H.R. 3606, THE REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES ACT OF 2011

HEARING

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS AND GOVERNMENT SPONSORED ENTERPRISES

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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H.R. 3606, THE REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES ACT OF 2011

Thursday, December 15, 2011

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:39 a.m., in room HVC–210, Capitol Visitor Center, Hon. Nan Hayworth presiding.

Members present: Representatives Schweikert, Royce, Hensarling, Posey, Hayworth, Hurt, Stivers, Dold; Sherman, Hinojosa, Maloney, Perlmutter, Donnelly, Himes, Green, and Ellison.

Also present: Representatives Fincher and Carney.

Dr. HAYWORTH [presiding]. This hearing will come to order, and I ask unanimous consent that Mr. Fincher and Mr. Carney be allowed to participate in this morning's hearing.

Without objection, it is so ordered. And as previously agreed with the ranking minority member, opening statements will be limited to 10 minutes on each side.

I recognize myself for 1 minute.

This hearing of our Capital Markets Subcommittee could not be held at a more critical time or a more propitious time, really, because yesterday the World Economic Forum reported that for the first time ever, Hong Kong was the number one center for financial market development.

Hong Kong topped both New York and London, based in large part on its rapidly growing IPO market. K. C. Chan is Hong Kong's Secretary for Financial Services and the Treasury, and he said, "We are working very hard to maintain Hong Kong's competitive advantages and increase Hong Kong's capital markets." Our task today, of course, is the same for the United States.

I now yield 2 minutes to Mr. Himes for an opening statement.

Mr. HIMES. Thank you, Madam Chairwoman, and I want to start by thanking the witnesses for appearing before us today on this very, very important topic. I am an original cosponsor of the legislation that we are here to talk about, so I am very excited about it. It is a good effort toward maintaining what are the deepest and most vibrant capital markets in the world. Our venture capital community, the way in which young companies can get financing and grow from being a figment in somebody's imagination to a multibillion dollar market cap company in the blink of an eye, is one of the true treasures that the United States has. The names that none of us had ever heard of 20 years ago, Google, Facebook, and the list goes on, exist today and are world-beating companies because of the vibrancy of our capital markets and particularly those markets that fund our early-stage companies.

I am a real believer in the legislation that we are here to talk about today. What we are doing, of course, is trying to grease the skids for young companies. And that is the right thing to do to be internationally competitive, but let us also not lose sight of the fact that in lifting some of the regulations, many of which are there for very good reasons, we are also running the risk of creating the kind of froth that we all saw in 1999 and 2000, where moms and pops and cab drivers and local small business owners were acting like tech VCs in the IPO market.

So I would really appreciate it if—and I think we are all on the same page with the same goals here—as we grease the skids for this wonderful capital formation exercise, we don't lose sight of the need to protect retail investors. And I would love to hear from the panel specifically about areas in this proposed legislation where you think we need to be particularly conscious of protecting the retail investors who allow you to do what you do.

Thank you. I yield back the balance of my time.

Dr. HAYWORTH. Thank you, Mr. Himes.

And now, the Chair yields 1 minute to the vice chair of the subcommittee, Representative Schweikert.

Mr. SCHWEIKERT. Thank you, Madam Chairwoman.

As a matter of fact, the center seat fits you well, doesn't it?

I am actually very happy this is moving forward. Mr. Fincher deserves some real credit here for being actually fairly dogged about this, and I want to also thank a bipartisan group for stepping up and embracing this, and moving this forward.

We have had a series of conversations, what does this do in Sarbanes-Oxley, how about the 404(b), are we going to run away from the good things it provides—which is always a fun debate of the good things it provides. But hopefully, this will truly help those upstart companies be able to organize and avoid some of the excessive costs, but this doesn't walk them away from the internal control requirements. Those are still there.

And ultimately, for many of us, when we are going to invest in a young, growing company, it is those internal controls we are most interested in.

Madam Chairwoman, I know I am out of time, but I am really hoping our witnesses today will focus on what this really does mean to a growing company and the benefits that we will provide for that growth.

Thank you, Madam Chairwoman.

Dr. HAYWORTH. Thank you, sir, and the Chair yields 2 minutes to Mr. Royce of California.

Mr. ROYCE. Thank you, Madam Chairwoman.

Over the last 15 years, we have seen our capital markets deteriorate. And if we take a hard look at what is discouraging capital from coming to our markets, Exhibit A continues to be Sarbanes-Oxley.

We have a recent SEC study that says that Sarbanes-Oxley compliance is the most often-cited reason why companies are delisting, why they are choosing to delist—to list elsewhere. And we have this phenomenal drop off in IPOs. As all of us will remember, in the 1990s, we played host to most of the IPOs around the globe.

Here in the United States, this was the home of the majority of those IPOs. Today, it is 11 percent, and it is trending downward at a pretty fast clip. And if you want to do any research as to the answer why, Exhibit A, again, Sarbanes-Oxley.

So, Mr. Fincher's new legislation, I think, goes some distance to helping reverse this trend by making those listings slightly less onerous. But given the urgency of this problem, I think we need a solution to it, and that is why I introduced the Small Business Access to Capital Act, which would exempt companies with a market cap of up to $1 billion from Section 404(b) of Sarbanes-Oxley.

That was recommended by the President's Council on Jobs and Competitiveness. They are on board for this, and this approach would address a key component of the SEC study, which shows the long-term burden on small businesses is 7 times that imposed on large firms relative to their assets. We have overweighted this against small business.

I very much support Mr. Fincher's legislation here today. I think it is needed. We need to move it, but we should follow up with consideration of the legislation that I have introduced.

I would ask the committee to do that, and I would ask at the same time that the Members take a look at some of the studies and the SEC studies that show that the cost of this legislation far outweighs its benefits to the investing public. We need to remedy this situation before the capital markets walk off from the United States overseas.

I yield back the balance of my time.

Dr. HAYWORTH. Thank you, sir.

The Chair recognizes the vice chairman of the full Financial Services Committee, Mr. Hensarling.

Mr. HENSARLING. Thank you, Madam Chairwoman, and thanks for holding the hearing. I want to thank the gentleman from Tennessee for his leadership and his dogged pursuit of this legislation.

We know that since the President has come into office, unfortunately, our unemployment rate has remained at, near, or above 9 percent. We have seen the fewest small business startups in 17 years, and clearly, our constituents expect jobs to be job number one for this Congress.

One of the key ingredients to job creation is capital formation. You can't have capitalism without capital. And as some of my colleagues who preceded me in their opening statements have well noted, we continue to lose market share in the IPO market.

Some studies have indicated that this has, frankly, cost our economy not thousands of jobs but potentially millions of jobs. Nearly one in 10 American companies that went public this year did so outside the United States, and that compares, I believe, Madam Chairwoman, with only two U.S. companies that show foreign exchanges in the entire decade of the 1990s.

And as my colleague, the gentleman from California pointed out, certainly one of the most often-cited factors for going to list on foreign exchanges, frankly, is Sarbanes-Oxley.

And so I want to, again, congratulate the gentleman from Tennessee. His legislation would take a huge step forward. Again, as the gentleman from California indicated, the President's own Council on Jobs and Competitiveness indicated that Sarbanes-Oxley continues to be an impediment. They have recommended the legislation, I believe, that the gentleman from California has authored.

I am happy to be a cosponsor of that legislation. I hope this committee will take it up, and I will yield back the balance of my time.

Dr. HAYWORTH. Thank you, sir.

The Chair recognizes the gentleman from Illinois, Mr. Dold.

Mr. DOLD. Thank you, Madam Chairwoman, and I certainly want to thank our witnesses for coming to join us today. I think that in the piece of legislation we have before us that we are discussing—and I want to certainly thank my colleague from Tennessee and my colleague from Delaware on the other side of the aisle for your leadership in this legislation—what we are talking about is jobs and the economy. We need to jump start these very important aspects, and it is capital formation.

If we look at what has just happened, studying history, we have seen a huge drop off in IPOs that has happened here in the United States, a precipitous drop off, and we can only assume that in talking to them, what was one of the big factors in doing that? It is excessive regulation. And as my colleague from California noted, Sarbanes-Oxley is often cited as number one in terms of excessive regulations, as what is preventing people from going public here or actually delisting here and going elsewhere.

We want to create jobs here in the United States. We want to be the land of innovation, and what has been, I believe, a competitive advantage for the United States is that we do have this vehicle, this mechanism, whether it be through venture capital, where people can take nothing more than an idea, bring it to fruition, get funding, and be able to take it and create additional jobs.

Those companies that go public, obviously, 90 percent of the jobs that they create happen after they go public. This is something that we want to foster. We want to make sure that we are the land of opportunity here in the United States. It is alarming to me that we have lost that in terms of the number one spot to Hong Kong. And I think that the legislation that we are talking about today certainly is a step in the right direction in terms of trying to address Sarbanes-Oxley and the excessive regulations that are put upon these businesses.

For a business that is just starting out, we want to create every opportunity to give them, in essence, an on-ramp to give them the opportunity to say, yes, we still expect you to do this, but we are going to lessen the regulations on these businesses for the first several years to give them an opportunity to get their feet underneath them, to be able to build up the capital and the mechanisms in order to be able to provide some of the reporting that we have asked of other public companies.

This is absolutely, I think, a piece of common-sense legislation. I am delighted to be a cosponsor, and I again want to thank the gentleman from Delaware, and the gentleman from Tennessee for your leadership.

I yield back.

Dr. HAYWORTH. The Chair recognizes the gentleman from Delaware, Mr. Carney, for 2 minutes.

Mr. CARNEY. Thank you, Madam Chairwoman.

Thank you very much, Madam Chairwoman, and thank you to the witnesses for being here. I am pleased to be one of the cosponsors and to work on my side of the aisle to line up other cosponsors, and we have been pretty effective doing that.

I want to congratulate and thank my friend from Tennessee, Mr. Fincher, for his leadership in this legislation, and everybody else who has gotten behind it.

As many of you know, I represent the State of Delaware, and corporate formation is a very important issue for our State. I spoke with my good friend Jeff Bullock just a couple of weeks ago when this legislation was proposed, and his colleague, Rick Geisenberger, who runs the Division of Corporations, and they confirmed for me what we all know, that corporate formation has dipped off over the last several years.

We have State officials who travel around the world, frankly, encouraging entrepreneurs and businesses to incorporate in the United States and, in particular, in the State of Delaware. They also inform me what we all know, which is that IPOs have been down quite a bit over the last 10 years.

I have provided them a copy of the legislation, and they told me that they believe this is a very good approach to addressing that problem. It is not going to fix everything, but it is a really good common-sense approach to allowing the regulations of Sarbanes-Oxley to kind of phase in, if you will, as Mr. Dold said a minute ago.

So I am pleased to be part of the team that is working on this legislation, and I look forward to your comments and to our discussion that will follow. Thanks very much.

Dr. HAYWORTH. The gentleman yields back. The Chair recognizes the gentleman from Tennessee, Mr. Fincher, for 2 minutes.

Mr. FINCHER. Thank you.

Thank you, Madam Chairwoman, for the hearing today.

I want to thank my colleague, Mr. Carney, for his help in moving what I think and what we think is a good piece of legislation.

How many times have we heard this year that we need to create more jobs, and I think what the consensus that we need to focus on as Washington politicians is that we are not in the business of creating jobs. The private sector creates jobs, and we need to make sure that well-meant reforms that have unintended consequences, like our legislation is hopefully going to undo, with bipartisan support, will help the private sector create more jobs.

An August 2011 survey of corporate CEOs conducted by the IPO task force, whose chair, Kate Mitchell, is testifying today before us, found that 90 percent of job growth occurs after a company goes public. However, during the last 15 years, fewer and fewer start-up companies have pursued initial public offerings because of burdensome costs created by a series of one-size-fits-all laws and regulations.

My bill would create a new category of issuers called emerging-growth companies that have less than $1 billion in annual revenues when they register with the SEC and less than $700 million in public float after the IPO. This is a unique category that appreciates the fact that young companies face expensive hurdles in accessing public capital and complying with a variety of laws and regulations.

This on-ramp status will allow small and mid-sized companies the opportunity to save on expensive compliance costs and create cash needed to successfully grow their businesses and create new jobs.

This is very, very important. We think this is a step in the right direction, and hopefully, it is. Again, my colleague from Delaware is showing that bipartisanship can take us where we need to go. So, thank you, and I yield back.

Dr. HAYWORTH. The gentleman yields back. The Chair recognizes Mr. Himes for 2 minutes.

Mr. HIMES. Thank you, Madam Chairwoman.

I asked for another 2 minutes because I feel compelled to make an observation on the bipartisanship that Mr. Fincher just called for. Look, we get things done in this committee, and we do get things done in this committee because we are factual and we leave ideology behind.

And already in this hearing, we have heard that left behind. We have heard statements from the gentleman from Texas that unemployment is at, near or above 9 percent, not below 8.6 percent, which is factual. We have heard Sarbanes-Oxley raised as the reason why IPO volume has gone down.

You know what, I can twist facts, too. I could tell you that Sarbanes-Oxley passed in 2002, when there were fewer than 100 IPOs, and that 3 years later, in 2007, there were 300 IPOs. And if I were not concerned with factuality, I might say that Sarbanes-Oxley actually tripled the number of IPOs.

Regulation is important, and if we are going to get a bipartisan deal done here, I think we need to be factual and we need to understand that some regulation is very important. The volume that you look at when you look at the IPO chart shows dramatic decreases in IPOs in 2001, 2002, and, guess what, in 2008 and 2009. And 2008, 2009 were many, many years after Sarbanes-Oxley, and just happened to coincide to a period of time when the capital markets suffered their biggest dislocation since 1929, and $17 trillion in U.S. assets evaporated.

So, let's at least start this because we agree that it is important to be bipartisan and to be factual. Let's get this done, but let's leave ideology on the side of the road.

Thank you, I yield back the balance of my time.

Mr. ROYCE. Would the gentleman like to yield?

Mr. HIMES. Yes, I will yield.

Mr. ROYCE. I think if we are going to look at facts as represented by the other side of the aisle, let's look at the compliance costs, which are now 30 times what I was told they would be on this committee when that bill passed.

If you want to look at facts, let's look at the fact that we now have 11 percent of the world markets in terms of IPOs, when we once dominated and had over 50 percent. And it was not that long ago. That was in the 1990s.

So, if you look at the facts, and you interview anyone in business as to the main reason why IPO's—

Mr. HIMES. I will take back the time that I don't have.

Dr. HAYWORTH. All the time for opening statements has now expired.

Without objection, all Members' opening statements will be made a part of the record.

I now have the pleasure of introducing our panel: Joseph Brantuk, the vice president of NASDAQ OMX; Steven LeBlanc, senior managing director of private markets for the Teacher Retirement System of Texas; Kate Mitchell, the chair of the Initial Public Offering Task Force, former president of the National Venture Capital Association, and managing director and co-founder of Scale Venture Partners; and Mr. Mike Selfridge, the head of regional banking for Silicon Valley Bank.

Thank you for being here.

Without objection, your written statements will be made a part of the record. You will be each recognized for a 5-minute summary of your testimony.

We will start with you, Mr. Brantuck.

STATEMENT OF JOSEPH BRANTUK, VICE PRESIDENT, NASDAQ OMX

Mr. BRANTUK. Thank you, Chairwoman Hayworth, Ranking Member Waters, and all of the members of the subcommittee.

On behalf of the NASDAQ OMX Group, I am pleased to testify in support of H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011.

Capital formation and job creation are in NASDAQ OMX's DNA. Forty years ago, NASDAQ introduced the world to electronic markets, which is now the standard for markets worldwide.

The creation of NASDAQ introduced a sound regulation to the over-the-counter trading. Around NASDAQ grew an ecosystem of analysts, brokers, investors, and entrepreneurs, allowing growth companies to raise capital that was not previously available to them.

NASDAQ is pleased that both Houses of Congress and the White House are taking a serious look at reducing regulatory burdens that are obstacles to companies becoming and remaining public.

I am here today to inform you that NASDAQ OMX supports the legislative efforts of Mr. Fincher and Mr. Carney and the sponsors of similar bills in the Senate to create an on-ramp for newly public companies that would give them the opportunity for growth before being subject to additional, extensive regulations.

We believe this is a significant step toward making our public markets more attractive to companies, both domestic and foreign.

The United States used to be the market of choice for global IPOs. From 1995 to 2010, the listings on U.S. exchanges shrank from 8,000 to 5,000, while listings in non-U.S. exchanges grew from 23,000 to 40,000. Prior to the Internet bubble, the United States averaged 398 IPOs per year in the early 1990s, and there were never fewer than 114 IPOs per year, even during a recession.

Following the regulatory changes of the last decade, there have been an average of only 117 U.S. IPOs per year. In 5 of the last 10 years, including 2011, there have been fewer IPOs than in the worst years of the 1990s.

In addition to the overall decline in the number of IPO companies, the average IPO has increased in size as the cost of complying with increased regulation has deterred many small and young companies from going public.

Longstanding rivals to the U.S. market such as the United Kingdom, and newcomers such as Hong Kong and Brazil, have taken steps to improve the efficiency and competitiveness of their market, and this is good for the global economy.

However, the United States is no longer the jurisdiction for capital raised via IPOs, ranking second in 2011. Only 3 of the top 10 IPOs so far this year have been from U.S. firms. In 2010, IPO issuance from the Asia-Pacific region accounted for almost two-thirds of the global capital raised.

There are three critical reasons why, in our view, we need to recommit to the public markets. One, efficient pricing and funding for entrepreneurial activity. Two, job creation; a healthy public equity market enables companies to raise more efficient capital more efficiently, funding more rapid growth and creating more jobs. Companies create 90 percent of new jobs after they go public. And three, wide availability of investment opportunity.

As the committee is aware, on October 20, 2011, the IPO Task Force, whose members are some of the best experts on capital formation and represent a diverse interest, submitted a report to the U.S. Treasury Department entitled, "Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth."

This report sets forth a detailed proposal to create a regulatory on-ramp for early stage growth companies, during which disclosure rules and compliance burdens would be phased in while maintaining investor protection. The task force also made detailed recommendations about how to improve research coverage for smaller companies. Many of these recommendations are contained in the House incentives bills, and we applaud the Members of Congress for doing so.

The IPO Task Force report and its recommendations have quickly made an impact on this debate and seem to have solidified a bipartisan core of support in both the House and Senate for quick and decisive action.

The recommendations include: One, provide an on-ramp for emerging companies and use existing principles in scaled regulation; two, improve the availability and flow of information for investors before and after an IPO; three, lower the capital gains tax for investors who purchase shares in an IPO and hold those shares for a minimum of 2 years; and four, educate issuers about how to succeed in the new capital market environment.

In our markets, the number one source of job creation is entrepreneurship. Just as business incubators nurture small companies until they are ready to leave the security of that environment and operate independently, there should be a space for incubating small public companies until they are ready to graduate to a national listing.

Canada, the United Kingdom, and Sweden all have successful venture markets with significant numbers of listed companies and substantial capital-raising successes. These markets list hundreds of small companies that create jobs at a fast rate. The NASDAQ OMX Group has received approval to create a new listing venue on the former Boston Stock Exchange. The availability of the BX venture market will facilitate growth companies to raise capital to continue to expand their business, create jobs, and support our economy.

In closing, I would like to make the following recommendations for reforms that would restore the ecosystem that once existed and is necessary to nurture, sustain, and grow public companies and reinvigorate the U.S. engine for job growth.

Solution one, pass the on-ramp bill and further reform Sarbanes-Oxley.

Solution two—

Dr. HAYWORTH. The witness' time has expired.

Mr. BRANTUK. Okay. Thank you, again, for inviting me and allowing me to testify.

[The prepared statement of Mr. Brantuk can be found on page 39 of the appendix.]

Dr. HAYWORTH. Thank you, sir.

And the Chair recognizes Mr. LeBlanc for 5 minutes.

STATEMENT OF STEVEN R. LEBLANC, SENIOR MANAGING DIRECTOR OF PRIVATE MARKETS, TEACHER RETIREMENT SYSTEM OF TEXAS

Mr. LEBLANC. Thank you, Madam Chairwoman, and members of the subcommittee.

Good morning, my name is Steve LeBlanc. I am the senior managing director of the Teacher Retirement System of Texas (TRS). I am pleased to appear before you today to share with you my views on H.R. 3606.

TRS is the largest public pension plan in the State of Texas. We are the 7th largest in the country and the 17th largest in the world. We serve 1.3 million beneficiaries, 1 in 20 Texans. Approximately 1 million are working members. It is teachers, bus drivers, cafeteria workers; it is everyone who serves our students in Texas. Approximately 300,000 are retirees, and most people may not realize the vast majority do not get Social Security. Our retirement is their only retirement.

Our net assets are at $107 billion, and I personally am a fiduciary for these teachers and workers for approximately $38 billion globally.

At TRS, we have a very diversified portfolio. We invest in private equity, public equities, Treasuries, bonds, real estate, oil and gas, and small emerging companies are a key component to the kind of capital that we can generate for our teachers.

Again, as I mentioned, I personally am a fiduciary, and I oversee the real estate, private equity, and principal investments of the fund. We include several billion dollars in private equity in small and emerging managers.

I applaud Representatives Fincher, Carney and all the others who are cosponsors of H.R. 3606 and I thank you, Madam Chairwoman, and the ranking member, for holding today's hearing.

