENT AUTHORITY.—

4 (1) IN GENERAL.—The amendments made by
5 subsection (a) relate solely to State registration, doc-
6 umentation, and offering requirements, as described
7 under section 18(a) of Securities Act of 1933 (15
8 U.S.C. 77r(a)), and shall have no impact or limita-
9 tion on other State authority to take enforcement
10 action with regard to an issuer, intermediary, or any
11 other person or entity using the exemption from reg-
12 istration provided by section 4(6) of such Act.

13 (2) CLARIFICATION OF STATE JURISDICTION
14 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,
15 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the
16 Securities Act of 1933 is amended by striking “with
17 respect to fraud or deceit, or unlawful conduct by a
18 broker or dealer, in connection with securities or se-
19 curities transactions.” and inserting the following: “,
20 in connection with securities or securities trans-
21 actions, with respect to—

22 “(A) fraud or deceit;

23 “(B) unlawful conduct by a broker or deal-
24 er; and

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

4 **TITLE IV—SMALL COMPANY**
5 **CAPITAL FORMATION**

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

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

9 (1) by striking “(b) The Commission” and in-
10 serting the following:

11 “(b) ADDITIONAL EXEMPTIONS.—

12 “(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—
13 The Commission”; and

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

15 “(2) ADDITIONAL ISSUES.—The Commission
16 shall by rule or regulation add a class of securities
17 to the securities exempted pursuant to this section
18 in accordance with the following terms and condi-
19 tions:

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

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

3 “(C) The securities shall not be restricted
4 securities within the meaning of the Federal se-
5 curities laws and the regulations promulgated
6 thereunder.

7 “(D) The civil liability provision in section
8 12(a)(2) shall apply to any person offering or
9 selling such securities.

10 “(E) The issuer may solicit interest in the
11 offering prior to filing any offering statement,
12 on such terms and conditions as the Commis-
13 sion may prescribe in the public interest or for
14 the protection of investors.

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

18 “(G) Such other terms, conditions, or re-
19 quirements as the Commission may determine
20 necessary in the public interest and for the pro-
21 tection of investors, which may include—

22 “(i) a requirement that the issuer pre-
23 pare and electronically file with the Com-
24 mission and distribute to prospective inves-
25 tors an offering statement, and any related

1 documents, in such form and with such
2 content as prescribed by the Commission,
3 including audited financial statements, a
4 description of the issuer’s business oper-
5 ations, its financial condition, its corporate
6 governance principles, its use of investor
7 funds, and other appropriate matters; and

8 “(ii) disqualification provisions under
9 which the exemption shall not be available
10 to the issuer or its predecessors, affiliates,
11 officers, directors, underwriters, or other
12 related persons, which shall be substan-
13 tially similar to the disqualification provi-
14 sions contained in the regulations adopted
15 in accordance with section 926 of the
16 Dodd-Frank Wall Street Reform and Con-
17 sumer Protection Act (15 U.S.C. 77d
18 note).

19 “(3) LIMITATION.—Only the following types of
20 securities may be exempted under a rule or regula-
21 tion adopted pursuant to paragraph (2): equity secu-
22 rities, debt securities, and debt securities convertible
23 or exchangeable to equity interests, including any
24 guarantees of such securities.

1 “(4) PERIODIC DISCLOSURES.—Upon such
2 terms and conditions as the Commission determines
3 necessary in the public interest and for the protec-
4 tion of investors, the Commission by rule or regula-
5 tion may require an issuer of a class of securities ex-
6 empted under paragraph (2) to make available to in-
7 vestors and file with the Commission periodic disclo-
8 sures regarding the issuer, its business operations,
9 its financial condition, its corporate governance prin-
10 ciples, its use of investor funds, and other appro-
11 priate matters, and also may provide for the suspen-
12 sion and termination of such a requirement with re-
13 spect to that issuer.

14 “(5) ADJUSTMENT.—Not later than 2 years
15 after the date of enactment of the Small Company
16 Capital Formation Act of 2011 and every 2 years
17 thereafter, the Commission shall review the offering
18 amount limitation described in paragraph (2)(A) and
19 shall increase such amount as the Commission deter-
20 mines appropriate. If the Commission determines
21 not to increase such amount, it shall report to the
22 Committee on Financial Services of the House of
23 Representatives and the Committee on Banking,
24 Housing, and Urban Affairs of the Senate on its
25 reasons for not increasing the amount.”.

