TESTIMONY OF SCOTT CUTLER
EXECUTIVE VICE PRESIDENT, NYSE EURONEXT
COMMITTEE ON FINANCIAL SERVICES,
U.S. HOUSE OF REPRESENTATIVES
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Chairman Frank, Ranking Member Bachus, Members of the Committee: My name is Scott Cutler, Executive Vice President of NYSE Euronext – the world's leading and most diverse exchange group with equities, futures and options markets throughout the United States and Europe.

I appreciate the opportunity to testify today – and I applaud your strong commitment, even in the late days of the current Congress, to promoting legislation that will help more American entrepreneurs access the capital they need to expand their businesses and create new jobs.

Across America's economy today, small businesses are struggling to find capital. A record 41 percent of small business owners cannot get adequate financing, according to the most recent data of the National Small Business Association – up from 22 percent in 2008.[1]

Regulation A was adopted by the Securities and Exchange Commission pursuant to Section 3(b) of the Securities Act of 1933. The purpose of Regulation A is to enable small businesses to offer their securities publicly in accordance with streamlined offering and disclosure requirements, as compared to the requirements for a full registered offering under the 1933 Act. Increasing the SEC's Regulation A exemption from $5 million to $30 million would open America's capital markets to more entrepreneurs. By reducing the regulatory burden and expense of raising capital from the investing public, as compared to full registration under the Securities Act, Congress can boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine. Regulation A can provide a reasonable alternative means for smaller companies to access the capital markets; it can also help entrepreneurial businesses attract private capital by providing liquidity opportunities at a lower level than might be feasible for an IPO using full registration.

Oftentimes, the greatest acceleration in job growth occurs after a company's initial public offering – in fact, the National Venture Capital Association reports that 92 percent of all job growth within publicly traded companies occurs after the company's IPO.[2] Let me give you just a few concrete examples.

- In 1995 when Pixar went public and released its first full-length movie – a little animated film called Toy Story – the company employed fewer than

[1] http://www.nsba.biz/docs/nsba_2010_mid-year_economic_report.pdf
[2] http://nvcatoday.nvca.org/index.php/nvca-releases-recommendations-to-restore-liquidity-in-the-us-venture-capital-industry.html

100 people. Going public provided the financing Pixar needed to grow from a small animator into a major motion picture studio. By the time the company released Toy Story 3 last summer, the number of jobs at Pixar had grown more than eight-fold.

- Another growing company many have seen in your local mall – Vitamin Shoppe – went public in 2009. In the nine months that followed, the company created nearly 300 new jobs and opened 29 new stores – the fastest expansion in its history.

Of course, not every small business in America will grow into the next Pixar or Vitamin Shoppe – but American job creation depends on giving every entrepreneur and small business that opportunity.

Congress has long recognized the economic benefit of helping small businesses secure capital through public offerings of securities – which is why your predecessors authorized the SEC to create the Regulation A exemption back in 1933. Congress gave the SEC the power to exempt securities from registration under the 1933 Act based on the small amount involved or the limited character of the public offering. Yet over the years, the Regulation A exemption has not been scaled to meet the demands of our modern economy.

Between 1995 and 2004, on average only eight companies per year utilized Regulation A. Simply put, the $5 million exemption – which was last raised in 1980 and is not indexed for inflation – is now too small to warrant companies incurring the time and expense to satisfy the offering and disclosure requirements of Regulation A, even though the costs of Regulation A offerings may be lower than those associated with a full registration under the 1933 Act. In addition to the stagnation in Reg A, we have seen very few IPOs below the $50mm level and even fewer below $30mm. A higher hurdle for entrepreneurial, venture backed companies is evident in the public markets as the median IPO deal size has been above $100mm for years.

All the relevant data point in one direction: Entrepreneurs and small businesses cannot access the capital they need to grow and create jobs. A critical source of financing – the public capital markets – has been largely closed off to America's proven job creators. An increased Regulation A ceiling may provide a valuable alternative for smaller, entrepreneurial companies that want to access the public capital markets even when the larger IPO market may remain limited. It may also enable smaller, growth-oriented companies to access the public market at an earlier stage in their growth cycle.

With respect to some of the Committee's specific questions:

- We believe that $30 million is a reasonable maximum amount for Regulation A offerings, though we note that most full-registration IPOs involve

significantly higher offering amounts. Therefore, there may still be a “gap” between the $30 million ceiling and the offering amount at which a company can realistically access the full-registration IPO market.

- While Regulation D is an alternative means for small companies to raise capital, it has limitations. Regulation D offerings can only be made to a small group of qualified investors, and securities sold in such transactions are subject to transfer restrictions. A Regulation A offering is a public offering and therefore can be made to a larger pool of investors.

- We believe that any increase in the ceiling for Regulation A offerings should be coupled with direction to the SEC to implement it in a manner that will promote capital-raising by smaller companies, while at the same time protecting investors. The SEC should avoid imposing disclosure, governance and other burdensome provisions that may increase costs and reduce the attractiveness of Regulation A as an alternative to a full-registration IPO under the 1933 Act.

- An exchange trading platform may have advantages for companies that issue securities in Regulation A offerings. Establishing a separate exchange trading platform may make these offerings more effective by providing some structural elements to improve liquidity, trading (broker dealer) interest and economics, and investor interest. However, we believe that further investigation would be required to determine if such platforms would be economically feasible.

Mr. Chairman, during the financial services reform debate, this committee took the lead in reducing the regulatory burden on small businesses wishing to go public by permanently exempting companies with market capitalizations of $75 million or less from one of the most onerous demands of Sarbanes-Oxley.

I urge you to continue your leadership in this area by reviving Regulation A and rededicating it to the role Congress originally intended: Promoting the vital flow of capital to the entrepreneurs and small business owners who transform it into economic growth and new jobs.

Thank you again for allowing me to testify. I look forward to answering any of your questions.

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