In my view, the proposed legislation's level of regulations for new public companies is a progressive approach to enable small and emerging companies access to capital and should be given positive consideration by this subcommittee, the SEC, and the other interested parties.

I am particularly supportive of the parts that would address the disclosure and corporate governance regulation on emerging growth companies. This will improve the availability and fair information, dramatically improve it and get it to the same level that large companies have. Potential investors would have more access, not less, to good information.

I do have some thoughts on the definition of emerging growth companies. As you have said, it is for a billion dollars in annual revenue. It might be that $700 million is a more appropriate level. A billion is quite big, and that I think that at $700 million, you would have enough scale to comply with the regulations.

Now, let me tell you where my experience came from. I was the CEO of a public company, Summit Properties; we were a small emerging company. We had a market float of about, when I joined, $500 million, and we implemented Sarbanes-Oxley, 404(b). I hired an internal auditor, and I will tell you I had better internal controls before Sarbanes-Oxley than after, because I had to take and hire an internal person when I could outsource to a large global scale, and I didn't have the resources to put internal capabilities in because it wasn't as a fiduciary to my shareholders' economics.

So I ended up having to sell the company due to Sarbanes-Oxley. We were mostly invested by retail investors, and I can tell from you 1998 to 2004, through 9/11, our investors made nearly 20 percent a year, doubled their money, and got between a 6 to 8 percent dividend. And that company was taken off the market in a large part because of Sarbanes-Oxley and our inability to scale the business to pay for the cost of Sarbanes-Oxley.

So I firmly believe that this legislation will allow the corporate growth of the small companies, the retail investors, access to that wealth creation opportunity that right now, because it is not public, is only available to high-net-worth individuals, who are primarily the beneficiaries of the regulation of Sarbanes-Oxley. Thank you.

[The prepared statement of Mr. LeBlanc can be found on page 50 of the appendix.]

Dr. HAYWORTH. The Chair thanks the witness, and the Chair recognizes Ms. Mitchell for 5 minutes.

STATEMENT OF KATE MITCHELL, MANAGING DIRECTOR AND CO-FOUNDER, SCALE VENTURE PARTNERS, AND FORMER CHAIRMAN AND CURRENT MEMBER, NATIONAL VENTURE CAPITAL ASSOCIATION

Ms. MITCHELL. Madam Chairwoman, and members of the subcommittee, thank you for the opportunity to be here today. With research showing that 92 percent of a company's job growth occurs after its IPO, restoring access to the public markets for emerging growth companies is of national importance.

In that spirit, I would like to begin by publicly supporting H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011.

I believe that this bipartisan legislation will help spur U.S. job creation and economic growth at a time when we desperately need both, and it will do so without increasing the risk for our country's investors. My support of H.R. 3606 is an outgrowth of my services as chairman of the IPO Task Force, a private and independent group of professionals representing experienced CEOs, public investors, venture capitalists, securities lawyers, and acquisitions and investment bankers.

We came together initially at the Treasury Department's Access to Capital Conference in March, where the dearth of IPOs was discussed at length. In response to this concern, our focus was to develop practical yet meaningful recommendations for restoring effective access to the public markets for emerging growth companies. Because public investors were an integral part of our team, we believe that the scale of regulations that we recommended, which H.R. 3606 reflects, strikes the right balance between targeted reform and maintaining appropriate regulatory safeguards.

Why do we believe reform is necessary? For the last half century, America's most promising young companies have pursued IPOs to access the additional capital they need to hire new employees, develop their products, and expand their businesses.

However, over the last 15 years, the number of IPOs has plummeted. From 1990 to 1996, over 1,200 U.S. venture-backed companies went public on U.S. exchanges. Yet from 2004 to 2010, there were just 324 of those offerings. A number of analyses suggests that there is no single event behind this decline. Rather, the cumulative effect of recent regulations, along with changing market practices and economic conditions, has driven up costs and uncertainty for emerging growth companies and has constrained the amount of information available to investors, making them more difficult to understand and to invest in.

This piece of legislation addresses these issues in two crucial ways. First, H.R. 3606 provides emerging growth companies with a limited, temporary, and scaled regulatory compliance pathway, or on-ramp, that will reduce their cost for accessing public capital without compromising investor protection. This on-ramp period will enable emerging growth companies to allocate more of the capital they raise from the IPO process toward growth instead of meeting compliance requirements designed for much larger companies.

So what are the practical aspects of this on-ramp? Most importantly, it is temporary. It would last only for a limited period of 1 to 5 years, depending on the company's size. In addition, the bill's transitional relief is limited to those areas that are significant cost drivers, and it would require full compliance as the company matures.

The scaled regulations under the bill include relief from Section 404(b) of Sarbanes-Oxley relating to outside auditors, as well as permitting emerging growth companies to provide scaled management discussion and compensation disclosure. While these requirements might make sense for larger companies, allowing emerging growth companies to phase in these costs simply follows the scaled regulations that the SEC has already developed and approved for smaller reporting companies.

Second, H.R. 3606 addresses the flow of information to investors about emerging growth companies. When our task force surveyed emerging growth CEOs, many of them expressed concern that the lack of available information about their companies would lead to a lack of liquidity for their shares post-IPO.

Institutional investors like Mr. LeBlanc expressed a similar concern about the dearth of information and exposure they had to IPO companies, making it difficult for investors to make informed investing decisions about these new issues. This bill improves the flow of information about emerging growth companies' IPOs by allowing investors to have access to research reports about the companies concurrently with their IPOs, while leaving unchanged the robust and extensive investor protections that exist today.

H.R. 3606 also permits emerging growth companies to test the waters prior to filing a registration statement. By expanding the range of permissible, pre-filing communications to institutional, qualified investors, the bill would provide a critically important mechanism for merging growth companies to determine the likelihood of a successful IPO. This also benefits issuers and the public markets by allowing otherwise promising companies to get investor feedback and to avoid a premature offering.

In all these ways, H.R. 3606 provides measured limited relief to a small population, strategically important companies, with disproportionally positive effects on job growth and innovation.

That is why I urge the members of this committee to support the passage of this measure. By doing so, we can reenergize U.S. job creation and economic growth by helping reconnect emerging companies with public capital.

Thank you for your time.

[The prepared statement of Ms. Mitchell can be found on page 59 of the appendix.]

Dr. HAYWORTH. Thank you, Ms. Mitchell.

The Chair recognizes Mr. Selfridge for 5 minutes.

STATEMENT OF MIKE SELFRIDGE, HEAD OF REGIONAL BANKING, SILICON VALLEY BANK

Mr. SELFRIDGE. Thank you, Madam Chairwoman, and members of the subcommittee, for the opportunity to testify before you today.

Silicon Valley Bank is a unique institution in terms of where we serve the economy. We help entrepreneurs, and we focus exclusively on technology, life science, and venture capital. We serve nearly half of the venture-backed technology and life science companies in the United States, and we finance them at the very early stages, as well as very late stages.

Having spent 18 years at Silicon Valley Bank, I have worked with thousands of entrepreneurs and venture capitalists. And from my vantage point, I see how critical capital is to emerging growth companies.

I also see firsthand the optimism and energy with which entrepreneurs change the world. Every day, I see a company that is working to cure cancer, that is looking to protect cyber space, that is helping to solve the world's energy challenges.

And while I am justifiably optimistic about the innovation sector's capacity and capability to generate new ideas, this subcommittee today addresses a very real problem, which is that companies need capital to grow.

Today, many entrepreneurs need to spend a better part of a decade building their companies before they can realistically pursue an IPO, and in most instances, those emerging companies opt to sell to larger corporations. I believe this has negative implications for our economy. The decision to go public or not go public is a great debate amongst American entrepreneurs and investors.

For example, I have worked with a company that does cutting-edge work on regenerative medicine—medicine that repairs damaged tissue and helps the body heal itself. This was a company that needed large amounts of capital to develop the treatment safely. This company debated greatly about whether to go public or not, and they did not. Instead, they sold to a foreign corporation.

I am glad they had a successful exit, but I am also sad that they did not pursue an IPO. I fear that job creation for this company may occur overseas.

Let me tell you about three other companies where I think this legislation would help. The first is a company called Broadsoft. They are right here in Gaithersburg, Maryland. They were founded 12 years ago, and they actually went public in 2010. They are a leading provider of business Voice over Internet Protocol (VoIP) applications for residential and corporate businesses. They are in 65 countries. They have 400 employees.

The money they raised in their IPO helped them grow significantly. But as a company—an executive at Broadsoft said to me, knowing that the company was out of pocket $2 million every year for lawyers and accountants before going public gave them real pause about whether to access the public markets.

For a large company, $2 million might not be a lot, but for Broadsoft, that is money that could have been used to hire over a dozen engineers, and from what I have seen, one engineer can make the difference in terms of global competition.

The second company is SAY Media, based in San Francisco, California. They were founded in 2005 by Matt Sanchez, who was just out of college. He started the company with 3 employees, and today there are over 400 employees.

SAY enables advertisers to reach consumers through an online audience of over 150 million. For SAY, the period of time in which they can access the public markets will be a longer path, as compared to their pre-Sarbanes counterpart. And accessing the public markets for capital could make a significant difference in the growth trajectory and future success for SAY Media. Worse, that added time may be too long too wait and SAY Media might find itself sold to a larger corporation.

The third company, which I highlight in my written testimony, was cofounded by Paige Craig, who attended to West Point, served in the Marine Corps, and worked in our defense, intelligence, and counterterrorism communities. He started a company called BetterWorks, Inc., in Santa Monica, California. They help companies engage, retain, and reward employees.

I know from speaking with Paige that he will face a difficult challenge. He knows that selling his company will be far easier and attractive given the cost and distraction of going public. I know Paige wants to build a sustainable global corporation, but that choice may not be available.

I have seen how aggressively other companies are working to displace the United States as the dominant player in the innovation ecosystem. To keep leading, we need to adapt to the changing times, build on our strengths, and eliminate unnecessary impediments that hinder our success.

This legislation will help address one part of the economy by removing legal and regulatory impediments that are a barrier to a growing company's ability to access capital markets. I see enormous potential for entrepreneurs and growth companies in America.

I watch these companies go from two people to thousands of employees and create global corporations. I congratulate this committee for working to strengthen the vitality on an essential part of our economy, and I thank you for your time.

[The prepared statement of Mr. Selfridge can be found on page 119 of the appendix.]

Dr. HAYWORTH. Thank you, Mr. Selfridge.

Without objection, for our witnesses, your written statements will be made a part of the record, as mentioned before.

And now, we will go to questions. The Chair recognizes herself for 5 minutes. I am a physician by profession, I am a surgeon ophthalmologist, and just reflecting on some of the commentary that we had about Sarbanes-Oxley, one thing that a medical crisis can do—and I think we would say the same about a fiscal crisis—is that it can bring into stark relief where there may be lesions or problems in a system. And I think that the testimony of our witnesses has amply demonstrated that as one might identify a highly constricting necktie that didn't cause problems earlier, but in the midst of a heart attack needs to be loosened, certain aspects of Sarbanes-Oxley unfortunately create more problems than they may solve for what we want to be a vigorous marketplace for players of all sizes and not lead to a too-big-to-fail scenario, which is unfortunately where a lot of regulation that is excessive does lead us.

Specifically, Mr. Brantuck, with regard to your comments about opening up a new venture market in the United States, there is the AIM in London, there is the Alternext in Paris. I have spoken with the SEC, actually, about opening up a better marketplace for our IPOs, so I am wondering if you can comment on how that kind of a venture market might work, how it could help our small companies access capital, and what kind of legislative structure would we need to use to help with that?

Mr. BRANTUK. Right. So, we already had approval from the SEC to launch the BX Venture Market, which a few years back, the NASDAQ acquired the Boston Stock Exchange. We had that exchange license, so that is already set up. And what we have learned from other competitors like the Toronto stock exchange, which is probably, we would point to probably the most venture market where they list 2,100 companies on their market with a market capitalization of $37 billion.

And the thing that I want to point out is that 451 of these companies that started out in their venture market have now migrated or upgraded, if you will, to list on the Toronto stock exchange. So we feel there is a strong need for an incubator exchange for these smaller companies that have the ability and access to liquidity, as well as visibility in the marketplace and a mechanism to do what is regulated.

NASDAQ, the Boston, the BX Venture Market would be a regulated national exchange and would comply with NASDAQ's—excuse me, the BX Venture Market's listing qualifications, so there would be a preliminary examination of these companies based on qualitative and quantitative metrics for initial listing as well as continued listings.

So we feel that unlike the OTC, or the pink sheets, this is an environment that creates a stepping stone for these companies to have access, to get recognition in the investment community, while being regulated in the overall market.

Dr. HAYWORTH. So, in other words, you provide an additional level of assurance to the investor. That is what you are seeking to do through establishing things.

Mr. BRANTUK. Correct.

Dr. HAYWORTH. And how far along are you in this process?

Mr. BRANTUK. We do have approval from the SEC to launch it. The next step is to outline the market structure, and this is something that we are taking great pause in to make sure that the market structure is there that will help these companies get notoriety among the market makers and provide liquidity.

One would argue that the AIM market has many listings, but things that I hear on a real-time basis from CEOs and CFOs that have either delisted or deregistered from the United States and have switched to the AIM market is that on paper, it was a great idea. They left the United States to avoid Sarbanes-Oxley.

But what they found was that by listing on AIM's, there was zero liquidity. The stock simply never traded. And I could follow up with some statistics of how many U.S. firms left the United States to list on AIM and have come back. And the companies that have come back have indicated that exact thing; there was no liquidity.

NASDAQ has taken the time to work with the regulators as well as the market maker community to get a better understanding and to really think through the structure of the market maker community to ensure that there's liquidity.

Dr. HAYWORTH. So companies want to be in the United States for our much more reliable and trustworthy fundamental regulatory structure; we just we need to adapt.

Mr. BRANTUK. Absolutely. And just, by way of my role, obviously, I am out on the road on a daily basis meeting with CEOs and CFOs, sometimes large companies, sometimes very small companies. And I would tell you the amount of conversations and the number of conversations that I have had around the excitement around a market like this has just grown exponentially within the last year.

Dr. HAYWORTH. That is exciting, and I thank you, sir.

And the Chair yields to Mr. Hinojosa for 5 minutes.

Mr. HINOJOSA. Thank you, Chairwoman Hayworth.

I want to thank you for calling this hearing on Reopening American Capital Markets to Emerging Growth Companies Act of 2011, and I thank all the panelists because I think this has been an interesting first part of this hearing, listening to what you would do to create more IPOs here in the United States, and it seems that in the last few years, IPOs are being opened abroad.

But just listening to the news last night and this morning on what is happening on the Euro and the European crisis where they have much less regulation, it seems to me that I would question that we stop being so hard on regulations here in these last 2 years because our economy seems to be trying to improve and our unemployment seems to be improving, yet Europe, with less regulations, seems to be very questionable.

So I would ask, Ms. Mitchell, can you discuss with the committee the totality of factors that have resulted in more companies declining to go public, and to what extent is regulation a driving factor in the declining number of IPOs versus other macroeconomic factors?

Ms. MITCHELL. Thank you, I am happy to answer that question, and I think that is a good question.

You are absolutely right that IPOs are impacted by economic and market cycles. We can't deny that. We did a CEO survey this summer. In fact, NASDAQ helped us administer that, of pre- and post-IPOs, CEOs about their points of view about the market. And a couple of interesting facts came out. Over 85 percent of both pre- and post-IPOs' CEOs felt that it was much worse today to go public than in 1995.

And the important thing for me, when I look at that, is looking at their perception of should I, as Mr. Selfridge remarked, should I be attempting to go public? The markets will open and close, and the issue is, are you going to be ready? It takes 2 years to prepare all the accounting issues you need to have pulled together and legal issues to be ready to go public.

But if I don't think it is possible, and I think it has become such a challenge, I am not going to do it. And the CEOs again, both pre- and post-IPO—because post-IPO, they know the answer—cited over $2.5 million conservatively calculated costs to go public and over $1.5 million to stay public each year. As Mr. Selfridge noted, for a small company that is trying to figure out how to succeed, and compete against much larger companies, it really is an important issue.

And it is interesting, when you think about the tie between this and what is happening in the economic markets. IPOs started declining in the 1996–1997 timeframe. That was the beginning of electronic trading, decimalization. It has been a panoply of things that have impacted IPO markets at a time when the market was actually taking off broadly the economy.

So there is a tie between regulation, but certainly, that needs to go hand-in-hand with what is happening in the economy, and we want CEOs to be ready and willing to be able to spend the time and the capital to go public to create the jobs that we referred to earlier.

Mr. HINOJOSA. Thank you, Ms. Mitchell.

I want to ask my fellow Texan here a question. Mr. LeBlanc, given the inherently high costs of going public, it seems as though private placement is a better alternative for some of the smaller firms. If these provisions were in place today, can you provide an estimate of how many companies could potentially benefit from the expanded exemption under this bill?

Mr. LEBLANC. Thank you, Representative Hinojosa. I welcome my fellow Texan, and I appreciate the question.

I can give you my own example of having been a CEO of a small company. We estimated it cost us approximately $2 million to comply with Sarbanes-Oxley and, therefore, I had to lay off nearly 10 percent of my workforce to cover those costs. So there were quite a number of people within the company I ran that lost their jobs due to the regulations that were imposed.

I would yield the answer to your question on the number of companies to my colleague here, who cited the average number of IPOs during the 1990s at approximately 300 to 400, a year and now down to approximately 100 a year, so I think you are looking at 200 to 300 companies a year that the retail investor does not have access to. The retail investor does not have access to private placements because private placements are limited to high-net-worth individuals, and I think this is a shame in our country that we don't allow the small mom-and-pop retail investors to have access to these growth companies that would generate quite a bit of wealth opportunity for our small retail investors.

Mr. HINOJOSA. Mr. LeBlanc, in the 1990s, we had the longest period of prosperity in our country, wartime or peace time, and you all are talking about how many IPOs started up during that 10-year period.

As you know, this bill states that a company would qualify as an emerging growth company with special status for up to 5 years so long as it has less than $1 billion. So I will ask you, Mr. LeBlanc, can you elaborate on your concerns with this threshold and what threshold you think might be more appropriate?

Mr. LEBLANC. Thank you, sir.

Yes, a billion dollars does seem like, for annual revenues, quite a large sum. My recommendation, respectfully, is that the committee might consider lowering that amount.

Mr. HINOJOSA. How much?

Mr. LEBLANC. $500 million.

Mr. HINOJOSA. $500 million. Do you have an estimate of what percentage of public issuers this bill would exempt under the new emerging growth company exemption? That will be my last question.

Mr. LEBLANC. Yes, sir. We had requested that research. We will have to get back to you with that answer. We are looking into that, the number of public companies in the market that have less than $500 million. I did it as an entrepreneur who has run a business, and I started looking at the revenue, what my profit margin might be, at what stage could I afford $1 million to $2 million that would be diminishing my return for my shareholders, and I thought $500 million would probably get me to that place. A billion might be too large. And I do want to have—

Mr. HINOJOSA. Thank you.

My time has run out, and I thank you for that response. I yield back.

Mr. LEBLANC. Thank you, sir.

Mr. DOLD [presiding]. The gentleman yields back, and I certainly appreciate that. The Chair will recognize himself for 5 minutes.

Mr. Brantuck, if you could, just shed a little light and obviously, we talked about the IPO marketplace and how it earlier had—was much more robust and more lately it seemed to decline in terms of numbers. Regardless of the reason why, and I think there is a number that we can point to, but can you just give me your take on what the impact was for the United States economy to have the number of IPOs drop so sharply?

Mr. BRANTUCK. In terms of IPO drops, I would say I think there has been enough data to be shared with the House here to identify that there is an issue.

The exact number in terms of jobs and jobs that were lost because IPOs—I could follow up with you; I do not have a list of those figures.

Mr. DOLD. Not a problem. If you could talk to me for just a second on Asian markets. In your testimony, you talked about how Asian markets raised over two-thirds of the world's capital in 2010. Can you shed a little light on terms of why they are going to Asia as opposed to why they are not doing it here in the United States?

Mr. BRANTUCK. Asia is seen as a viable alternative to U.S. capital markets. Regulation isn't as burdensome. Many companies also see that Asia, many of their customers are located over there, so they are seeing an alignment over there. But, again, the number one reason that we hear companies going over to Asia is because of the high regulatory environment that we have here in the United States.

Mr. DOLD. And we will follow up with you a little bit later in terms of some of the other things that we should be doing. If I can just switch for a moment to Ms. Mitchell.

Your testimony states that approximately 85 percent of what would be classified as emerging growth companies under the bill do not find going public is as attractive today as they did in 1995. Can you give me some better perspective from what you are hearing as to why and how this has hurt the U.S. economy, in your opinion?

Ms. MITCHELL. It is interesting and a contrast to entrepreneurs overseas who see going public on their exchanges as a great banner and, certainly, in the early 1990s and late 1980s, companies in the United States were aiming for that alternative as well. And I think the issue is—we have referred to it quite at length here. In the early 1990s, when you think about a normal time period, and I think Congressman Himes' comments, which I think are good ones, we are not trying to recreate the bubble at all in what we are doing here.

We are really trying to bring it back to a normalized level.