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

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

8 “(i) offered or sold on a national secu-
 9 rities exchange; or

10 “(ii) offered or sold to a qualified pur-
 11 chaser, as defined by the Commission pur-
 12 suant to paragraph (3) with respect to that
 13 purchase or sale;”.

14 (c) CONFORMING AMENDMENT.—Section 4(5) of the
 15 Securities Act of 1933 is amended by striking “section
 16 3(b)” and inserting “section 3(b)(1)”.

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

19 The Comptroller General shall conduct a study on the
 20 impact of State laws regulating securities offerings, or
 21 “Blue Sky laws”, on offerings made under Regulation A
 22 (17 CFR 230.251 et seq.). The Comptroller General shall
 23 transmit a report on the findings of the study to the Com-
 24 mittee on Financial Services of the House of Representa-
 25 tives, and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate not later than 3 months after
2 the date of enactment of this Act.

3 **TITLE V—PRIVATE COMPANY**
4 **FLEXIBILITY AND GROWTH**

5 **SEC. 501. THRESHOLD FOR REGISTRATION.**

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

9 “(A) within 120 days after the last day of its
10 first fiscal year ended on which the issuer has total
11 assets exceeding \$10,000,000 and a class of equity
12 security (other than an exempted security) held of
13 record by either—

14 “(i) 2,000 persons, or

15 “(ii) 500 persons who are not accredited inves-
16 tors (as such term is defined by the Commission),
17 and”.

18 **SEC. 502. EMPLOYEES.**

19 Section 12(g)(5) of the Securities Exchange Act of
20 1934 (15 U.S.C. 78l(g)(5)), as amended by section 302,
21 is amended in subparagraph (A) by adding at the end the
22 following: “For purposes of determining whether an issuer
23 is required to register a security with the Commission pur-
24 suant to paragraph (1), the definition of ‘held of record’
25 shall not include securities held by persons who received

1 the securities pursuant to an employee compensation plan
2 in transactions exempted from the registration require-
3 ments of section 5 of the Securities Act of 1933.”.

4 **SEC. 503. COMMISSION RULEMAKING.**

5 The Securities and Exchange Commission shall revise
6 the definition of “held of record” pursuant to section
7 12(g)(5) of the Securities Exchange Act of 1934 (15
8 U.S.C. 78l(g)(5)) to implement the amendment made by
9 section 502. The Commission shall also adopt safe harbor
10 provisions that issuers can follow when determining
11 whether holders of their securities received the securities
12 pursuant to an employee compensation plan in trans-
13 actions that were exempt from the registration require-
14 ments of section 5 of the Securities Act of 1933.

15 **SEC. 504. COMMISSION STUDY OF ENFORCEMENT AUTHOR-**
16 **ITY UNDER RULE 12G5-1.**

17 The Securities and Exchange Commission shall ex-
18 amine its authority to enforce Rule 12g5-1 to determine
19 if new enforcement tools are needed to enforce the anti-
20 evasion provision contained in subsection (b)(3) of the
21 rule, and shall, not later than 120 days after the date of
22 enactment of this Act transmit its recommendations to
23 Congress.

1 **TITLE VI—CAPITAL EXPANSION**

2 **SEC. 601. SHAREHOLDER THRESHOLD FOR REGISTRATION.**

3 (a) AMENDMENTS TO SECTION 12 OF THE SECURI-
4 TIES EXCHANGE ACT OF 1934.—Section 12(g) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78l(g)) is fur-
6 ther amended—

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

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

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

23 (b) AMENDMENTS TO SECTION 15 OF THE SECURI-
24 TIES EXCHANGE ACT OF 1934.—Section 15(d) of the Se-
25 curities Exchange Act of 1934 (15 U.S.C. 78o(d)) is

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

6 **SEC. 602. RULEMAKING.**

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

11 **TITLE VII—OUTREACH ON**
12 **CHANGES TO THE LAW**

13 **SEC. 701. OUTREACH BY THE COMMISSION.**

14 The Securities and Exchange Commission shall pro-
15 vide online information and conduct outreach to inform
16 small and medium sized businesses, women owned busi-
17 nesses, veteran owned businesses, and minority owned
18 businesses of the changes made by this Act.

Passed the House of Representatives March 8,
2012.

Attest:

Clerk.

112TH CONGRESS
2^D SESSION

H. R. 3606

AN ACT

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.