

Summary of HR 3606, Jumpstart Our Business Startups Act

Title I “Reopening American Capital Markets to Emerging Growth Companies Act of 2011” (HR 3606, Carney-Fincher)

HR 3606 creates an expanded on-ramp for newly public companies by exempting a new category “emerging growth companies” (companies with less than \$1 billion in revenues or \$700 million in public float) for up to five years from a variety of securities law requirements, including: say-on-pay votes; certain executive compensation reporting; requirements to provide 3-years of audited financials (would only need 2 years worth), SOx section 404(b) auditing of internal controls over financial reporting; and any future auditor rotation or other auditor requirements. HR 3606 also eases restrictions on communications and research related to an IPO. HR 3606 passed the Financial Services Committee by a vote of 54-1 on 2/16/12, has not previously come to the floor action.

Title II, “Access to Capital for Job Creators Act” (HR 2940, McCarthy of CA)

HR 2940 amends section 4(2) of the Securities Act of 1933 to permit use of public solicitation in connection with private securities offerings, provided that the issuer or underwriter verifies that all purchasers of the securities are accredited investors. In addition, the SEC would have to share offering materials and documentation with the states. HR 2940 passed the House 413-11 on 11/3/11.

Title III, “Entrepreneur Access to Capital Act” (HR 2930, McHenry)

HR 2930 creates a new exemption from registration under the Securities Act of 1933 for “crowdfunding” securities. HR 2930 permits a company to raise up to \$2 million a year, with investors permitted to invest the lesser of \$10,000 or 10% of his or her income annually in such companies. HR 2930 pre-empts the state regulators’ registration authority for the exempt securities, but websites and issuers must register with and provide notice to the SEC, which would be shared with the states. HR 2930 passed House 407-17 on 11/3/11.

Title IV, the “Small Company Capital Formation Act of 2011” (HR 1070, Schweikert)

HR 1070 requires the Securities and Exchange Commission (SEC) to create a new and larger exemption, effectively raising the limit from \$5 million to \$50 million for its Regulation A (“Reg A”) security offerings and permitting a more streamlined approach for smaller issuers. The current limit is \$5 million, but the mechanism is little used due to the small size of issuances permitted. The bill would permit SEC to impose conditions on issuance under the rule, and would require periodic review of the limit. HR 1070 passed House 421-1 on 11/2/11.

Title V, “Private Company Flexibility and Growth Act: (HR 2167, Schweikert)

HR 2167 allows companies to remain private longer, with no SEC filings, by raising the minimum shareholder threshold triggering public reporting for all companies from 500 to 1000 shareholders, and by excluding employees from the definition of a shareholder. HR 2167 passed the Financial Services Committee on voice vote 10/26/11, but has not previously come to the floor.

Title VI, “Capital Expansion” (HR 4088, Quayle)

HR 4088 is identical to House-passed HR 1965 (Himes) except that HR 4088 removes a cost-benefit analysis study on raising the shareholder threshold for all companies (see Title V). HR 4088 allows banks and bank holding companies to remain private longer by raising the threshold triggering public reporting from 500 shareholders to 2000 shareholders. The bill also eases restrictions for discontinuing public reporting by increasing the minimum threshold from 300 shareholders to 1200 shareholders. The employee exclusion discussed in Title V also applies to banks and bank holding companies. HR 4088 has not been considered in the Financial Services Committee. However, HR 1965 passed the House 420-2 on 11/2/11.