But entrepreneurs were very specific about their concerns about going public, their ability to get information to investors and the costs of doing so. And, so, again when there is a lot of economic uncertainty in the market, coupled with what they know to be an expensive process, they will pull back, and as Mr. Selfridge referred to, invest in engineers. And when you haven't invested then in getting ready to go public, you are more likely to be sold. And when you are sold in the short run, you actually have job reductions because you eliminate redundant jobs.

You asked Mr. Brantuck a question about the jobs that might have been created, and I think it is always hard to deal with a hypothetical. But there is a McKinsey study that is actually in the President's Council on Jobs and Competitiveness report that refers to over 2 million jobs that would have been created in the last few years. So I refer to that element, and we can all look at that after this hearing, but McKinsey had taken a look at that, and I think it was post 2007 or 2008 that they referred to that piece of it.

Mr. DOLD. Thank you.

Mr. LeBlanc, you just testified a moment ago that in your company, when you were dealing with Sarbanes-Oxley and the like, it was costing you about $2 million in order to comply.

Would you estimate, and you are dealing with other companies, that would be more the norm or would that be the exception?

Mr. LEBLANC. Thank you, Representative. I believe the average is about $1.5 million, so we were estimating between $1.5 million and $2 million, and probably of the two, we would have spent a portion of that, so I think $1.52 million is a good number.

I would like to respond to your question about Asia. As a fiduciary for the teachers of Texas, I would much rather see those companies which are going public in Asia, instead going public in the United States, because I, as a fiduciary, have much more confidence in our rule of law, and our enforcements of the regulations we have and the punishment of those that violate those regulations than I do, frankly, in the Asian markets.

Mr. DOLD. So just following up on that, obviously we would all like to see those companies go public here in the United States, as opposed to over in Asia. What would you recommend in terms of— I think you believe, as I think most of us do, that this piece of legislation will move us closer to creating an environment that will help us attract more businesses to go public here in the United States. Do you have any indication as to how this legislation may be able to help them?

Mr. LEBLANC. Yes, sir. I believe that the reduced requirements for the Sarbanes-Oxley requirements, the additional information provided to potential investors about companies, just ease and reduction of cost over that 5-year ramp-up period, will encourage many more small companies.

My son is a good example. He is 24 years old. He is working at a start-up in Silicon Valley called WePay. They are a competitor to PayPal. PayPal, as you know, was bought by eBay, and is now a large company. And there are 30 kids trying build a business that they hope can create jobs, do something, and create a competitive environment to give people an alternative. They look at the public exit as not viable today, and so they ultimately possibly would not want to sell or go public but have to sell to a larger company, and the wealth creation would be lost to the retail investors.

Mr. DOLD. Thank you so much. My time has expired. The gentleman from Colorado is recognized for 5 minutes.

Mr. PERLMUTTER. Thank you, Mr. Chairman. And I am generally supportive of this legislation, but I have to say, and I am sorry I missed the first panelists' remarks, but I haven't heard anything about investor protection. And there was a reason for Sarbanes-Oxley, there was a reason for the 1933 Act, and there was a reason for the 1934 Act, and that is about investor protection. If the investors don't feel protected, that they are getting fair information in a timely manner, they are not going to invest.

So now that I got that off my chest, do you believe that the appropriate investor protections still remain? And I will start with you, Ms. Mitchell.

Ms. MITCHELL. You are asking a very pertinent question, and something that the IPO Task Force really started out with as a premise, and why the composition of our committee included not just CEOs, but institutional investors, because we felt if we didn't address that issue, we would have failed. Our objective was to have practical but meaningful recommendations. And what we ended up with, the structure that we decided early on was to build and extend on existing regulations, because we do think they are valuable. That is why our recommendations on the cost side are temporary. And that is why on the research side, they still are within the confines of SEC and FINRA regulations and governance. And we felt that was a really important piece. There are certain people who don't think we went far enough. But I think that is why we were looking to strike that balance.

On the cost side, we have addressed the cost issues, but it is a short number of issues for a limited period of time. And on the investor information side, we are modernizing it, but we are doing it within the context of the existing regulations. And we thought that was actually a very important part of this to make it successful going forward.

Mr. PERLMUTTER. Okay. Mr. Selfridge?

Mr. SELFRIDGE. Yes?

Mr. PERLMUTTER. I have represented people who got caught up in WorldCom and in Enron, so I have seen people harmed. I have seen capital absolutely evaporate in front of people's eyes. So, you are talking about, hey, I have these three companies and this would really help them.

I want to just make sure that we have a system in place, sort of as Ms. Mitchell and I were just talking about, that protects them. So as a banker, you also have the investor side of this. What do your investors think about this?

Mr. SELFRIDGE. I guess as a banker, I look for the same protections in terms of how I analyze risk and manage risk. So as Ms. Mitchell so eloquently said, I think the protections are still there. Yet what I am dealing with in terms of the segment of the economy is far different than global corporations with perhaps a few bad eggs. I see companies that are growing at 20 to 100 percent a year. And in terms of their impact as three companies on the total economy, I think it is de minimis. However, I see the potential for them to grow to be enormous companies and support job growth. What I also see is that every dollar that they can spend to help compete against fierce competition in countries that have limited respect for intellectual property rights, or that they can use to hire engineers, or perhaps boost up sales and marketing is a dollar that I think has a—

Mr. PERLMUTTER. Whoa, whoa, whoa. Do you think every dollar goes into employing somebody, or does it go into a dividend to the investor?

Mr. SELFRIDGE. The companies I deal with do not dividend to investors. They go into operating expenses to grow companies

Mr. PERLMUTTER. Have you heard of an outfit called SecondMarket?

Mr. SELFRIDGE. I have.

Mr. PERLMUTTER. Okay? Do you use their services at all?

Mr. SELFRIDGE. No.

Mr. PERLMUTTER. Why not?

Mr. SELFRIDGE. Personally, I don't want to invest in those companies. And that is my personal choice.

Mr. PERLMUTTER. Okay. No, no, that is fine. That is fine. I didn't know if it was something—because that is one where you can take what is locked-up wealth or value in a private company, and then hopefully find some other people so that you can liquidate or provide some cash—

Mr. SELFRIDGE. Sure.

Mr. PERLMUTTER. —for that locked-up wealth. And that is part of what happens in these private companies.

Mr. SELFRIDGE. Right.

Mr. PERLMUTTER. So, Mr. LeBlanc, in your situation was it really—sometimes just going public is a tough row to hoe, whether it is Sarbanes-Oxley or anything else. You come under a lot of new restraints. Did that play into your decision at all, just going public and knowing you are going to be under this whole new regimen and you have investors that you don't know?

Mr. LEBLANC. Yes, sir, that did play into my decision. And the decision was that the benefits of the access to the public markets, the ability to have growth capital to employ more people, to get access to retail investors, outweighed the Bataan Death March you have to go through to become a public company.

I will specifically speak, though, to your internal controls. And let me use 404(b) as an example. I had to hire an internal auditor, and I hired the best person I could at the salary I could afford. And I could tell you that that person was qualified, but I had better resources when I was using Deloitte and outsourcing that, because I got global experience, global knowledge, and it was much better for me to outsource it. So I ended up having to hire that person and supplement their work with outside resources.

So that is where I would tell you that sans Sarbanes-Oxley, I had better internal controls before Sarbanes-Oxley than I did after. And then my costs went up, with no added benefit.

Mr. PERLMUTTER. All right. Thank you for your testimony.

Mr. DOLD. The gentleman's time has expired. The gentleman from Virginia is recognized for 5 minutes.

Mr. HURT. Thank you, Mr. Chairman. I want to thank each of the witnesses for joining us today. And thank you for your testimony.

Obviously, I think we all here on both sides of the aisle want to see an increased, vibrant marketplace for new and emerging companies. So, I appreciate your insights into that. And I thank the gentleman for putting forth this bill.

One of the questions that I wanted to ask was about the PCAOB and the concept that they have put out there about mandatory rotation of auditing firms. And I guess the costs of that concern me, as well as I think that the diminished quality of work that might result from having that sort of disruption.

And I was just wondering if, and maybe I will start with you, Mr. Brantuk, if you could maybe address your views on that, and then maybe have the other witnesses talk about that. Thank you.

Mr. BRANTUK. Working closely with auditors and auditor firms, one big concern that they have is ramp-up time, getting to understand the company and understand the books. And a natural concern to this rotation would be, how much time does it take to ramp up to allow these audit firms to do the proper due diligence to properly audit these firms? So the quality of the rotation could be hampered in our opinion.

Mr. HURT. Mr. LeBlanc?

Mr. LEBLANC. Yes. We were subject to—when I ran a public company—the rotation. I would recommend two things. One, that you do have rotations of the auditor within the audit company. I think that is good. I am not sure you have to rotate the company. And then, I would encourage this committee to enforce existing regulations so when there is lying, cheating, or stealing, there is punishment for that, and that will have a better impact than causing a rotation, in my view.

Mr. HURT. Excellent.

Ms. Mitchell?

Ms. MITCHELL. I am happy to answer the question. The pending recommendation that the PCAOB has had out there as we were working as a task force over the course of the summer, to be honest with you, the members of the task force across-the-board almost reacted in horror when they heard that. The expenses of it for a small company are huge. Again, they are using their capital at that stage not to liquidate investors, but to really invest in their growth. Every few hundred, or few thousand dollars really is a huge difference in perhaps even being profitable and not.

The expense of bringing in a brand new firm—and by the way, small companies buy their services on a retail basis. Their hourly rates are among the highest, as one of the former accountants on our task force noted to us. And none of us could really believe that could be a possibility.

I agree with Mr. LeBlanc. I think it is very important that we continue to have audit partner rotation. That is healthy. Frankly, I think that the company benefits. You get the objectivity of a new partner coming in. That is a very good thing. To have a new firm come in because they have to go back and reaudit prior years, and start all over at the beginning, is punitive without providing investors with a lot of benefit. So that cost-benefit balance is just really not there.

Mr. HURT. Thank you. Mr. Selfridge?

Mr. SELFRIDGE. I would echo Ms. Mitchell's comments, and I would also add that I think from what I see, different accounting firms have different philosophies and approaches to new and emerging growth companies. Some treat them with more resources than others. So I would be suspect in terms of the rotation of an accounting firm.

Mr. HURT. Great. I thank you for answering the questions, and I yield back the balance of my time.

Mr. DOLD. The gentleman yields back. The Chair recognizes the gentleman from Connecticut, Mr. Himes, for 5 minutes.

Mr. HIMES. Thank you, Mr. Chairman. Let me thank the panel again for their very good testimony. I am really hopeful we are going to get something done here in good bipartisan fashion, which is why I felt obligated in the opening statements to try to urge the discussion to stay out of the realm of ideology.

I do want to just run through just a couple of concerns that I have. And Mr. LeBlanc, one of the concerns, maybe the prime concern I have had with the legislation is how we pick the number, $1 billion. I looked at some data, 3 years, $1 billion in revenues would basically be about 80 percent of all IPOs. I heard you say both $500 million and $700 million as a counter-recommendation. Did I mishear?

Mr. LEBLANC. Thank you, Representative Himes. I believe the proposed legislation was $1 billion in annual revenue.

Mr. HIMES. Right.

Mr. LEBLANC. And my suggestion is to reduce that number down to $500 million.

Mr. HIMES. Can you give us a feel for why—at some level, these things are arbitrary—$500 million may be better than $1 billion in revenues?

Mr. LEBLANC. As you wanted to stay fact-oriented, it is less factual about the number of companies but about me looking at running an operating statement, a balance sheet, and saying, if I have $500 million in annual revenue and I have a 10 percent, 20 percent, 30 percent profit margin, then I have $50 million, $100 million, $150 million in net revenue. And then if I had $1.5 million, well gosh, that seems like at $50 million, it is still going to be burdensome. At $50 million, I am actually concerned that maybe the $500 million needs to be higher. But at $150 million, 1 percent of my net revenue, if I had to implement a full $1.5 million, that seems like an appropriate level where I could ramp up to Sarbanes-Oxley.

Mr. HIMES. Thank you. I appreciate that. My second question is not so much a question as a request. I get a lot more comfortable on this stuff, on these ideas, if the investors who are purchasing these securities understand that they are purchasing a slightly different category of securities than everything else, than blue chip stocks. I remember back when, if you were on the New York Stock Exchange, you had a one- or two- or three-letter symbol, and if you were NASDAQ, you had four-letter symbols. I would make a request to the panel if you couldn't help us think through and maybe submit some ideas on how we make it plain to investors that when they purchase this, they are purchasing unmatured, emerging companies. That, I think, would help a lot of us get some comfort. So, that is just an offline request.

My last question, and this is directed at Ms. Mitchell and also Mr. LeBlanc, it is a sort of "dog that didn't bark" question. I have now heard the $2.5 million figure a number of times. We have made no mention of the fees to underwriters. Back when I was doing this when I was a tech banker, there was notable consistency in gross spreads fees to underwriters of about 7.5 percent. Is that still more or less where we are?

Ms. MITCHELL. Yes.

Mr. HIMES. Okay. Is it true—so that I do can do a little math here, I looked at some data—that the average IPO is somewhere between $350 million and $400 million? Is that more or less true? Let me use $350 million. A little quick math in my head here would suggest that 7.5 percent times $350 million is about $25 million in fees to underwriters. That is 10 times the $2.5 million that we are talking about as burdensome here. What do I make of that? Am I not hearing about that because issuers and the investing community feel like they are getting really good value for that $25 million, or just what am I to make of that?

Mr. LEBLANC. That is a great question. Do keep in mind your $25 million is a one-time event. The $1.5 million to $2 million ongoing expense is ongoing every year. And ultimately, companies are valued based upon the net present value of their income stream over a long period of time.

I would love to see a more robust Dutch auction similar to what Google did—you see Facebook is talking about this—and to disintermediate that 7.5 percent, and I would love to work with you and others to find a way to make that market more efficient and make that cost of going public less costly.

I am a capitalist; I believe in market valuations. The market seems to be settled in on that. Hopefully, you will see some companies, some providers of those services maybe start to reduce those costs.

Mr. HIMES. Thank you. Ms. Mitchell?

Ms. MITCHELL. I am happy to answer that. And interesting enough, one of the objectives, and we did have investment bankers, as I noted, on our IPO Task Force, and our hope is that we have more IPOs, that we have smaller IPOs. A number of the IPOs that we all know about this year really are not small cap IPOs, they are multibillion-dollar companies raising huge amounts of capital that are driving really large fees. And if the recommendations in H.R. 3606 that you sponsored come to bear, we are hoping that smaller companies come to market, the average raise will be smaller, and frankly, the fees from an investment banking point of view would come down because the average raise would be smaller.

In the early 1990s, the average raise, as you pointed out, was a fraction of what it is today. And we are looking to actually allow for the opportunity for smaller companies to go public.

A quick response to the question that you asked Mr. LeBlanc about the size, I think it is a good, healthy discussion for us to have. We were thoughtful about where you draw that line. And the reason we picked the two pieces, one $700 million in public float, the amount of shares that are available on the market, is that is consistent with the common SEC definitions for a large accelerated filer. So we were trying to build on existing regulations out there.

The revenue test, we picked that, partly feedback from the institutional investors on our committee, the way they look at small cap companies versus large. Also as I mentioned, it takes 2 years to plan for an IPO from a cost and infrastructure point of view. As you noted, these are companies that are growing 30 to 50 percent a year. So you are having to begin, let's say, if you are 5 years on the on-ramp, in year 3 to begin to be ready by year 5.

And then last, that this really is a lot of these companies—and because of these high-growth, frankly, job-creating companies that we are referring to that really can, again, revitalize the economy as we talked about, grow so quickly, they often are investing in the future; they are investing in future growth. A lot of them are on the cusp of cash flow breakeven, and aren't generating the kind of steady-state net income or cash flow that Mr. LeBlanc refers to, so that is why we left it at that level.

I would say, by the way, companies like Zynga and Groupon, who obviously had well-publicized and successful IPOs of late, within the first year would be off the on-ramp, if not available even at the beginning.

We weren't looking to solve the problem for GM or HCA or companies like that. We were really trying to get the smaller companies, again, revitalizing those small IPOs and for the poor bankers.

Mr. HIMES. Thank you. I note I am way out of time, but if you can get back to us with a response to this question: How can we make sure that retail investors know they are investing in something a little more risky than perhaps the average stock out there? I think that would be helpful.

Ms. MITCHELL. That is important.

Mr. HIMES. Thank you. Thank you, Mr. Chairman.

Mr. DOLD. I thank the witnesses. And the Chair recognizes the gentlewoman from New York, Ms. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you. Thank you for your testimony. I would like to ask Ms. Mitchell, recently we had a hearing on Mr. Fincher's proposal to permanently exempt companies with a larger market capitalization from section 404(b) of Sarbanes-Oxley. And it was noted at that time by exempting companies of $75 million or less, which was in Dodd-Frank, we were really capturing 60 percent of the public companies that are out there.

So can you explain to me why you believe a 5-year exemption from compliance, for companies with almost 10 times that in market cap as the ones we exempted in Dodd-Frank, is a good idea?

Ms. MITCHELL. Thank you for asking that. That was something we pondered carefully when we began thinking through this group from the broader ecosystem, because it is—from an investor protection point of view, can be concerning if it is a large percentage of any population. And the reason we chose that 5 years is the opportunity to use the capital to grow and, in the process, prepare for full compliance. And the result is that—

Mrs. MALONEY. Ms. Mitchell, my time is limited. Aren't we really talking about very small companies that want to go public but don't have the resources to create full compliance regimes or cover the cost of registering? Why is the threshold so high? I can understand wanting to help smaller companies comply, but this is a huge exemption.

Ms. MITCHELL. And the benefit that we put forth, the 5-year time horizon, actually means that less than 2 percent of the market cap on the total exchanges would be impacted by the recommendations that we are making. And it is less than 15 percent of the companies that are on the exchanges because we have set a limited time for compliance.

Mrs. MALONEY. But it is a huge cap; it is 10 times what we had in Dodd-Frank.

Let me ask you, what are the investor protections that are there during that 5-year period? What is there to protect investors?

Ms. MITCHELL. Number one, it is important that they are on the public exchanges, because all the SEC and FINRA regulations exist for small through large companies, and the governance at a large level. When we looked at very small reporting companies, the list of exemptions that they have, we actually took a lot of them off that on-ramp list because we felt that we should leave everything in place that we possibly can. So if it didn't generate cost, we left it on. If it also was not valuable for investors, even if it was expensive, we also took it off that on ramp.

As an example, projections of future commitments of cash flow are really important for investors to understand the cash position of a small company. So even though that is costly, we felt it was important that companies still comply with that from day one. So, again, we looked at building and extending existing regulations, not throwing them all out and making these companies exempt from everything. And they are exempt only for a limited period of time. So again, we tried to do it within the spirit of investor protection, and consistent and clear communication with investors.

Mrs. MALONEY. Okay. I would like to ask Mr. Joseph Brantuk from NASDAQ, I regret I had another hearing I had to vote in and so I am getting here late, but in your statement, you were talking about opening up some new exchange called the BX Venture Market, which is going to be helpful for small companies. Can you explain why it is helpful? Why do we need this? What do you see as the benefits of this? What is the difference in the way a small company's stocks trade? And also, your comments on what protections are there for investors during this 5-year period?

Mr. BRANTUK. Right. I will take the protections for investors in this 5-year period; I would point to the exchanges themselves. These companies that are listed on NASDAQ, NASDAQ Global Select, our highest listing here, has the highest listing standards in the world. So not only is it very difficult, both qualitative and quantitative metrics, for these companies to list on NASDAQ, but there is also ongoing regulations and continued listing qualifications that monitor.

So we have a team here in Rockville, Maryland, that is constantly monitoring these companies to make sure that both on a qualitative and quantitative basis, they are following the rules of NASDAQ.

To the BX Venture Market, we believe this is an absolutely critical and important market for small companies looking to access capital. It is an efficient way where there is no middle ground between companies that are trading on the OTC in an unregulated market, and companies that cannot qualify to list on NASDAQ. Right now it is sort of a no man's land. And we believe by creating a BX Venture Market, that it is highly regulated, and that these companies will have access to mature, grow, incubate, and hopefully one day list on the main exchange, on the NASDAQ Stock Market.

There are fundamental issues that we are concentrating on right now, which is market fragmentation and the lack of liquidity, and pricing discovery on these smaller companies and smaller cap companies. And we believe that the committee should also take a look at innovative market structure rules to ensure that these companies are provided and supported by the market-maker community.

Mrs. MALONEY. Very briefly, Ms. Mitchell, you mentioned that small companies pay retail rates for auditors—and you can get back to me in writing since my time has expired—but what are those rates, and how do they compare to the rates for larger companies, since we are doing sort of a contrast between large and small? Or if you can answer quickly, I think that is an important point for my colleagues.

Ms. MITCHELL. I will submit that. In the interests of being accurate, I will go back to my committee members and supply that to you in response.

Mrs. MALONEY. Great. Thank you so much. Thank you. I yield back.

Mr. DOLD. The gentlelady yields back. The Chair recognizes the gentleman from California, Mr. Royce, for 5 minutes.

Mr. ROYCE. Thank you, Mr. Chairman. Mr. Brantuk, you noted the President's Council on Jobs and Competitiveness, and they had this report on Section 404(b), their recommendation. Can you expand on why you believe that providing a permanent exemption for 404(b) is necessary?

Mr. BRANTUK. The permanent extension of 404, quite honestly, we believe there is no additional value in 404, just additional cost. I believe one thing we did mention is for companies, a suggestion to have these internal controls done every other year. We just think that the additional costs of having these controls for 404 every year are just not necessary.

Mr. ROYCE. Now, you also cited testimony regarding the potential negative consequences of companies staying private. You mentioned some research on that. Why is that the case? Why would it matter on a macro level if a given firm decided to remain a privately held company? We had that statistic we talked about earlier here. We have the majority—or you have a smaller number of public companies today than you did 10 years ago here in the United States, despite the fact of so many going public overseas. Why would that matter?

Mr. BRANTUK. It really comes down to job creation. These smaller companies need access to capital to grow and create jobs. And without that access to capital, they really are only left with one option, which is to sell themselves to recognize the true value of their company.

One big concern is that there is $1.5 trillion of cash on the balance sheets of U.S. corporations. We believe that money is just sitting there and ripe to acquire a number of companies. And as we all know, M&A equals job reductions. IPOs equal job creations. And we believe that is the main focus and driver behind job creation is fostering and creating valid IPO capital markets.

Mr. ROYCE. So you think this phenomenon of delisting, and the mergers and acquisitions that go on in place of it as firms become more inward looking, and as they are not engaged in R&D, and don't have access to the capital, and they sort of change their outlook, and as a result, it impacts employment here in the United States?

Mr. BRANTUK. Absolutely. These companies are looking to where they can fit a niche product or service for a larger corporation in the goal to be acquired, whereas, looking at it holistically, looking at the innovative nature of the U.S. economy and the U.S. entrepreneurs in the United States and really grow and strive and thrive and, again, raise and create jobs.

Mr. ROYCE. In your work with clients, do the disproportionate way in which these costs affect smaller firms relative to larger ones, given the way that larger ones can more easily absorb the costs, does that have an impact? We have compliance cost evidence from an SEC survey that suggests that the ratios are 7 to 1 or 8 to 1, something in that neighborhood. What impact does that have?

Mr. BRANTUK. Absolutely. We are not against regulation. In fact, NASDAQ is an SRL. We embrace regulation. We believe it supports capital formation and protects investors. But we also believe that we just need to strike a balance. It is not a one-size-fits-all in terms of regulation. The ability for a company making a billion dollars in revenue to absorb these additional compliance costs is much different than a company making $75 million to absorb these compliance costs.

Mr. ROYCE. So for example, the piece I had from the Wall Street Journal about some of these rules, companies have had to undertake exhaustive investigations of such minor issues as how many people should be required to authorize small customer refunds at a retail location, you are saying that when this happens, the disparate impact on small firms is considerable?

Mr. BRANTUK. Exactly. I have heard crazy stories of how, because of 404, companies needed processes in place to order staplers, order business supplies.

Mr. ROYCE. So the economies of scale relative to large firms versus small, would argue that an exemption under a certain amount would be very beneficial in terms of the competitiveness of up-and-coming smaller firms, which are the larger hiring firms, right?

Mr. BRANTUK. Absolutely.

Mr. ROYCE. They the ones that are most likely to hire and grow.

Mr. BRANTUK. Absolutely. I would point to the data that 90 percent of all new jobs are created after a company goes IPO.

Mr. ROYCE. Thank you, Mr. Chairman. I will yield back.

Mr. DOLD. The gentleman yields back. The Chair recognizes the gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman.

My question is, looking at H.R. 3606, there are a number of things that would comprise this widened on-ramp you all are talking about. And they come in the form of exemptions. I haven't gotten on the bill yet. I might. I am just thinking about it. And the thing that kind of drew my attention first is not some of the regulatory stuff that may make things better. Experts who know more than me, I might want to listen to. But other things sort of got my attention, like how would exempting these companies from say-on-pay votes—and there are a number of compensation-related things—how does this help a small company?

Again, I have never run a company. I guess I ran my law firm. That is the only one. But how do these things play? The stuff about 404(b) and the other stuff, it does make sense to me, but just letting—just dropping all accountability around compensation, I would just love to hear your thoughts on how that helps a company achieve public status. There is probably a good reason, but I just don't know it.

Ms. MITCHELL. Simply, and I should yield to a former CEO as well, at your direction. And again, it is really important that you bring this up. There is detailed compensation disclosure that will be included. So we are narrowing for a short period of time. Frankly, the truth is for these small companies, their compensation is very simple and not as complex, and frankly not as lucrative as some of the larger companies.

Mr. ELLISON. Exactly. So that is why I don't know why the exemption needs to exist. Usually, it is simpler.

Ms. MITCHELL. What they have to do, though, is go through a much more detailed compensation disclosure when most of it doesn't apply to them. But because it is a larger company, what is required for IBM is required for a smaller start-up, and they still have to fill out all the paperwork and have all the lawyers take a look at all that piece for compensation.

What we are saying is they do disclose, using the small reporting company format. It is important for shareholders to understand compensation. But let's for that initial on-ramp use the smaller company reporting that the SEC allows today, and then over that 5-year period, they will either grow out of the on-ramp status themselves; or, at the end of the 5-year period, regardless of their size, they will need to comply with the same requirements that an extremely large company would have, the much longer, more lawyers' fees kind of disclosure. But it would be disclosed.

Mr. ELLISON. That is good to know. And also too, when I heard about the reduction in IPOs, I was disturbed by those statistics. And then, I heard the migration to the Asian markets is really where we see the growth. I thought to myself, if I had a lighter regulatory burden in some other part of the world, I might go there. But then, is Asia in for its own Enron and WorldCom because they don't have the regulations that we have? The reality is if you look at this housing bomb that we just went through, it really took place in the more unregulated part of our market. Ultimately, Sarbanes-Oxley was passed, as my friend said, for a reason. Is the migration to Asia's lower regulatory burden, is it necessarily—I guess it is a bad thing, but are they just not being prudent? Mr. LeBlanc?

Mr. LEBLANC. It is hard for me to respond to say whether or not they are being prudent. Would I rather have those companies in the United States—

Mr. ELLISON. Me too.

Mr. LEBLANC. —under a rule of law that I have faith and confidence in? Yes. I don't think Enron or WorldCom would be affected by this legislation. If we look back at what has been too- big-to-fail as what has caused a lot of the financial burden, it has not been small companies.

Mr. ELLISON. Right. I agree. And I hope you accept my questions as one who would love to see us increase our number of IPOs. I like the spirit of this legislation. I just want to make sure, like other questioners have, that we are basically not ripping off regulatory burdens that protect investors, and at the end of the day we get rid of all this stuff, and we are just back in a bad economic situation.

Mr. LEBLANC. Representative Ellison, I applaud you for that. I think that is critical. Business in this country is based upon trust. And if we lose trust, there is no business. There is not a regulation in the world that will keep a dishonest person honest. But if you have a set of rules that are fair and equitable, and then enforcement of those rules—I sign Sarbanes-Oxley as a CEO in certification. To my knowledge, there has not been a prosecution of a CEO under Sarbanes-Oxley. I am stunned.

Mr. ELLISON. I am out of time, but I will say that we do have to talk about nonregulatory ways to increase basic civic virtue and honesty. And I am curious to know in the future how the corporate community is doing that. Thank you.

Mr. DOLD. The Chair recognizes the gentleman from Tennessee, Mr. Fincher, for 5 minutes.

Mr. FINCHER. Thank you, Mr. Chairman. Let me be clear, too. I thank my colleagues on the other side of the aisle for some good questions. This is an attempt to move forward in a bipartisan manner. Mr. Carney and I have had the conversation, not putting the blame on any one person or party, but in order to move the country forward and in order to stay with the focus of job creation. I have said many times that I don't know what was happening here before I got here, but I know what is happening now. So, we are just looking at moving forward.

Mr. LeBlanc, a few minutes ago you made the statement of dialing back the $1 billion to $500 million. Do the other panelists agree with that? Mr. Brantuk?

Mr. BRANTUK. I think it holds merit to do an analysis. And absent the data of exactly how many companies would fall into each of those categories, I think it would be difficult to comment on.

Ms. MITCHELL. The IPO Task Force in its recommendations actually supported the $1 billion cut-off for the reasons that we talked about. Institutional investors that were participating in our committee looked at that because of the time it takes to prepare and the growth, you have to actually start—you have to aim for a couple of years. And because these companies are still investing in their growth, it is a large percentage of their bottom line. So we are supportive of the $1 billion revenue and the $700 million public float definition.

Mr. FINCHER. Mr. Selfridge?

Mr. SELFRIDGE. I would agree with Ms. Mitchell, I support the billion dollars. I think as I understood Mr. LeBlanc's testimony, the litmus test of a net profit margin is far different than the company's IC, where they are rapidly investing in operating expenses. So on a net margin basis, that is a far different metric than gross revenues.

Mr. FINCHER. Okay. Mr. Brantuk, just again a common-sense question here. How soon after a company files with the SEC to go public will it take for them to actually enter the marketplace and issue shares for the sale to the public?

Mr. BRANTUK. In a good economy, a minimum of 3 months. But given the volatility just in this year alone, it is taking companies significantly longer than that. So 8, 10, or 12 months. And there are even some companies that are on file now that filed their S–1 a year-and-a-half ago.

Mr. LEBLANC. One comment, question, that is from the date you file. There is a tremendous amount of time that occurs before the date you file to prepare for the filing, which could be 6 months to a year to put all the information you need together financially to prepare the application.

Mr. BRANTUK. Absolutely. And to that point, I apologize if I didn't understand the question. But we advocate that a company should begin acting like a public company 2 full years before they actually file their S–1.

Mr. FINCHER. Okay. Ms. Mitchell, when a company is unable to go public, why are job losses so heavy when the company is sold or merges with another company?

Ms. MITCHELL. It is an important fact, and you see it. We have talked about the longer-term studies showing that 92 percent of a company's growth occurs post-IPO. The study that we did with NASDAQ this summer actually looked at newer companies. So we wanted fresh data around the cost of going public, including Sarbanes-Oxley as an example.

It is interesting, one of the questions we asked in that was job growth. These are companies that had gone public since 2006. So let's say the average age is somewhere in the 3-year range, roughly. Their statistics were that 86 percent job growth had occurred post-IPO, which tells you that most of that job growth occurs early in that company's IPO cycle.

So number one, that is why you want to go public. When a company sells itself—as one of my colleagues always said, what would Seattle look like without Microsoft? What would Silicon Valley look like without Intel?

When you become a division of a company, first of all when you get acquired, all of the redundant positions, the CFO, the CEO, a lot of the management team gets laid off. And you may not have the opportunity to grow and become an independent company like you could have if you had been able to stand on your own and go public. And it is interesting to see with all these M&As, and it used to be 90 percent of venture-backed companies went public; now 90 percent sell themselves. One of the impacts of that is the number of tech listings has gone down, the number of acquirers has gone down. So there is even less competition.

If you decide to sell yourself, there are even fewer companies to sell to. We need to get more companies public that are big, that not only can themselves create jobs but even acquire some of the smaller companies. It is really a shrinking pie. And again, it is moving overseas.

Mr. FINCHER. Thank you guys.

One last comment before I yield back. Making sure the investors are protected is critical. It is. But also making sure that the environment is friendly for the creation of these companies will also give the investors an opportunity to invest. And you can't have one without the other.

And so no one here is wanting to—the pendulum sometimes here swings way too far in either direction. But we are trying to take a common-sense approach. Again, I thank Mr. Carney and my other colleagues. But with that, I yield back. Thank you, Mr. Chairman.

Mr. DOLD. The gentleman yields back. The Chair recognizes the gentleman from Delaware, Mr. Carney, for 5 minutes.

Mr. CARNEY. Thank you, Mr. Chairman. And I want to once again thank Mr. Fincher for his leadership on this, the gentleman from Tennessee. As a Representative from Delaware, the first State, I am the last one, I am the lowest man on the totem pole on this committee. And when I have a chance to ask questions to a panel, it usually looks like this: the Chair and nobody else but staff. And everybody else has left.

I have been carrying the ball on this side of the aisle, and I have heard a lot of the questions that you heard from our side and from our members. And by the way, Mr. Himes and Mr. Perlmutter are cosponsors of the legislation. But they have real concerns that you heard. And they fit in really three categories, why the $1 billion threshold, and we have had a very good conversation. By the way, this panel is excellent. Your responses to our questions have been very insightful, and we appreciate that.

What about investor protection? And then, what you heard from Mr. Ellison on why on say-on-pay. And first, I would like to hear, Ms. Mitchell, just talk about the IPO Task Force itself for the record, kind of get it on the record who was involved in that. And if you could end that kind of description with Treasury's kind of view of the legislation and the issues that were identified in that task force.

Ms. MITCHELL. I would be happy to. I will quickly say on behalf of small companies who have incorporated in Delaware, maybe you are small on the map, but in the small company's mind you actually loom quite large.

Mr. CARNEY. All my friends in California who are lawyers can always tell me who the Secretary of State is in Delaware.

Ms. MITCHELL. Exactly.

Mr. CARNEY. At the risk of malpractice, they file their companies in Delaware. And we appreciate that.

Ms. MITCHELL. Exactly. And we appreciate that it exists, actually. It is quite healthy. The IPO Task Force actually came together after the Treasury's Access to Capital Conference, which was a very healthy discussion in and of itself. We were a private group, an independent group, and we literally came together in the halls. And the good discussion that has happened today, this balance between, as Congressman Fincher referred, of making it more palatable for small companies to access public markets, but to do so without compromising investor protection, led us to put a diverse group together. It, as I mentioned, included CEOs and institutional investors, probably the first-class citizens, I would say, of that IPO Task Force—and they should have been—along with private investors, securities lawyers to help us fathom how all this works, academicians, and investment bankers.

And it was interesting because when we started working together, we each came with our own list, like we all do. And when we came together, we all ended up shortening our list. We all had our dream statement. And we came together with something that was designed, again, to work with existing regulations, to find that balance that really wasn't extreme in either point of view. We were really trying to come back with a very balanced perspective was really the objective overall.

Mr. CARNEY. So could you just talk a little bit about the investor protection piece of it and how that discussion played out, and if there were other things that maybe weren't—that didn't make it into this legislation? I have heard all these questions before as I have tried to encourage my colleagues to become cosponsors. And we have a good list of cosponsors, by the way, from this side.

Ms. MITCHELL. You do. It is important to note how much is still applicable to these companies. The current and the periodic reporting, risk factor disclosures, audited financial statements, disclosures of related party transactions, the mandatory requirement to disclose all material information. That gets to the SOX 404(b) issue. It is mandatory that they disclose material weaknesses. They actually still have to certify it. So that was new in 2012 with SOX. They still have to do that. And they still have to comply with all corporate governance. So we really tried to keep as many of the existing regulations as we could.

Mr. CARNEY. I think that is really important to get on the record, and it is the points I have tried to make with my colleagues, that this doesn't do away with regulations that are important in terms of those kinds of things.

Mr. LeBlanc, could you comment on that? You said some things at the outset I thought that were very important to hear with respect to investor protection and access to information.

Mr. LEBLANC. Yes, sir. Thank you, Representative Fincher. And thank you, also, for sponsoring this bill.

Two points I would like to make. One is, I believe the disclosure of information will be increased through this bill, not decreased. And as Ms. Mitchell has said, the regulations will still be there. We are just trying to reduce the regulations that are burdensome to small companies that cannot afford it until they get to scale.

One thing I do want to mention about capital and the access to capital that is very important: Most of these private companies have access to not permanent capital. It is provided by mostly closed-end funds or high-net-worth individuals who have a timeline, who say I will put my money in and you have a distinct timeline to get my money out. And therefore, you either will have to do an IPO or you will have to sell yourself.

If we do not open up the IPO market, these small companies will be forced to sell to larger companies, who will then lay off a portion of the smaller companies due to redundancy. So I think a critical part to this is to get access to permanent capital on our public markets, which are the best public markets in the world.

Mr. CARNEY. I think that point has been well made by each of you today in terms of having IPOs as an outlet, as opposed to being bought by a larger company in terms of job creation, which is important to all of us.

And I see my time has run out. So I just want to thank the panel once again. I want to thank Mr. Fincher again for putting together and working with this group on a piece of legislation that I think is common sense and a way to help with the IPO market and create jobs in our country. And I am pleased to be the cosponsor on this side.

Mr. DOLD. The gentleman's time has expired. The Chair recognizes the gentleman from California, Mr. Sherman, for 5 minutes.

Mr. SHERMAN. Thank you, Mr. Chairman. I am one of the few members of the committee who has actually done auditing. I had hair before I started that process. And so, I see the importance of internal control. I know we have a panel of four distinguished witnesses here who have shown their brilliance perhaps in every respect except for their support for the language chopping back on 404(b). So I won't ask a question about that. I will just say that without internal control, you simply don't have numbers that investors can rely on.

I am also concerned about mandatory firm rotation, because I have been on audits when our firm was new to the audit, and it was twice as hard; but that was okay, we just charged them twice as much.

So I want to focus my questions on this mandatory firm rotation. I will start with Mr. Brantuk. Is mandatory partner-in-charge rotation sufficient, or should we move to mandatory firm rotation?

Mr. BRANTUK. Again, we testified before, and we are against mandatory firm rotation. We believe that it is inefficient and it brings additional costs to especially these smaller companies.

Mr. SHERMAN. Mr. LeBlanc?

Mr. LEBLANC. I agree. I think mandatory partner rotation is good unless you want the bill to be called the Auditor Full Employment Act.

Mr. SHERMAN. I have friends. But they are all fully employed already.

Ms. Mitchell?

Ms. MITCHELL. I concur. And particularly for small companies, paying the freight for a brand new audit firm every year is too much. Having the audit partner, though, is very important, having that rotation.

I would also say, by the way, H.R. 3606 does support internal controls. It just excludes for a short period of time the external audit of internal controls. They still exist. They have to be disclosed if there are weaknesses. The CEO and CFO have to certify them. And corporate governance rules still comply.

Mr. SELFRIDGE. I do not agree with mandatory firm rotation. As I stated earlier in my testimony, I had mentioned, and I think as you just said, you charge them twice as much. I see different approaches from different accounting firms. Some do spend as much attention with emerging growth companies as others. And as such, I think those companies suffer.

Mr. SHERMAN. I would also point out that all four firms, the major firms, at least I believe all the major firms, not even the four largest, have done something that I think is even more important than mandatory partner rotation, and that is a rule within the firm, what we used to call the quality control and technical compliance partner has to sign off.

Arthur Andersen had a policy with their technical review department. It was called, "Don't Ask, Don't Tell." That is to say the partner in charge of golfing with the client could choose whether to consult with the technical review department or not. I think this policy gave Arthur Andersen its significant growth and its complete demise.

And I look forward, as this bill goes forward, if we are going to focus, and it is germane to taking a look at the yes, you should have a rotation of the managing partner on the job, but you should also require the technical review department's consent before the audit is signed.

So I applaud the firms I am familiar with, whom I might add are still in existence, unlike Arthur Andersen, for following that policy. Perhaps, Congress will play a role there. And with that, I yield back.

Mr. DOLD. The gentleman yields back. And I certainly want to thank the witnesses for their time today. Without objection, the NYSE Euronext testimony will be submitted for the record.

The Chair notes that some Members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

This hearing stands adjourned. And again, thank you for your time.

[Whereupon, at 11:29 a.m., the hearing was adjourned.]

A P P E N D I X

December 15, 2011

STATEMENT
CHAIRMAN SPENCER BACHUS
Subcommittee on Capital Markets Government Sponsored Enterprises Hearing on
H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act"
December 15, 2011

Thank you, Mr. Garrett, for convening today's very important hearing which continues the Committee's efforts to facilitate capital formation.

Last month the House overwhelmingly passed four bills that originated in our Committee to help companies raise desperately needed equity capital and create desperately needed jobs. Today we are reviewing thoughtful and bipartisan legislation, H.R. 3606, introduced by our colleagues Mr. Fincher and Mr. Carney, of which I am proud to be an original cosponsor. In this struggling economy, Congress should be doing everything it can to make it easier for small businesses to grow and create new jobs. Proposals like H.R. 3606 that foster the formation of capital or relieve some of the regulatory burdens that impede the formation of capital must be among our top priorities.

As we all know, our country's initial public offering market has stalled. Indeed, there were fewer venture-backed IPOs in 2008 and 2009 than in any year since 1985. This legislation is designed to change this situation. It will encourage more entrepreneurs to start businesses and allow more start-ups to become public companies.

Many emerging growth companies remain private to maintain greater flexibility and control and to avoid the increased costs associated with becoming a public company. To attract employees and conserve capital for research and development, startup companies often award their employees stock options in lieu of higher salaries. Because private companies are taking longer to go public than they have in the past, employees' stock options are increasingly vesting before the companies go public. Small private companies may thus find themselves subject to the same requirements as a listed company before they are ready to face the legal and regulatory burdens of public companies.

Mr. Fincher and Mr. Carney are to be commended for introducing a bill that recognizes not all companies are the same and that emerging growth companies are vitally important to the future of our economy.

I thank our witnesses for joining us and I yield back the balance of my time.

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Testimony of Joseph Brantuk
Vice President, NASDAQ OMX Group
Before the House Financial Services Committee
Subcommittee on Capital Markets

December 15, 2011

Thank you Chairman Garret, Ranking Member Waters and all members of the subcommittee. My name is Joseph Brantuk, Vice President and head of the New Listings and IPOs team in NASDAQ OMX's Corporate Client Group. On behalf of the NASDAQ OMX Group, I am pleased to testify in support of H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011".

Capital formation and job creation are in NASDAQ OMX's DNA. Forty years ago NASDAQ introduced the world to electronic markets, which is now the standard for markets worldwide. The creation of NASDAQ introduced sound regulation to over-the-counter trading. Around NASDAQ grew an ecosystem of analysts, brokers, investors and entrepreneurs allowing growth companies to raise capital that was not previously available to them. Companies like Apple, Microsoft, Oracle, Google, and Intel, all of which are listed on the NASDAQ Stock Market, use the capital they raised to make the cutting edge products that are now integral to our daily lives. As they grew, these companies have created millions of jobs along the way.

Today, the NASDAQ OMX Group owns and operates the global infrastructure of public markets, markets for securities that are publicly traded and available to all investors. We own 24 markets, 3 clearing houses, and 5 central securities depositories, spanning six continents. Eighteen of our 24 markets trade equities. The other six trade options, derivatives, fixed income products, and commodities. Seventy exchanges in 50 countries trust our trading technology to run their markets, and markets in 26 countries rely on our surveillance technology to protect investors, together driving growth in emerging and developed economies. We are the largest single liquidity pool for U.S. publicly traded equities and provide the technology behind 1 in 10 of the world's securities transactions.

NASDAQ is pleased that both Houses of Congress and the White House are taking a serious look at reducing the regulatory burdens that are obstacles to companies becoming and remaining public. As a self-regulated organization, we believe that regulation is absolutely necessary to support capital formation and protect investors in both the public and private markets. It is particularly critical to the public markets which are best at allocating capital and creating jobs. Therefore, it is absolutely imperative that we strike the right balance in regulating the public markets while maintaining their benefits to the economy.

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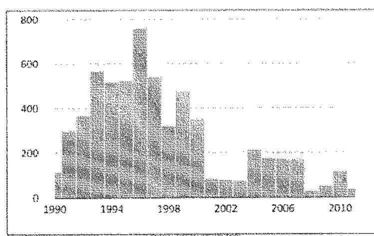
I am here today to inform you that NASDAQ OMX supports the legislative efforts of Mr. Fincher and Mr. Carney and the sponsors of similar bills that have been introduced in the Senate to create an on-ramp for newly public companies that would give them opportunities for growth before being subject to extensive regulation. We believe that this is a significant step toward making our public markets more attractive to companies both domestic and foreign.

Condition of the U.S. Public Markets

The United States used to be the market of choice for global IPOs. From 1995 to 2010, listings on U.S. exchanges shrank from 8,000 to 5,000, while listings on non-U.S. exchanges grew from 23,000 to 40,000.

•U.S. IPOs declining over time



Calls to increase exemptions from SEC registration indicate that excessive regulation is stifling innovation, capital formation, and growth. Prior to the internet bubble, the U.S. averaged 398 IPOs per year in the early 1990s and there were never fewer than 114 IPOs per year, even during a recession. Following the regulatory changes of the last decade, there has been an average of only 117 U.S. IPOs per year. In 5 of the last 10 years, including 2011, there have been fewer IPOs than in the worst year of the 1990s. In addition to the overall decline in the number of public companies, the average IPO has increased in size as the cost of complying with increased regulation has deterred many smaller and younger companies from going public.

I am not suggesting that the health of the U.S. economy is dependent on the number of companies listing on U.S. exchanges. It is, of course, much more complex than that. But, I would point to two recent academic studies[1] which suggest that the reduction in the availability of IPO capital may have profound consequences for the U.S. economy as a whole. When IPO capital formation is restricted, entrepreneurs follow market incentives to create products which complement existing products of large companies, rather than creating transformational products which change the way we live, work and think. Entrepreneurs are forced to sell their ideas too cheaply in the private markets. Essentially, the NASDAQ ecosystem of the past has been replaced in a "second best" form by the private markets. In the broadest terms, resources are

[1] Patrick Bolton, Tano Santos, and Jose A. Scheinkman, Cream Skimming in Financial Markets (March 23, 2011) and Xiaohui Gao, Jay R. Ritter, and Zhongyan Zhu, Where Have All the IPOs Gone? (October 11, 2011).

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inefficiently allocated, growth is negatively impacted, and the economy falls short of its potential.

As I indicated, we operate in 50 countries around the world and provide regulatory services in 26. Competing markets in Australia, Canada, Brazil and Hong Kong offer levels of efficiency and regulatory integrity that are perceived as "world class" by investors and issuers. Longstanding rivals to the U.S. markets such as the United Kingdom have also taken significant steps to improve the efficiency and competitiveness of their markets. And that is good for the global economy. However, the U.S. is no longer the top jurisdiction for capital raised via IPOs, ranking second in 2011, and only three of the top 10 IPOs so far this year have been by U.S. firms. In 2010, IPO issuances from the Asia-Pacific region accounted for almost two-thirds of global capital raised. The story is the same for smaller companies too. Venture oriented markets in Australia, Canada and the U.K. have listed 155 companies each raising $50 million dollars or less, while only 44 such companies have listed in the U.S. during 2011.

Why Do We Need Public Companies and Markets?

There are three critical reasons in our view to recommit to the public markets:

1. Efficient pricing and funding of entrepreneurial activity: The value of an enterprise, how much capital it should receive, and at what costs are best determined by a deep competitive market like the public markets. A company that has a clear price set in the open market will attract more investors and lenders to help them fund growth. It is well recognized that companies that do not trade on exchanges are valued at a discount. Companies that do not trade in the public markets must establish their value through ad-hoc valuation and opaque negotiation. A limited number of potential investors bid for private companies. Financial experts, the IRS, the SEC, and courts recognize that discounts for lack of marketability can range from 30% and even higher. Clearly, a company valued 30% or more below its true value will not be able to invest, grow and create jobs as quickly.

2. Jobs: A healthy public equity market enables companies to raise capital more efficiently, funding more rapid growth and more jobs. Companies create 90% of their new jobs after they go public. An IPO is the best public policy outcome in terms of jobs for the broader economy. A company that has exchange-traded shares can better use its stock as a currency to grow its business and incentivize employees. A successful IPO is a very public signal to other entrepreneurs about the availability of capital financing.

3. Wide availability of investment opportunity: A public listing allows the most diverse universe of investor's access to ownership. This democratization allows employees, individual investors, pensions, mutual funds, corporations and others to put their capital to work and enjoy the rewards, and risks, of equity ownership.

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What is Hurting the U.S. Public Markets?

Too often regulation has been approached with a "one size fits all" mentality. In the wake of the collapses of Enron and WorldCom, Congress acted quickly and aggressively to restore investor confidence with the enactment of Sarbanes-Oxley. Unfortunately, it did not distinguish between large companies and small companies. The SEC and PCAOB have continued that approach with rules and legal obligations that usually assume that all public companies are large enterprises that can digest and respond to rules and regulations with the same ease. We applaud this committee for codifying in the Dodd-Frank legislation an exemption to SOX Section 404(b) for companies under the $75 billion in market capitalization. However there is more that needs to be done.

NASDAQ has worked tirelessly to address Sarbanes-Oxley issues on behalf of our listed companies and potential IPOs since the bill was enacted. We held several regional roundtables with the PCAOB and our companies to get them to "redo" their initially disastrous implementation regulations of SOX. In 2006, we invited a bipartisan delegation of Representatives to visit with a group of our listed companies to discuss the effects of Section 404 on small cap companies. Most recently we worked with the IPO Task Force on a post IPO CEO survey of our listed companies. As this Committee is aware, on October 20, 2001 the IPO Task Force, whose members are some of the best experts on capital formation and represent diverse interests, submitted a report to the U.S. Treasury Department titled: Rebuilding the IPO On-Ramp *Putting Emerging Companies and the Job Market Back on the Road to Growth*. This report sets forth a detailed proposal to create a regulatory on-ramp for early-stage growth companies, during which disclosure rules and compliance burdens would be phased-in, while maintaining investor protections. The Task Force also made detailed recommendations about how to improve research coverage for smaller companies. These recommendations merit careful consideration.

IPO Task Force Recommendations:

The IPO Task Force report and its recommendations have quickly made an impact on this debate and seem to have solidified a bipartisan core of support in both the House and Senate for quick and decisive action. Those recommendations include:

1. **Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.** Companies with total annual gross revenue of less than $1 billion at IPO registration and that are not recognized by the SEC as "well-known seasoned issuers" should be given up to five years from the date of their IPOs to scale up to compliance. Doing so would reduce costs for companies while still adhering to the first principle of investor protection.
2. **Improve the availability and flow of information for investors before and after an IPO.** The flow of information to investors about emerging growth companies before and after an IPO should be improved by increasing the availability of company information and research in a manner that accounts for technological and communications advances

that have occurred in recent decades. Doing so would increase visibility for emerging growth companies while maintaining existing regulatory restrictions appropriately designed to curb past abuses.

3. **Lower the capital gains tax rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years.** A lower rate would encourage long-term investors to step up and commit to an allocation of shares at the IPO versus waiting to see if the company goes public and how it trades after its IPO.
4. **Educate issuers about how to succeed in the new capital markets environment.** Improve education and involvement for management and board members in the choice of investment banking syndicate and the allocation of its shares to appropriate long-term investors in its stock. Doing so will help emerging growth companies become better consumers of investment banking services, as well as reconnect buyers and sellers of emerging company stocks more efficiently in an ecosystem that is now dominated by the high-frequency trading of large cap stocks.

Legislation to implement these recommendations, within the jurisdiction of the Senate Banking and House Financial Services Committee, has been introduced: H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011," sponsored by Representatives Stephen Fincher and John Carney and its companion bill in the U.S. Senate, S. 1933, sponsored by Senators Charles Schumer and Pat Toomey. NASDAQ believes this legislation would begin the process of reducing the barriers to strong and effective capital markets for companies across the United States. In summary the proposed legislation:

- **Emerging Growth Company.** Establishes a new category of issuers, called "Emerging Growth Companies." To qualify, a company must have less than $1 billion in annual revenues and, following the IPO, not more than $700 million in public float. Emerging Growth Company status would last only for a limited period (from one year up to a maximum of five years) after the IPO, depending on the size of the Emerging Growth Company.
- **Executive Compensation.** Exempts Emerging Growth Companies from the requirement to hold a shareholder vote at least once every three years on executive compensation packages – the so-called "say-on-pay" vote – and executive severance payments known as "golden parachutes". It also exempts Emerging Growth Companies from the requirement to disclose the relationship between executive compensation and financial performance and the ratio of the CEO compensation to the median total compensation of all employees.
- **Financial Disclosures.** Requires Emerging Growth Companies to provide with their registration statement the same financial statements that smaller reporting companies currently provide (2 years of audited financials, rather than 3 years, as currently required for larger reporting companies) and phases in the requirement to provide a total of 5 years of financial data so that an Emerging Growth Company is not required to provide audited financial statements for periods prior to those provided with the registration statement.
- **New Accounting Pronouncements.** Provides Emerging Growth Companies with the same extended compliance period for new accounting pronouncements as is currently available for private companies.

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- **Internal Controls Audit.** Allows Emerging Growth Companies to defer compliance with Section 404(b) of Sarbanes-Oxley until the conclusion of the "on ramp" period. Companies' CEOs and CFOs would still maintain effective internal controls over financial reporting and disclosure controls and procedures and certify personally such controls pursuant to Section 302 of Sarbanes-Oxley.
- **Auditing Standards.** Exempts Emerging Growth Companies from proposed mandatory audit firm rotation and auditor's discussion and analysis. Also the SEC must determine whether auditing standards adopted by PCAOB in the future should apply to Emerging Growth Companies.
- **Provision of Research.** Permits the publication or distribution by a broker or dealer of a research report about an Emerging Growth Company that is the subject of a proposed public offering, even if the broker or dealer is participating or will participate in the offering. Allows members of the investment banking team for a broker or dealer participating in an offering to arrange for communications between securities analysts and potential investors and permits research analysts to participate in communications with management of the issuer that are also attended by other members of the broker or dealer. Allows Emerging Growth Companies to "test the waters" prior to filing a registration statement by expanding the range of permissible pre-filing communications to sophisticated institutional investors. Finally, it allows the publication and distribution of research reports about Emerging Growth Companies during post-IPO quiet periods and lock-up periods.
- **Other Matters.** Permits U.S. companies to submit draft registration statements to the SEC on a confidential basis, as has been permitted for non-U.S. companies. This would allow companies to begin the SEC registration process and to explore the possibility of an IPO without disclosing their most sensitive commercial and financial information to competitors in advance of determining the true feasibility of a successful IPO.

Market Structure Does Not Help Attract Companies to the Public Markets

While this legislation will help in tangible areas, other areas of our markets require attention to make our capital markets more robust and appealing. We believe that the daily operation of the markets and their increasing complexity hurt efforts to get companies to go public here in the U.S. Today's U.S. markets are increasingly fragmented and volatile. Liquidity in U.S. stocks is dispersed across 13 exchanges, over 40 other registered execution venues, and uncounted other trading facilities. The declining cost of launching and operating electronic order crossing systems has led to a proliferation of decentralized pools of liquidity that compete by offering their owners and customers reductions in fees, obligations, transparency and order interaction.

Consider that today nearly one-third of public company stocks trade 40% to 50% of their volume away from the exchanges. In the past 3 years, the percentage of U.S. market share traded in systems that do not publicly post their bids and offers rose from 20% to over 30%. Many retail and core investor orders are executed away from the primary exchanges.

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We recognize that there are situational benefits and value to some orders trading away from the public. We also recognize that competition between markets has dramatically reduced investors' costs and improved market quality in listed securities through technological and structural innovation. However, the unintended consequences of the market fragmentation has been a lack of liquidity and price discovery in listed securities outside the top few hundred names and a disturbing absence of market attention paid to small growth companies by all market participants, including exchanges.

Such fragmentation of trading creates a thin crust of liquidity that is easily ruptured, as occurred on May 6, 2010. In fact, the SEC and CFTC in their joint "Flash Crash" report pointed out: "The Commission has noted that absent extraordinary conditions such as those occurring on May 6, 2010, retail orders are generally executed by internalizers away from exchanges and without pre-trade transparency, exposure or order interaction." Fragmentation and current market structure may be raising investors' costs. In 2010, the U.S., which has perennially ranked first globally for institutional investor costs, fell to fourth in the world, behind Sweden, Japan, and France. Price discovery and available transparent liquidity are essential parts of vibrant market systems.

We believe that, whenever possible, public price discovery should be encouraged to ensure a robust and balanced marketplace. Private transactions serve an important role at times and in those situations should be encouraged -- when a customer can get price improvement, or when market impact for larger institutional orders can be minimized. That said, we must also ensure that there is ample liquidity contributing to the critical role of price discovery. Transparency is critical to efficient markets.

Just as our markets continue to evolve and adapt so must the regulatory structure of our markets. We need to strengthen regulation by modernizing systems and increasing transparency to regulators. We support the development of a consolidated audit trail with real time market surveillance and new regulatory tools to help regulators keep pace with technology advances and other changes in the markets.

Additional steps the SEC should take include adopting modifications to the market data revenue allocation formula to emphasize the value of public quotations.

Finally, we believe that companies should be able to choose the manner in which their shares trade, particularly for smaller companies outside of Regulation NMS in the period following an IPO when an efficient and liquid market is still developing. We encourage you to consider including a provision in H.R. 3606 permitting the SEC to allow emerging growth companies exemptions from today's fragmented markets during their transition period.

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Small Companies Need a Strong Venture Exchange to Grow and Create Jobs

In our markets the number one source of job creation is entrepreneurship. Just as business incubators nurture small companies until they are ready to leave the security of that environment and operate independently, there should be a space for incubating small public companies until they are ready to graduate to a national listing. The U.S. must create a space for these companies just as our foreign competitors have successfully done.

Canada, the United Kingdom, and Sweden have successful venture markets with significant numbers of listed companies and substantial capital-raising success. These markets list hundreds of small companies that create jobs at a fast rate. Venture market companies regularly grow and then graduate to the main markets in those countries. The U.S. has no equivalent exchange-supported, organized venture market.

In just five years, Sweden's First North Market, run by NASDAQ OMX, has grown to 141 listings with a total capitalization of 2.8 billion Euros. Twenty-two First North companies have graduated to the main market since 2006 -- all of this in a country of 9 million people. The Toronto Stock Exchange's TSX Venture Exchange may be the most successful of these venture markets. The TSX Venture Exchange lists 2,100 companies with a total market capitalization of $37.8 billion and a median size of $4.2 million. And 451 TSX Venture Exchange companies have graduated to the Toronto Stock Exchange since 1999. Graduates account for more than $87 billion in market capitalization. According to the London Stock Exchange, The London AIM Market has been one of the fastest growing markets in the world for the last decade. They have listed over 1,200 companies, including 234 international listings, some of which are American firms, and 141 AIM Market listings have graduated to LSE's main market. These markets have successfully used special listing standards and adopted innovative market structures targeted towards smaller companies.

<u>BX Venture Market can be the U.S. Home for Small Companies.</u> The NASDAQ OMX Group has received approval to create a new listing venue on the former Boston Stock Exchange. The BX Venture Market will have strict qualitative listing requirements, similar to other exchanges, but lower quantitative standards that would attract smaller, growth companies. The availability of the BX Venture Market will facilitate their ability to raise capital to continue and expand their businesses, creating jobs and supporting the U.S. economy. The BX Venture Market will provide a well-regulated listing alternative for companies that otherwise would transfer to, or remain on, the largely unregulated Pink Sheets or OTCBB, where there are no listing requirements, no public interest review, limited liquidity, and limited transparency, or list on junior tiers of non-US markets.

However, under existing structures, these companies will receive little regulatory benefit from opting to subject themselves to these additional requirements. For example, unlike companies

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listing on other exchanges with higher quantitative listing requirements, they will still be subject to the state's Blue Sky laws. And unlike companies remaining on the OTC Bulletin Board or Pink Sheets, they must comply with the full panoply of regulations arising from SOX and Dodd-Frank. We believe that there should be incentives provided to these smaller companies that list on an exchange, such as those in H.R. 3606. We also believe that steps should be taken to limit the fragmentation of trading in these smaller companies.

NASDAQ's Recommendations for Strong *Public* Capital Markets

Our capital markets require multi-faceted actions to help invigorate the atmosphere for entrepreneurs to help their companies access capital and create jobs. We believe that these reforms would restore the ecosystem that once existed and is necessary to nurture, sustain and grow public companies and reinvigorate the U.S. engine of job growth.

Solution #1: Pass the On-Ramp Bill and Further Reform Sarbanes-Oxley

All of the NASDAQ OMX personnel who report to me and are engaged in selling the U.S. markets to companies around the world tell me and I have many experiences myself confirming this; Sarbanes-Oxley is the most quoted reason for not listing on NASDAQ. Providing a regulatory on-ramp for newly public emerging growth companies would be a great signal to the global business community that we are open for business.

While we support H.R. 3606, we think the Committee should incorporate the IPO Task Force suggestion that emerging company growth status be limited to companies listing on a national exchange. The regulation of the exchange would provide a degree of additional oversight for newly public companies that are temporarily relieved of regulatory requirements, without being overly burdensome.

While we support the On-Ramp legislation and its relaxation of 404(b) for IPO companies, we believe that a longer term examination of SOX 404(b) and how it applies to all companies should be undertaken. President Obama's own Council on Jobs and Competitiveness has called for sweeping reforms to regulation in this area. The President's Council stated:

> "Amend Sarbanes-Oxley (Sox) to allow shareholders of public companies with market valuations below $1 billion to opt out of at least Section 404 compliance, if not to all of the requirements, of Sarbanes Oxley; or, alternatively, exempt new companies from Sox compliance for five years after they go public."

We also believe that a further reduction in compliance costs could be obtained if the Section 404(b) examination were allowed to occur every two years for exchange-listed companies that are found to have no significant weaknesses.

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Solution #2: Reject Expensive and Expansive New Regulations on Public Companies and Reexamine Existing Regulations

Policy makers and regulators must also be careful about imposing new regulations that lack necessity, yet will raise a public company' costs. Congress, the SEC and other regulators should evaluate the global competitive landscape before imposing new regulations.

One example is the recent PCAOB proposal to require public companies to rotate auditors. Such a requirement will certainly increase costs without necessarily providing any clear benefit. It is possible that it may do just the opposite by reducing audit quality. We agree with the IPO Task Force Report where it states, "We believe that mandatory auditor rotation will be extremely disruptive to public companies, will increase audit costs and may even result in reduced audit quality. "

In April 2005, after the PCAOB was created, a hearing was held in the House Financial Services Committee and then-Chairman William J. McDonough was asked about the viability of required auditor rotation. Chairman McDonough wisely rejected the idea then, and it should be rejected now.

Existing regulations should also be reexamined. In that regard, as noted earlier, we support H.R. 3606, which will ease the compliance burdens during a small company's transition to being a public company. Recent regulations that have resulted in a dramatic reduction of research coverage for smaller companies should also be reviewed.

Solution #3: Support a Strong and Vibrant Venture Exchange with Innovative Market Structure for Small Companies

While we are certain the BX Venture Market is needed, we also believe that innovative trading rules are required to make the market successful. Small companies do not trade like big ones. As you look at the trading behaviors of small companies, building and maintaining liquidity can be a constant challenge. When we examine what has worked here and abroad in building liquidity for smaller companies, we believe these stocks should receive the same protections as Regulation NMS securities and that market data should be made widely available through existing data feeds.

The most prevalent listed company concern we hear about equity market structure relates to volatility. It is time to consider allowing certain IPO companies, especially smaller companies using the public market to fuel growth, for a period of up to a year, to choose the market structure they feel would best introduce their stock to the marketplace. Empower these IPO companies to restrict the fragmentation that occurs in their stock and causes volatility and limit their trading to a well-regulated, transparent market unless off-exchange trading delivers real price improvement. We believe this would be an excellent addition to the proposed On-Ramp legislation.

The SEC should also allow companies to pay for market quality by allowing the exchanges to establish programs to reward broker dealers for committing capital to a stock and meeting rigorous market-quality benchmarks established by the exchange. This has worked in our Nordic markets.

Solution #4: Create Jobs by allowing Companies to Hire the Employees They Need

While not directly related to promoting IPOs, one issue that we now mention to every Member of Congress and in testimony to every Committee we appear before is legal immigration reform. The United States achieved its economic prominence by inviting the best and the brightest from around the globe to unleash their creative capabilities on American soil and contribute to the American mosaic, culturally, politically and economically. Immigrants have been some of the greatest contributors to business, science and technology in American Society. 25% of technology and engineering companies from 1995 to 2005 had at least one immigrant key founder. Our economy and NASDAQ itself have directly benefited from the contributions of foreign-born talent. Looking just at the Fortune 500 companies, we found at least 14 active NASDAQ companies that have foreign-born founders. These companies represent over $522 billion in market capitalization and employ almost 500,000 workers.

Legal immigration is a source of economic growth in the United States and NASDAQ OMX is concerned that continued entanglement in the illegal immigration debate will only exacerbate our already anemic economy. If U.S. companies cannot hire them here, they will hire them for the same job overseas. Therefore, I recommend the following to the U.S. Congress:

- ***Debate Legal Immigration on its own merits:*** Do not link *legal* reform to reform of *illegal* immigration – Americans are losing jobs and opportunity while one issue drags down the other.
- ***Enact a more flexible and stable regime for Legal Immigration***: Reform must convey economic priorities: job growth and global competitiveness. Increasing H-1B numbers is no longer enough.
- ***Attack the "job stealing" myth directly:*** Opponents of Legal Immigration reforms argue that when a foreign born immigrant gets a job, American graduates are the losers. Research tells a different story. The National Federation for American Policy says that for every H-1B worker requested, U.S. technology companies *increase* their employment by five workers.

Thank you again for inviting me to testify. I look forward to responding to your questions.

Testimony of

Steven R. LeBlanc

Senior Managing Director of Private Markets

Teacher Retirement System of Texas

H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011"

Before the

Subcommittee on Capital Markets and Government Sponsored Enterprises

of the

Committee on Financial Services

United States House of Representatives

December 15, 2011

Mr. Chairman, Ranking Member Waters, and Members of the Subcommittee:

Good morning. I am Steven R. LeBlanc, Senior Managing Director of Private Markets at the Teacher Retirement System of Texas or "TRS". I am also a member of the Securities and Exchange Commission's (SEC) Advisory Committee on Small and Emerging Companies. I am here speaking to you today on my own behalf.

I am pleased to appear before you today to share with you my views on H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011" (HR 3606). My testimony begins with a brief overview of TRS followed by a discussion of my views on some of the key provisions of the proposed legislation.

TRS[1]

Formed in 1937, TRS is the largest public retirement system in Texas in both membership and assets. The agency serves more than 1.3 million participants – approximately 1 million are public and higher education members, and approximately 300,000 are retirees. Our system's net assets total approximately $107 billion.

[1] For more information about the Teacher Retirement System of Texas (TRS), see TRS's website at http://trs.state.tx.us/info.jsp?submenu=about&page_id=/about/about_trs.

At TRS, we maintain a diversified portfolio of investments, including allocations to the global equity markets, to real return, and to a stable value portfolio.

As Senior Managing Director of Private Markets, I am responsible for overseeing the real assets, private equity, and principal investments portfolios at TRS. Pertinent to the subject matter of this hearing, that portfolio includes several billion dollars of private equity and principal investments in small and emerging growth companies.

I believe that the success of small and emerging growth companies is vital to our nation's economic well-being. I also believe that it is timely and appropriate to reevaluate our existing laws and regulations relating to capital formation and determine whether any of those rules are unnecessarily impeding the ability of small and emerging growth companies to access capital. In my view, smart, workable, and cost-effective rules and regulatory oversight are a necessary component of strong capital formation and a robust capital market system that benefits investors, workers, retirees, small and emerging growth companies, and the U.S. economy.

In that regard, I applaud the SEC for establishing the Advisory Committee on Small and Emerging Companies to consider issues relating to capital formation. I look forward to continuing to work with my fellow Committee members to identify, develop, and provide recommendations to the SEC on this important topic. I also applaud Representatives Fincher and Carney for introducing HR

3606, and to you Mr. Chairman for holding today's hearing to discuss their proposed legislation.

HR 3606

In my view, HR 3606's scaling of regulations for newly public companies presents a workable approach to facilitating small and emerging growth companies' access to capital and should be given careful consideration by this Subcommittee, the SEC, and other interested parties.

I am particularly supportive of the provisions of HR 3606 that (1) ease the disclosure and corporate governance related obligations of emerging growth companies, and (2) improve the availability and flow of information to investors before and after an initial public offering (IPO). I, however, also have some reservations about the qualifications of an "emerging growth company" as defined under the proposed legislation. Let me briefly discuss each of those issues in more detail.

Disclosure Obligations

Mandatory disclosures and other existing corporate governance related obligations for public companies can be critical to investors in evaluating their investment opportunities and to the efficient allocation of capital. However, not all requirements are equal, and certain mandatory requirements in the name of transparency and good corporate governance may not always provide the benefits needed to justify the costs.

I, therefore, generally support the provisions of HR 3606 that permit an issuer that satisfies the definition of an emerging growth company to elect to participate in a system that has scaled disclosure and corporate governance requirements. More specifically, I support the following provisions of HR 3606:

First, I support exempting emerging growth companies from the say-on-pay, say-on-frequency and say-on-parachute votes under Section 951 of the Dodd-Frank Act. I would note that the SEC has acknowledged that advisory votes on say-on-pay and say-on-frequency impose burdens on smaller companies, and as a result, exempted companies with less than $75 million in public float from the say-on-pay and frequency votes until 2013.[2]

Second, I support allowing emerging growth companies to defer compliance with the internal control requirements of Section 404(b) of the Sarbanes-Oxley Act until the conclusion of the HR 3606 "on-ramp" period. I would note that under current law, all companies with less than $75 million in public float already are permanently exempt from the requirements of Section 404(b). Moreover, all newly public companies (regardless of size) currently benefit from a transition period of up to two years before they must comply with the Section 404(b) requirements.

[2] Release No. 33-9178 (Apr. 4, 2011) (concluding that "it is appropriate to provide additional time before Smaller Reporting Companies are required to conduct the shareholder advisory votes on executive compensation and the frequency of say-on-pay votes" based upon "the potential burdens on Smaller Reporting Companies"), http://www.sec.gov/rules/final/2011/33-9178fr.pdf.

The exemption and deferral resulted, at least in part, from an acknowledgment by the SEC that the Section 404 requirements warranted a significant transition period to alleviate "costs and burdens imposed on companies"; give companies "additional time to develop best practices, long-term processes and efficiencies"; and increase time to find "outside professionals that some companies may wish to retain" to facilitate their compliance efforts.[3]

Finally, with respect to disclosure related obligations, I also support the provision of HR 3606 that would require emerging growth companies to provide with their registration statement *only two years of audited financials*, consistent with the existing requirement for smaller reporting companies, rather than three years, as is currently required for larger companies.

Availability of Information

In addition to easing the disclosure and corporate governance related obligations of emerging growth companies, I also believe that it is important to improve the availability and flow of information to investors before an IPO. I believe that investment research coverage has declined dramatically in recent years as a result of economic and regulatory pressures that have reduced research budgets, and that the lack of research coverage has adversely impacted trading volumes, company market capitalizations and the total mix of information available to market participants.

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[3] Release No. 33-8238 (June 5, 2003) at text accompanying n. 174, http://www.sec.gov/rules/final/33-8238.htm.

I also believe that some of the existing restrictions on communications surrounding the offering process were designed in an era of paper-based communications between issuers and investors, and those restrictions should be reevaluated and updated to reflect advances in technology and market expectations.

I, therefore, support the provision of HR 3606 that would allow the publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering, even if the broker or dealer is participating or will participate in the offering. I believe that such a provision would appropriately allow potential investors of emerging growth companies access to information similar to information that investors have long been able to obtain for larger company IPOs.

I also support the provisions of HR 3606 that would reduce some of the existing restrictions on communications surrounding the offering process. More specifically, I support the provisions of HR 3606 that would allow emerging growth companies to "test the waters" prior to filing a registration statement by expanding the range of permissible pre-filing communications to sophisticated institutional investors. Doing so would allow those companies to remove a significant amount of uncertainty regarding the feasibility of a successful IPO.

Moreover, expanding permissible IPO related communications is generally consistent with recognition by the SEC that some additional accommodations are necessary to allow "well-known seasoned issuers," acting through underwriters, to "assess the level of investor interest in their securities before filing a registration statement."[4]

Qualification as an Emerging Growth Company

Finally, as indicated, my main concern with HR 3606 is the provision of the proposed legislation that defines the qualifications for an emerging growth company. As you are aware, under those provisions a company would qualify for special status for up to five years, so long as it has less than $1 billion in annual revenues and not more than $700 million in public float following its IPO.

I believe that the annual revenues and public float threshold elements of the definition may be too high in establishing an appropriate balance between facilitating capital formation and protecting investors. I would note that a recent study by the SEC indicated that public companies with less than $700 million in public float include more than 80% of all public issuers.[5] While the percentage of public issuers that would qualify as emerging growth companies would be lowered by the annual revenue and five-year criteria of HR 3606, I believe that a

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[4] Release No. 33-9098 (Dec. 18, 2009) (proposing to amend Securities Act Rule 163 to allow underwriters, acting on behalf of "well-known seasoned issuers," to offer securities before filing a registration statement to gauge investor interest without requiring public disclosure of an intent to conduct an offering), http://www.sec.gov/rules/proposed/2009/33-9098fr.pdf.

[5] Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million, U.S. Securities and Exchange Commission 30 (2011), http://www.sec.gov/news/studies/2011/404bfloat-study.pdf.

more appropriate threshold for the scaling of regulations might be $500 million in public float and $250 million in annual revenue.

My recommendation is based on my experience as the Chief Operating Officer and later Chief Executive Officer of Summit Properties, a small public company that, during my tenure, from 1998 to 2004, increased its equity market cap from $500 million to over $1 billion. It is my belief that companies cannot afford the resources necessary to comply with existing U.S. securities regulations until they reach a public float greater than $700 million. I, therefore, would respectfully request that this relatively modest modification to the definition of emerging growth company under HR 3606 be considered.

Thank you again, Mr. Chairman and Ranking Member Waters for inviting me to participate at this important and timely hearing. I welcome the opportunity to work with this Subcommittee, the SEC, and other interested parties in ensuring that HR 3606 and other related legislation and regulations support our shared goal of increasing American job creation and economic growth by improving access to the public capital markets for small and emerging growth companies.

I look forward to the opportunity to respond to your questions.

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

Subcommittee on Capital Markets and Government Sponsored Enterprises

"H.R. 3606, the Reopening of American Capital Markets to Emerging Growth Companies Act of 2011"

December 15, 2011

Chairman Garrett, Ranking Member Waters, my name is Kate Mitchell and I am a managing director at Scale Venture Partners, a Silicon Valley-based venture capital firm that has investments in information technology companies across the United States. Venture capitalists are committed to funding America's most innovative entrepreneurs. We work closely with them to transform breakthrough ideas into emerging growth companies that drive U.S. job creation and economic growth. We believe that IPOs drive job creation and economic growth because, as our data show, 92 percent of a company's job growth occurs after its IPO.

I am also a former chairman and current member of the National Venture Capital Association. Companies that were founded with venture capital accounted for 12 million private-sector jobs and $3.1 trillion in revenue in the U.S. in 2010, according to a 2011 study by IHS Global Insight. That equals approximately 22 percent of the nation's GDP. Almost all of these companies, which include Apple, Cisco, Genentech and Starbucks, began small but remained on a disciplined growth trajectory and ultimately went public on a U.S. stock exchange.

More recently, I served as chairman of the IPO Task Force, a private and independent group of professionals representing the entire ecosystem of emerging growth companies — including experienced CEOs, public investors, venture capitalists, securities lawyers, academicians and investment bankers. This diverse coalition came together initially as part of a working group conversation at the U.S. Department of the Treasury's Access to Capital Conference in March 2011, where the dearth of initial public offerings, or IPOs, was discussed at length. In response to this shared concern, we formed the IPO Task Force to examine the challenges facing America's troubled market for IPOs and make recommendations for restoring effective access to the public markets for emerging growth companies.

Our task force developed our proposals based on a consensus approach that considered, and in many cases rejected, a variety of possible approaches. We left behind many ideas based on the valuable input we received from the variety of interdisciplinary perspectives that our membership represented. We released our report, "Rebuilding the IPO On-Ramp," in October of this year. We shared our findings and recommendations with Members of Congress and the Administration, including the Treasury Department and the Securities and Exchange Commission (SEC). I have submitted a copy of this report along with my written testimony today.

On behalf of the diverse members of the IPO Task Force, I am here today to support "H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011." This bipartisan legislation will help restore effective access to the public markets for emerging growth companies without compromising investor protection. Restoring that access will spur U.S. job creation and economic growth at a time when we desperately need both. I appreciate the opportunity to discuss with you the challenges we face and the merits of this important bill.

Challenges Facing the U.S. IPO Market

For the last half-century, America's most promising young companies have pursued IPOs to access the additional capital they need to hire new employees, develop their products and expand their businesses nationally and globally. Often the most significant step in a company's development, IPOs have enabled emerging growth companies to generate new jobs for the U.S. economy, while public investors of all types have harnessed that growth to build their portfolios and retirement accounts.

The decision to pursue an IPO is a complex one because alternatives *do* exist: a company can seek to be acquired or can decide to remain private. The most prevalent outcome today for the CEO of an emerging growth company is to be acquired by a larger company. Yet the IPO remains appealing, although demonstrably less so than it was a decade ago, for a variety of reasons. In a survey the IPO Task Force conducted of more than 100 CEOs of companies considering an IPO in the next 24 months, 84 percent of CEOs cited competitive advantage as the primary motivation for going public, while two thirds of them indicated the need for cash to support future growth. And while 94 percent of CEOs agreed that a strong and accessible small-cap IPO market is critical to maintaining U.S. competitiveness, only 9 percent agreed that the market is currently accessible to them.

The data support that unfortunate conclusion. During the past 15 years, the number of emerging growth companies entering the capital markets through IPOs has plummeted relative to historical norms. From 1990 to 1996, 1,272 U.S. venture-backed companies went public on U.S.

exchanges, yet from 2004 to 2010, there were just 324 of those offerings. Those companies that do make it to the public markets are taking almost twice as long to do so. During the most recent decade, acquisitions have become the predominant path forward for most venture-backed companies. This is significant because M&A events do not produce the same job growth as IPOs. In fact, an acquisition often results in job losses in the short term as redundant positions are eliminated by the acquirer. While global trends and macroeconomic circumstances have certainly contributed to this prevalence of acquisitions over IPOs, the trend has transcended economic cycles and has hobbled U.S. job creation.

What is driving this precipitous decline in America's IPO market? A number of analyses, including that of the IPO Task Force, suggest that there is no single event behind it. Rather, a complex series of changes in the regulatory environment and related market practices have driven up costs and uncertainty for emerging growth companies looking to go public, and have constrained the amount of information available to investors about such companies, making them more difficult to understand and invest in. These changes have included the advent of electronic trading, new order-routing rules, Regulation FD, the Gramm-Leach-Bliley Act of 1999, decimalization, the Sarbanes Oxley Act of 2002, the Global Research Analyst Settlement, and aspects of the Dodd-Frank Act of 2009. Every one of these developments and each piece of legislation addressed significant issues. Yet, the cumulative effects of these regulations over the years have produced an unintended consequence: They have limited the ability of emerging growth companies to go public.

In effect, these changes have shifted the focus of emerging growth companies away from pursuing IPOs and toward positioning themselves for acquisition by a larger company. In fact, approximately 85 percent of the emerging growth company CEOs surveyed by the IPO Task Force indicated that going public is not as attractive as it was in 1995. This shift toward acquisitions and away from IPOs by emerging growth companies is problematic for the U.S. economy because, as mentioned, acquisitions simply do not generate the same amount of job growth as IPOs. Consider the impact on jobs and the general economy if companies such as FedEx, Intel or Microsoft were acquired by larger corporations instead of going public and maintaining the independent growth that led them to be market leaders in their own right.

Addressing these multiple, interrelated factors and mitigating their effects will require a measured and nuanced response. Many of the new regulations in recent years have addressed specific concerns and delivered valuable protections to investors — protections that any efforts to rebalance the regulatory scales for emerging companies must recognize and respect. These new requirements have raised the bar for companies pursuing IPOs — in terms of size, compliance and cost — in ways that should inspire greater investor confidence in our markets. Similarly, many of the related market evolutions have increased access and lowered costs for some public investors. These factors have resulted in a fundamental restructuring of the U.S. capital markets system over the past 15 years. Our IPO Task Force report examines this restructuring and its implications in greater depth. For my purposes here, I will focus on the regulatory aspects of the current IPO challenge and how H.R. 3606 can mitigate it.

I believe the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011" provides an opportunity to thoughtfully recalibrate these regulations to reduce barriers for ECG's in three crucial ways. First, it recognizes emerging growth companies as a unique category facing acute challenges in accessing public capital. Second, it provides a limited, temporary and scaled regulatory compliance pathway, which the IPO Task Force referred to as an "on-ramp," that will reduce the costs and uncertainties of accessing public capital. Third, it improves the flow of information to investors about the initial offerings for emerging growth companies. The legislation follows a balanced approach by structuring the on-ramp as a temporary feature available only for a limited period of one to five years, depending on the size of the company.

Recognizing "Emerging Growth Company" Challenges

The "Reopening American Capital Markets to Emerging Growth Companies Act of 2011" would establish a new category of issuer, called an "emerging growth company" (EGC) that has less than $1 billion in annual revenues at the time of SEC registration. These companies would benefit from a temporary regulatory on-ramp designed to provide EGCs with a smooth entryway into the IPO market while ensuring adequate investor protection. This on-ramp status would last only for a limited period of one to five years, depending on the company's size, and it would encourage EGCs to go public while ensuring that they achieve full compliance as they mature and build the resources necessary to sustain the level of compliance infrastructure associated with larger enterprises.

As noted, EGC status, and the scaled regulation associated with the on-ramp, would last for a limited period of one to five years. Specifically, EGC status would cease at the first fiscal year-end after the company (1) reaches $1 billion in annual revenue; (2) has been public for five years; or (3) becomes a "large accelerated filer" with more than $700 million in public float (i.e., market value of shares held by non-affiliates). To put the bill's limited scope in perspective, if the on-ramp provisions were in effect today, they would apply to only 14 percent of public companies and only 3 percent of total market capitalization, according to the IPO Task Force estimate. For example, Ford Motor Company would not qualify as an EGC eligible for the on-ramp. Nor would Zynga be expected to qualify. However, Carbonite and Horizon Pharmaceuticals would.

As someone who has spent the last 15 years seeking out, evaluating, investing in, and helping to build promising young companies, I cannot overemphasize the value of a robust and accessible IPO market. In our survey of emerging growth company CEOs, 86 percent of respondents listed accounting and compliance costs as a major concern of going public. Again, over 85 percent of CEOs said that going public was not as attractive of an option as it was in 1995. Given these concerns, for CEOs of successful companies deciding between pursuing an IPO or positioning themselves for an acquisition, the scaled disclosure and cost flexibility provided by the bill could help make an IPO the more attractive option.

Reopening Access through Scaled Regulation

The bill provides qualifying EGCs with a narrow, temporary and scaled regulatory compliance pathway that would reduce the costs of accessing public capital without compromising investor protection. The bill's transitional relief is limited to those areas of compliance that are significant cost drivers. While those requirements may sensibly apply to larger enterprises, allowing EGCs to phase in these costs would not compromise investor protection for smaller public companies that are following the scaled regulation that the SEC has already developed and approved for smaller reporting companies. In this way, the on-ramp benefits from the SEC's prior regulatory actions that carefully balanced both investor protection and the promotion of efficiency, competition, and capital formation, consistent with Section 3(f) of the Securities Exchange Act of 1934. The scaled regulations under the bill include:

Section 404(b) of Sarbanes-Oxley. In addition to the typical cost of auditing their financial statements, large public companies must pay an outside auditor to attest to the company's internal control over financial reporting. Studies have shown that compliance with Sarbanes-Oxley can cost companies more than $2 million per year, with much of that cost associated with the Section 404(b) requirements. All companies with a public float of less than $75 million are already exempt from Section 404(b) because Congress has recognized the substantial burden this requirement would impose on smaller companies. In addition, existing regulations provide that all newly public companies — regardless of their size or maturity — benefit from a transition period of up to two years before they are required to comply with Section 404(b) of Sarbanes-Oxley. Under current law, this transitional relief is available even for very large companies that would not qualify as EGCs. Moreover, this existing transitional relief is necessary even though the auditing standard for the Section 404(b) audit is intended to be flexible and scalable. (The Public Company Accounting Oversight Board's Auditing Standard No. 5 expressly permits a top-down, scalable approach for the audit and recognizes that "a smaller, less complex company" may "achieve its control objectives differently than a more complex company.") Building on these concepts, H.R. 3606 provides EGCs with a limited and targeted extension of the existing transition period during the on-ramp for compliance with Section 404(b). The bill would not affect current requirements under which management is responsible for establishing and maintaining internal control over financial reporting and disclosure controls and procedures.

Look-back for audited financials. EGCs would be required to provide audited financial statements for the two years prior to registration, rather than three years. This two-year period already applies under existing SEC rules for companies with a public float of less than $75 million. For the year following its IPO, the EGC will go forward reporting three years of audited financials, similar to larger issuers, without facing an incremental cost burden because the third year will have already been audited in connection with the IPO. The transition period for this element, therefore, will only extend for a year, which is much shorter than the full on-ramp period.

Exemptions from long form compensation disclosure. The EGC will disclose its compensation arrangements using the established format that the SEC has adopted for smaller reporting companies. The bill would also exempt EGCs from the requirement to hold an advisory stockholder vote on executive compensation arrangements, including advisory votes on change-of-control compensation arrangements and the frequency of future advisory votes. The SEC has given smaller reporting companies an additional year to comply with the new rules, in light of the additional burden these requirements impose. The bill would extend this transitional relief for

EGCs during the on-ramp period. During that time, EGCs would still be required to comply with all stock exchange governance requirements, including director independence requirements.

The on-ramp period will give EGCs the opportunity to realize the benefits of going public in their first, critical years in the public markets. They will be able to allocate more of the capital they raise from the IPO process toward hiring new employees, developing new products, expanding into new markets and implementing other elements of their growth strategies — as opposed to funding the type of complex compliance apparatus designed for larger, more mature companies. At the same time, EGCs and their management will be able to devote more time, energy and other resources to managing the business, charting the path to future growth and implementing compliance systems that are appropriate for smaller, more nimble companies. Indeed, 92 percent of the public-company respondents in the IPO Task Force's CEO survey identified the burden of administrative reporting as a significant challenge, while 91 percent noted that reallocating their time from company building to compliance management has been a major challenge.

The IPO Task Force's membership included institutional investors who provided important perspectives that shaped the specific recommendations we made. In particular, the scaled regulation that we ultimately recommended, and which H.R. 3606 reflects, incorporated key recommendations from the investor community that this constituency believes is consistent with investor protection and will ensure full disclosure of all relevant information by EGCs as well as the availability and flow of information for investors.

Improving the Availability and Flow of Information for Investors

Along with compliance burdens, post-IPO liquidity ranked very high among the concerns of emerging growth company CEOs. Institutional investors in particular expressed concerns about the dearth of information and exposure they had to IPO companies versus what they receive for other securities, making it difficult to get enough information to make an informed investing decision about a new issue. In order to increase post-IPO liquidity, investors need efficient markets with abundant, accurate information about newly public companies. In an effort to make IPOs more attractive to EGCs and investors, the bill would improve the flow of information about EGCs to investors before and after an IPO. It will do so primarily by updating existing regulations to account for advances in modes of communication since the enactment, 78 years ago, of the Securities Act of 1933, and to recognize changes in the information available to investors in the Internet era. Current rules relating to analyst research were initially adopted more than 40 years ago — long before the fundamental changes that the Internet has brought regarding the availability of information, including instantaneous access to registration statements filed with the SEC. The SEC has amended these rules only modestly and incrementally since that time. Specifically, the bill will:

Close the information gap for emerging growth companies. Existing rules allow investment banks participating in the underwriting process to publish research on large companies on a continuous basis, but prohibit those investment banks from publishing research on EGCs. This bill would allow investors to have access to research reports about EGCs concurrently with their IPOs. In other words, H.R. 3606 extends to EGC investors the research coverage currently enjoyed by investors in very large companies. At the same time, the bill preserves the extensive investor protections adopted in this area within recent years. For example, H.R. 3606 leaves intact robust protections such as:

- Sarbanes-Oxley Section 501, which requires analysts and broker-dealers that publish research reports to disclose any potential conflicts of interest that may arise when they recommend an issuer's equity securities, including whether an analyst or broker-dealer currently owns other debt or equity investments in the issuer or has received compensation from the issuer for publishing the report or whether the issuer is a client of the broker-dealer.
- SEC Regulation AC, which requires broker-dealers to include in all research reports a statement by the research analyst certifying that the views expressed in the research report accurately reflect the research analyst's personal views about the securities and to disclose whether the research analyst was compensated in connection with the specific recommendations.
- The Global Research Analyst Settlement of 2003, which severed the link between research and investment banking activities at large investment banks, required investment banks to use independent research and made analysts' historical ratings and price targets publicly available.

As the SEC recognized in 2005, the "value of research reports in continuing to provide the market and investors with information about reporting issuers cannot be disputed." We agree that research reports are indisputably valuable to investors and endorse the changes in H.R. 3606 that would permit research coverage of EGCs at the time of an IPO, rather than the current regime, which permits research only for large, established public companies. The bill's changes would address the current information shortfall by providing a way for investors to obtain research about IPO candidates, while leaving unchanged the robust and extensive investor protections that exist to ensure the integrity of analyst research reports.

Permit emerging growth companies to "test the waters" prior to filing a registration statement. The bill would permit EGCs to gauge preliminary interest in a potential offering by expanding the range of permissible pre-filing communications to institutional and qualified investors. This would provide a critically important mechanism for EGCs to determine the likelihood of a successful IPO. For a company on the verge of going public, but not quite ready, getting that investor feedback beforehand improves the chances of a successful IPO at a later date. This benefits issuers and the public markets in the process by helping otherwise-promising companies avoid a premature offering. All of the antifraud provisions of the securities laws would still apply to these communications, and the bill ensures that the delivery of a statutory prospectus would still be required prior to any sale of securities in the IPO.

Permit confidential pre-filing with the SEC. Currently, foreign entities are permitted to submit registration statements to the SEC on a confidential basis under certain circumstances, even though U.S. companies are not. Since the recent introduction of H.R. 3606, the SEC staff has updated its policy in this area to permit confidential filings for foreign governments registering debt securities and foreign private issuers that are listed or are concurrently listing on a non-U.S. securities exchange. This accommodation is not available to domestic issuers. Allowing U.S. companies to make confidential submissions of draft registration statements would allow EGCs to commence the SEC review process in a far more efficient and effective manner. In particular, this process would remove a significant inhibitor to IPO filings by allowing pre-IPO companies to begin the SEC review process without publicly revealing to competitors sensitive commercial and financial information before those pre-IPO companies are able to make an informed decision about the feasibility of an IPO. The bill would require U.S. companies that elect to use the confidential submission process to make public the filing of the initial confidential submission as well as all amendments resulting from the SEC review process, thereby providing full access to the information before an IPO that is traditionally disclosed to the public during the registration process. The bill would also require such a public filing at least 21 days before the pre-IPO company commences a road show with potential investors, providing ample time for public review of all changes made in all amendments to the registration statement occurring during the SEC review process.

Conclusion

With the U.S. economic recovery stalled, unemployment hovering near 9 percent and global competition ramping up, the time to revive the U.S. IPO market and jumpstart job creation is now. We believe that the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011" can help us accomplish those goals without compromising important investor protections, including many of the reforms implemented in recent years.

The bill provides measured and limited relief, for a period of one to five years, to a small population of strategically important companies with disproportionately positive effects on job growth and innovation. We believe that these changes could provide powerful incentives for those emerging companies to more seriously consider an IPO as a feasible alternative when they are deciding between the growth potential of an IPO versus the safer and easier path of an acquisition transaction. As a result, we believe these changes could bring those alternatives back to their historical balance — a balance that has, in prior years, allowed IPOs to occur more easily and, in so doing, supported America's global economic primacy for decades.

I urge the members of this committee to support the passage of the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011." By doing so, we can re-energize U.S. job creation and economic growth by helping reconnect emerging companies with public capital — all while enabling the broadest range of investors to participate in the growth of those companies through a healthy and globally respected U.S. capital markets system. These outcomes are not only consistent with the spirit and intent of the current regulatory regime, but also essential to preserving America's strength for decades to come.

In closing, I want to personally thank you for the opportunity to discuss these important issues with you today. I look forward to answering any questions you may have and, I thank you for your service to our country in your capacity as Members of Congress and your attention to this critical issue.

Rebuilding the IPO On-Ramp

Putting Emerging Companies and
the Job Market Back on the Road to Growth

Issued by the IPO Task Force
October 20, 2011

Presented to The U.S. Department of the Treasury

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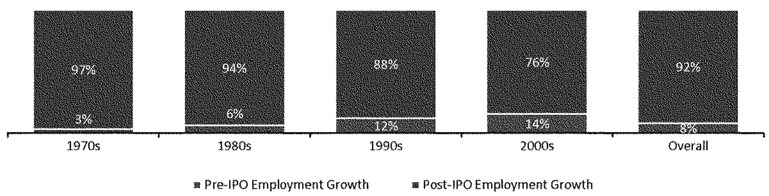
I. Executive Summary

This report recommends specific measures that policymakers can use to increase U.S. job creation and drive overall economic growth by improving access to the public markets for emerging, high-growth companies.

For most of the last century, America's most promising young companies have pursued initial public offerings (IPOs) to access the additional capital they need to hire new employees, develop their products and expand their businesses globally. Often the most significant step in a company's development, IPOs have enabled these innovative, high-growth companies to generate new jobs and revenue for the U.S. economy, while investors of all types have harnessed that growth to build their portfolios and retirement accounts. We refer to these companies in this report as "emerging growth" companies (defined more specifically for purposes of this report on page 20).

Chart A: IPOs Finance Significant Job Creation



Source: Venture Impact 2007, 2008, 2009, & 2010 by IHS Global Insight; IPO Task Force August 2011 CEO Survey.

During the past 15 years, the number of emerging growth companies entering the capital markets through IPOs has plummeted relative to historical norms. This trend has transcended economic cycles during that period and has hobbled U.S. job creation. In fact, by one estimate, the decline of the U.S. IPO market had cost America as many as 22 million jobs through 2009.[1] During this same period, competition from foreign capital markets has intensified. This dearth of emerging growth IPOs and the diversion of global capital away from the U.S. markets – once the international destination of choice – have stagnated American job growth and threaten to undermine U.S. economic primacy for decades to come.

In response to growing concerns, the U.S. Treasury Department in March 2011 convened the Access to Capital Conference to gather insights from capital markets participants and solicit recommendations for how to restore access to capital for emerging companies – especially public capital through the IPO market. Arising from one of the conference's working group conversations, a small group of professionals representing the entire ecosystem of emerging growth companies – venture capitalists, experienced CEOs, public investors, securities lawyers, academicians and investment bankers – decided to form the IPO Task Force to examine the conditions leading to the IPO crisis and to provide recommendations for restoring effective access to the public markets for emerging, high-growth companies.

In summary, the IPO Task Force has concluded that the cumulative effect of a sequence of regulatory actions, rather than one single event, lies at the heart of the crisis. While mostly aimed at protecting investors from behaviors and risks presented by the largest companies, these regulations and related market practices have:

1. driven up costs for emerging growth companies looking to go public, thus reducing the supply of such companies,

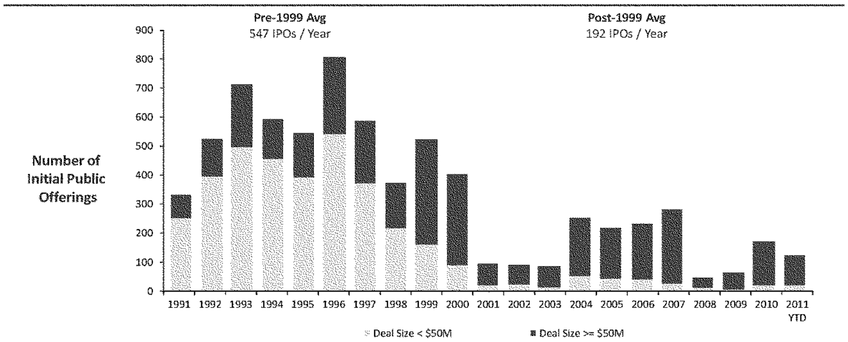
(1) *D. Weild and E. Kim, Grant Thornton, A Wake-up Call for America at page 2 (November 2009).*

2. constrained the amount of information available to investors about such companies, thus making emerging growth stocks more difficult to understand and invest in, and

3. shifted the economics of the trading of public shares of stock away from long-term investing in emerging growth companies and toward high-frequency trading of large-cap stocks, thus making the IPO process less attractive to, and more difficult for, emerging growth companies.

These outcomes contradict the spirit and intent of more than 75 years of U.S. securities regulation, which originally sought to provide investor protection through increased information and market transparency, and to encourage broad investor participation through fair and equal access to the public markets.

Chart B: IPOs are Down...Particularly Smaller IPOs



Sources: JMP Securities, Dealogic, Capital Markets Advisory Partners, Grant Thornton

To help clear these obstacles for emerging growth companies, the IPO Task Force has developed four specific and actionable recommendations for policymakers and members of the emerging growth company ecosystem to foster U.S. job creation by restoring effective access to capital for emerging growth companies. Developed to be targeted, scalable and in some cases temporary, these recommendations aim to bring the existing regulatory structure in line with current market realities while remaining consistent with investor protection. The task force's recommendations for policymakers are:

1. **Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.** We recommend that companies with total annual gross revenue of less than $1 billion at IPO registration and that are not recognized by the SEC as "well-known seasoned issuers" be given up to five years from the date of their IPOs to scale up to compliance. Doing so would reduce costs for companies while still adhering to the first principle of investor protection. (Page 19)

2. **Improve the availability and flow of information for investors before and after an IPO.** We recommend improving the flow of information to investors about emerging growth companies before and after an IPO by increasing the availability of company information and research in a manner that accounts for technological and communications advances that have occurred in recent decades. Doing so would increase visibility for emerging growth companies while maintaining existing regulatory restrictions appropriately designed to curb past abuses. (Page 26)

3. **Lower the capital gains tax rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years.** A lower rate would encourage long-term investors to step up and commit to an

allocation of shares at the IPO versus waiting to see if the company goes public and how it trades after its IPO. (Page 30)

In addition to its recommendations for policymakers, the task force has also developed a recommendation for members of the emerging growth company ecosystem:

4. **Educate issuers about how to succeed in the new capital markets environment.** The task force recommends improved education and involvement for management and board members in the choice of investment banking syndicate and the allocation of its shares to appropriate long-term investors in its stock. Doing so will help emerging growth companies become better consumers of investment banking services, as well as reconnect buyers and sellers of emerging company stocks more efficiently in an ecosystem that is now dominated by the high-frequency trading of large cap stocks. (Page 31)

The recommendations above aim to adjust the scale of current regulations without changing their spirit. Furthermore, the task force believes that taking these reasonable and measured steps would reconnect emerging companies with public capital and re-energize U.S. job creation and economic growth – all while enabling the broadest range of investors to participate in that growth. The time to take these steps is now, as the opportunity to do so before ceding ground to our global competitors is slipping away.

For this reason, the members of the IPO Task Force pledge their continued participation and support of this effort to put emerging growth companies, investors and the U.S. job market back on the path to growth.

II. Brief Background and Purpose

In March 2011, the U.S. Department of the Treasury convened the Access to Capital Conference to gather insights from capital markets participants and solicit recommendations for how to restore effective access to capital for emerging companies, including public capital through the IPO market. Arising from of one of the conference's working group conversations, a small group of professionals representing the entire ecosystem of emerging growth companies – venture capitalists, experienced CEOs, public investors, securities lawyers, academicians and investment bankers – decided to form the IPO Task Force (Appendix A, page 33) in order to 1) examine the challenges that emerging growth companies face in pursuing an IPO and 2) develop recommendations for helping such companies access the additional capital they need to generate jobs and growth for the U.S. economy and to expand their businesses globally.

This report recommends specific measures that policymakers can use to increase U.S. job creation and drive overall economic growth by improving access to the public markets for emerging, high-growth companies.

III. Emerging Growth Companies Drive U.S. Job Creation

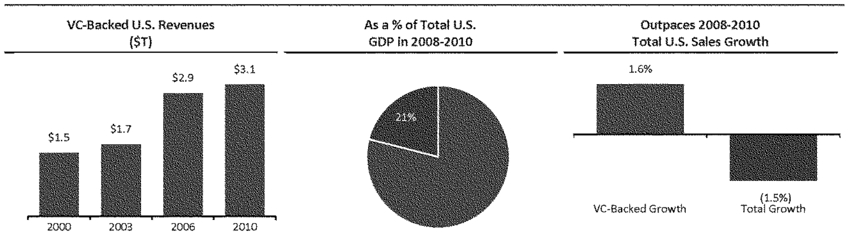
For most of the last century, America's most promising young companies have pursued IPOs to access the additional capital they need to hire new employees, develop their products and expand their businesses globally. Often the most significant step in a company's development, IPOs enabled these innovative, high-growth companies to generate new jobs and revenue for the U.S. economy, while investors of all types harnessed that growth to build their portfolios and retirement accounts. We refer to these companies in this report as "emerging growth" companies (defined more specifically for purposes of this report on page 20).

92% of job growth occurs after a company's IPO. Most of that growth occurs within the first five years of the IPO.[2]

The role of these emerging growth companies in creating American jobs cannot be understated. From 1980 to 2005, firms less than five years old accounted for all net job growth in the U.S.[1] In fact, 92 percent of job growth occurs after a company's initial public offering, according to data from IHS Global Insight. Furthermore, in a survey of emerging growth companies that have entered the public markets since 2006, respondents reported an average of 86 percent job growth since their IPOs (See Appendix C, page 36).

Indeed, some of America's most iconic and innovative companies – Apple, Cisco, FedEx, Genentech and Starbucks – entered the public markets through small-cap offerings at a time when the markets were more hospitable to small- and mid-cap stocks. These companies also received venture capital funding as startups. While none of the challenges or recommendations outlined in this report are exclusive to venture capital-backed companies, such companies serve as useful proxies when discussing the disproportionately positive impact of emerging growth companies on U.S. job creation and revenue growth. For example, while investment in venture-backed companies equates only to between 0.1 percent and 0.2 percent of U.S. gross domestic product each year, companies with venture roots employed 11 percent of the total U.S. private sector workforce and generated revenues equal to 21 percent of U.S. GDP in 2010.[3]

Chart C: Innovative Companies Create Jobs and Grow Quickly



Source: Venture Impact 2007, 2008, 2009 & 2010 by IHS Global Insight.

(1) *Source: Venture Impact Study 2010 by IHS Global Insight*

(2) *Source: Ibid.*

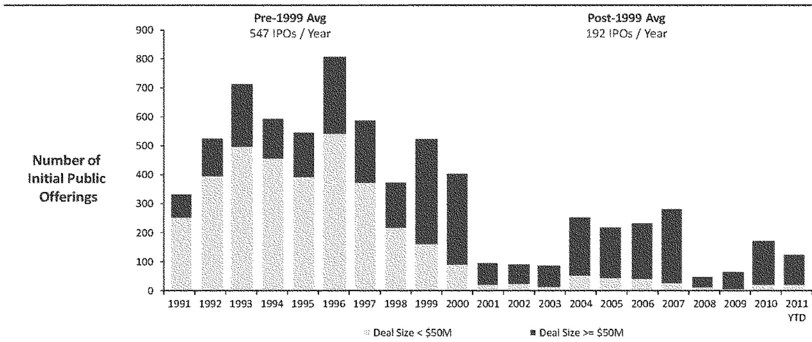
(3) *Source: Ibid.*

IV. The IPO Market Decline

Over the last decade, the number of emerging growth companies entering the capital markets through IPOs has plummeted. This trend has persisted independent of the economic cycles during this same time. After achieving a one-year high of 791 IPOs in 1996, the U.S. averaged fewer than 157 per year from 2001 to 2008. In fact, only 45 companies went public in 2008.(1) The numbers for the last two years have rebounded slightly, but remain well below historical norms and well below the amount required to replace the number of listed companies lost to mergers, acquisitions, de-listings and bankruptcy.

Venture-backed emerging growth companies illustrate the trend. From 1991 to 2000, nearly 2,000 such companies (which, as noted above, typically grow larger and faster than their peers) went public as compared to only 477 from 2001 to 2010.(2) That represents a drop of more than 75 percent. In addition, the companies that make it to the public markets are taking twice as long to do so: The median age of a venture-backed company at the time of its IPO has nearly doubled in recent years. The average age at IPO of companies going public between 1997 and 2001 was approximately five and a half years, compared with more than nine years for companies going public between 2006 and 2011.(3) As a result, many smaller companies have life spans as private companies longer than venture fund life cycles and employee stock option terms.

Chart D: IPOs are Down...Particularly Smaller IPOs



Sources: JMP Securities, Dealogic, Capital Markets Advisory Partners, Grant Thornton

Over this same period, the prevalence of IPOs versus acquisitions of emerging growth companies has undergone a stunning reversal. Acquisitions by a shrinking number of larger companies (due to the lack of IPOs) have become the primary liquidity vehicle for venture capital-backed companies as compared to IPOs.(4) This is significant because M&A events don't produce the same job growth as IPOs – nor do they allow investors to participate as directly in the economic growth of a stand-alone company. In fact, M&A events result in job losses in the short term as the acquiring company looks to eliminate redundant positions between the two enterprises. Subsequent job growth may occur at the acquiring company, but only over time, and only after those initial job losses are recovered.

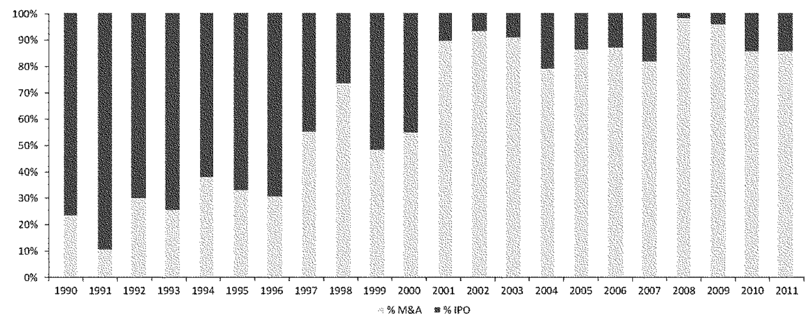
(1) *Source: JMP Securities, Dealogic.*

(2) *Source: Thomson Reuters, National Venture Capital Association.*

(3) *Source: Ibid.*

(4) *Source: VentureOne data.*

Chart E: Shift from IPOs to M&A



Source: Thomson Reuters/National Venture Capital Association (Based on number of exits per year; M&A exits are for private company sales only).

V. Fewer IPOs: Less Job Growth

Imagine how different Seattle, Cupertino or Austin would look today if — instead of going public — Microsoft, Apple or Dell had undergone an acquisition by an old-line conglomerate.

Given the propensity of emerging growth companies for generating new jobs, it is little wonder that the primary casualty in the decline of America's IPO market has been job creation. By one count, "up to 22 million jobs may have been lost because of our broken IPO market."[(1)] Meanwhile, U.S. Labor Department statistics suggest that the number of unemployed and under-employed Americans reached approximately 25 million in 2011.[(2)]

The adverse effects brought on by the IPO market decline across the entire American capital markets system have begun to undermine U.S. global economic primacy. The United States raised just 15 percent of global IPO proceeds in 2010, down from its average of 28 percent over the preceding 10 years.[(3)]

The losers in the IPO crisis are the U.S. workers who would have been hired by emerging growth companies had they been able to go public and generate new jobs through their subsequent growth.

(1) *D. Weild and E. Kim, Grant Thornton, A Wake-up Call for America at page 2 (November 2009).*

(2) *U.S. Department of Labor, "The Employment Situation – May 2011" News Release.*

(3) *Dent, Mary J. "A Rose by Any Other Name: How Labels Get In the Way of U.S. Innovation Policy" March 2011; U.S. Global IPO Trends, supra note 42.*

VI. Regulatory and Market Roadblocks

While the costs of the IPO market's decline to the U.S. economy are clear, its causes cannot be traced to one single event. Rather, a complex series of changes in the regulatory environment and related market practices, most of which were intended to solve problems unrelated to emerging growth company IPOs, has:

1. driven up costs for emerging growth companies looking to go public, thus reducing the supply of such companies,

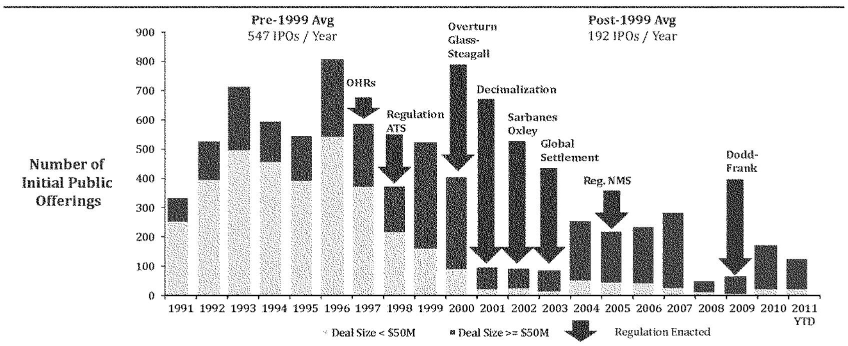
2. constrained the amount of information available to investors about such companies, thus making emerging growth company stocks more difficult to understand and invest in, and

3. shifted the economics of investment banking away from long-term investing in such companies and toward high-frequency trading of large-cap stocks, thus making the IPO process less attractive to, and more difficult for, emerging growth companies.

These outcomes contradict the spirit and intent of more than 75 years of U.S. securities regulation, which originally sought to provide investor protection through increased information and market transparency, and to encourage broad investor participation through fair and equal access to the public markets. In most cases, the regulations were intended to address market issues created exclusively by the behavior of, and risks presented by, the largest companies. While some regulations succeeded in this aim, almost all of them have created unintended adverse effects on emerging growth companies looking to access public capital.

The collective result of these well-intentioned but "one-size-fits-all" regulations and the market changes they have engendered amounts to nothing less than a fundamental change in the structure of the U.S. capital markets. The losers in this restructuring are the U.S. workers who would have been hired by emerging growth companies had those companies been able to go public and generate new jobs through their subsequent growth.

Chart F: IPOs and Regulatory/Market Changes



Sources: JMP Securities, Dealogic, Capital Markets Advisory Partners, Grant Thornton.

A. Impact on Supply of Emerging IPOs

While 96% of emerging growth companies surveyed agreed that a strong and accessible small cap IPO market was important, only 13% agreed that the current market is easily accessible for small companies.[(1)]

An IPO represents one of the most significant steps in a young company's growth cycle. Unfortunately, a series of rules, regulations and other compliance issues aimed at large-cap, already-public companies has increased the time and costs required for emerging companies to take this critical first step.

Many of the rules and regulations adopted over the last 15 years aimed to respond to scandals or crises at major public companies and to restore confidence in the public markets by requiring public companies to adopt more stringent financial and accounting controls. These requirements are included in the dozens of rulemakings (some of which are still pending) following the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and various accounting and compliance requirements. Financial Accounting Standards Board (FASB) and Public Company Accounting Oversight Board (PCAOB) rules can further increase the compliance challenge, as discussed further below.

Chart G: The Regulatory Cascade

1996-Today	Accounting & Compliance from Policymakers & Industry
1996	Advent of Electronic Trading
1999	Gramm-Leach-Bliley Overturns Separation Of Commercial & Investment Banking
2001	Decimalization Introduced for All Exchange Traded Shares
2002	Sarbanes-Oxley Act
2002-Today	Additional Accounting & Compliance from Policymakers & Industry
2003	Global Analyst Settlement Separates Research & Banking
2009-Today	Dodd-Frank Act

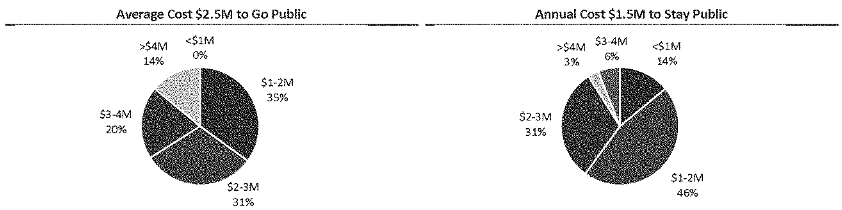
Two recent surveys of pre- and post-IPO companies – one initiated by the IPO Task Force (see Appendix C for summary results) and one conducted by a company currently in registration by reviewing public filings of its peers[(2)] – place the average cost of achieving initial regulatory compliance for an IPO at $2.5 million, followed by an ongoing compliance cost, once public, of $1.5 million[(3)] per year. These figures can represent a significant amount of an emerging company's earnings before interest, taxes, depreciation and amortization (EBITDA) and can lower the company's market cap based on EBITDA multiples by tens of millions of dollars. Respondents to the task force survey listed the regulatory burdens of going public as their primary concerns.

(1) *IPO Task Force August 2011 CEO Survey (see Appendix C).*

(2) *Survey conducted by a private company via an independent review of public filings for 47 IPOs raising less than $200M in 2011.*

(3) *Results compiled from two different surveys. The first was initiated by the Task Force; methodology and summary results can be found in Appendix C. Survey conducted by a private company via an independent review of public filings for 47 IPOs raising less than $200M in 2011.*

Chart H: The Costs of Going and Staying Public are High



Costs Including SOX, Legal, Accounting

Source: IPO Task Force August 2011 CEO Survey of incremental IPO costs. Sample set of 35 CEOs of companies that went public since 2006.
Consistent With Independent Review of Public Filings for 47 2011 IPO's Raising Less Than $200M (Avg. Cost of $3M for IPO).

These high costs can force a grim tradeoff for management: 1) commit these resources to achieving and maintaining compliance in an uncertain IPO market, or 2) postpone (or forgo altogether) an IPO to continue developing the company's product offering and building the enterprise at a lower growth trajectory. Given that completing an IPO involves a great deal of risk and uncertainty for an emerging growth company, especially in a down cycle, many companies are choosing the second option with the target exit being acquisition by a larger company. As described earlier, this outcome not only generates less short-term job growth, but can actually reduce the number of jobs in the short run when the acquiring company eliminates redundant positions.

While these rules apply to public companies, emerging growth companies must be ready to comply with them at, or very soon after, the time of their IPOs and typically must begin to build up a significant compliance infrastructure a year or two ahead of time. Currently, companies with market capitalizations of under $75 million (known as "Smaller Reporting Companies" or "SRCs") are exempted from a broad range of rules that apply to all larger companies. While the idea behind this exemption is sound, the execution falls short of market realities. First, it creates a false dichotomy within the equities space wherein a company is either a micro-cap or a large cap. This is akin to classifying all motor vehicles as either sub-compact cars or semi-trucks – with nothing in between. Second, the current system holds even the smallest cap companies to the large-cap standards before they can go public. As a result, emerging growth companies and U.S. workers pay the price – literally.

The continued implementation of various rules under the Dodd-Frank Act, along with proposed FASB and PCOAB initiatives under discussion, will likely further increase the compliance challenge for emerging growth companies. For example, matters under consideration in the PCOAB's recent concept release on new auditor firm rotation threaten to increase costs even further for emerging growth companies. This requirement is in addition to the existing requirement that all individual auditors assigned to an account be rotated regularly with other auditors within the same firm. For an emerging company, hiring a new audit firm a year or two after an IPO is very expensive. This is because it often takes a company a year or two to fully educate its auditor about the company's business model and for the auditor to use that knowledge to deliver services efficiently. For these reasons, the first year or two of the engagement are the most costly for a company. The rotation rule would force a company to drop its audit firm just as the relationship is becoming cost-efficient, and start the education process anew with a different audit firm. Relief under current and proposed rules for small companies does not compromise investor protection as the incidence of accounting fraud by small companies is no greater than for their large peers.[1]

(1) *10-Year Study by Audit Analytics Released May 2011.*

Cumulatively, the unintended effects of these current and pending regulations – the increasing length of time between initial start-up and liquidity event, the increasing compliance costs associated with becoming and maintaining a public company in the U.S., the significantly larger market capitalization and revenue size required to go public, the financial, accounting and compliance infrastructure required to go public in today's environment – have likely delayed, diverted or discouraged hundreds of companies from entering the public markets since the mid-1990s. The long-term economic impact for U.S. workers and consumers resulting from the lost jobs and revenues from these companies cannot be underestimated.

Recommendation #1:

Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.

1.1 Create a new category of issuer, "emerging growth company," that lasts up to five years and is transitional.

1.2 Define such companies by the following criteria:

- 1.2.1 Annual revenue of less than $1 billion
- 1.2.2 Not recognized by the SEC as a "well-known seasoned issuer"
- 1.2.3 Registered for an IPO, or less than five years post-IPO

1.3 Build on existing scaled disclosure rules to ease compliance burdens during the transition period while maintaining investor protection.

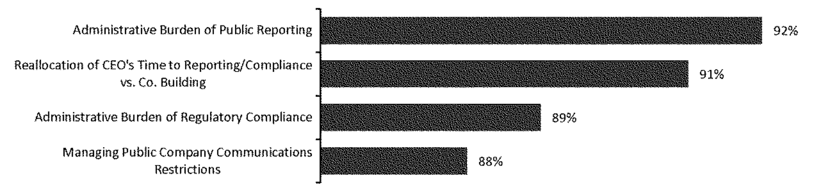
1.4 Apply scaled On-Ramp regulations only as long as a company qualifies as an emerging growth company.

Detailed recommendation on page 19.

The task force made its recommendations with the objective of maintaining the principles of investor protection and sought investor input into the limited measures that are recommended in this report. When analyzing the cohorts of emerging growth companies that went public over the last five years, emerging growth companies never exceed 15 percent of all companies listed on the exchange (see Appendix D, page 42). Market cap was rejected as a basis for determining status as an emerging growth company because, in a volatile market, companies often have limited visibility of or control over their market cap. A revenue-based test satisfied the objective of increased certainty regarding the applicability of key regulations.

The primary reasons emerging growth companies seek capital are to grow their businesses, pursue promising new products and innovations, and create jobs. Enabling them to use an On-Ramp (for some or all of the scaled regulation and disclosure) for a period of time after their IPOs will reduce their costs in trying to achieve these goals. Based on interviews with pre- and post-IPO companies, we would expect the On-Ramp scaling to reduce internal and external compliance costs for such companies by 30 percent to 50 percent. It will also allow them to build the resources to satisfy the additional regulatory burdens to which large, mature companies are accustomed. We expect that this will result in a larger supply of emerging growth companies going public and increased job creation over the long term.

Chart I: Public Company CEOs: Most Significant IPO Challenges



Source: IPO Task Force August 2011 CEO Survey.

Per a 10-year study by Audit Analytics released in May 2011, the incidence of restatement by small companies is no different from their larger peers and is proportional to their percentage of the public company population.

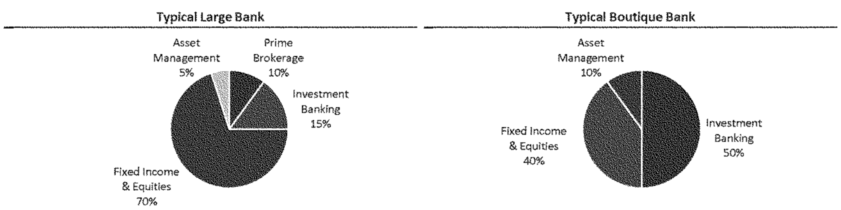
B. Changes to the IPO Channel

As described earlier, the extraordinary sequence of regulatory interventions and the market changes it has engendered have fundamentally changed the structure of the U.S. capital markets. This new market structure has shifted the economic incentives for financial institutions away from long-term investing in a company's fundamental growth – upon which emerging growth companies and their IPOs rely – and toward short-term trading driven by volatility and changes in market price. In the process, it has broken the traditional relationship between buyers and sellers of emerging growth company stocks.

This shift began in the late 1990s with the rise of electronic trading, which led to lower commissions and reduced the role of traditional brokers, who helped to expose investors to a wide array of stocks – including small caps. The adoption of decimal pricing (wherein stocks are priced in pennies instead of by fractions of dollars) by 2001 further reduced the economic opportunity per trade for investment banks.

In the new, low-cost, frictionless environment promulgated by electronic trading and decimalization, investment banks now generate revenue primarily by executing a high volume of low-priced trades meant to capitalize on short-term changes in the price of highly liquid, very large-cap stocks.

Chart J: Channel Focus: Trading Drives Revenue for Largest Investment Banks



Source: JMP Securities.

The rise of algorithmic trading strategies and high-frequency execution (known collectively as high-frequency trading, or HFT) illustrates this shift in stark terms. High-frequency trading now accounts for nearly 75 percent of all equities trading volume at U.S. exchanges,[1] compared with slightly more than 20 percent in 2004.[2]

The problem for emerging growth company stocks is that high-frequency trading is driven by non-fundamental factors such as price discrepancies among various market makers, relationships between various stocks and commodities, and price movements, as opposed to by a particular company's prospects for growth and profitability. In addition, HFT positions are closed out at the end of every day – the exact opposite of the type of long-term, fundamentals-based strategy that favors emerging growth IPOs. In this environment, large stocks can sometimes function more like commodities whose value is driven more by their volatility, liquidity and the amount of the company's shares available for trading in the public market (its "float") than by the long-term growth they may offer to their holders. With their large floats and high visibility with investors, large-cap stocks can support this model. Most investment banking research, especially for the investment banking firms with significant trading and prime brokerage operations, is now focused on supporting these large cap companies, which represent most of the business of those firms.

(1) *Source: The Tabb Group, Aite Group.*

(2) *Source: The Tabb Group.*

By contrast, emerging growth stocks do not fit this model. They begin their "public" lives with modest liquidity levels and small floats – both of which they must grow over time through strong fundamental growth and increased visibility. Due to this relative lack of liquidity and float, emerging growth company stocks simply don't produce enough trading volume to make money for the investment bank's trading desk and therefore the investment bank as a whole. This undermines the incentive for investment banks to underwrite and make markets for newly public companies.

As the revenue drivers for investment banks have shifted to trading, the focus of their research departments has understandably followed suit. Already, decimalization had put the economic sustainability of sell-side research departments under stress by reducing the spreads and trading commissions that formerly helped to fund research analyst coverage. The Global Analyst Settlement of 2003 increased that stress by prohibiting the direct compensation of research analysts through investment banking revenue. This limited the compensation sources for analysts to trading revenues. As a result, most sell-side research analysts have shifted their attention to the high-volume, high-liquidity large-cap stocks that now drive revenues for their institutions and provide the basis for their compensation. This shift has resulted in less research coverage of emerging growth companies and thus less transparency and visibility into emerging growth companies for investors – an outcome that contradicts the original intent of the regulations in question. Instead, these regulations and market changes have produced less efficient markets in which long-term growth investors have less information about and access to the emerging growth companies that need capital the most.

Recommendation #2:

Improve the availability and flow of information for investors before and after an IPO.

2.1 Improve the availability and flow of research coverage.

2.2 Expand and clarify existing safe harbors.

2.3 Eliminate unnecessary research quiet periods.

2.4 Eliminate unnecessary restrictions on analyst communication.

2.5 Facilitate capital formation by expanding permissible communications between issuers and prospective investors and by providing for confidential IPO filings.

Detailed recommendation on page 26.

The task force developed the above recommendations under the premise that more information for investors is always better than less. It also allows emerging growth companies to "be heard" in the midst of the high-volume, large-cap-dominated trading landscape. Again, this remains consistent with historical first principles regarding the intent of U.S. securities regulation. Improving the flow of information about emerging growth companies to investors before and after an IPO can increase visibility for emerging growth companies while maintaining transparency for investors. In some cases, this will simply require an update of regulations that have been in place for 80 years to reflect today's marketplace and communications realities.

Despite the shift in economics and the paucity of information about emerging growth companies, there remains a vibrant community of boutique investment banks and growth-company investors willing to execute and invest in emerging growth IPOs. In the current environment, however, gaining access to emerging growth IPOs has become a challenge. In the wave of investment bank consolidation triggered by the passage of the Gramm-Leach-Bliley Act of 1999, large institutions acquired many of the most prominent and successful "growth stock investment banks," which increased the market strength of the largest investment banks. The combination of brand power and adverse market cycles has enabled the larger investment banks to garner a dominant market share of the dwindling IPO market. As a result, companies have shifted away from diversified investment banking syndicates that include growth-oriented investment banking firms who, in the past, were allocated shares to place with investors looking for long-term growth. Instead, current practices favor syndicates that are dominated purely by the largest investment banks. In this model, the large investment banks have incentives to place IPO shares with their biggest trading counterparts, rather than long-term growth investors, who are the strongest holders of emerging growth company IPOs.

Once again, these changes have undermined their original intents by making it more difficult for public investors wishing to invest in the long-term growth of innovative, emerging companies to gain access to such stocks.

Recommendation #4

Members of the emerging growth ecosystem must educate issuers about how to succeed in the new capital markets environment.

4.1 Choice of balanced investment banking syndicate.

4.2 Increase issuer's role in IPO allocation process with the goal to create an optimal mix of investors for the company.

4.3 Improve practice of investor communication.

Detailed recommendations on page 31.

The IPO Task Force developed the above recommendations with the goal of restoring the broken link between emerging growth companies and the public investors who wish to invest in them. By educating issuers about the new capital markets environment described above, we can help them become better consumers of investment banking services and find long-term institutional small-cap investors that best fit their evolving investor bases. This will help reconnect buyers and sellers of emerging growth stocks more efficiently. The Task Force believes responsibility for this education effort lies not with policymakers but rather with all members of the emerging growth company ecosystem.

C. Impact on Demand

As described in the prior section, demand for emerging growth company IPOs persists among a number of investor communities. This persistent demand in the face of shifting market economics underscores the value that smaller IPOs can still deliver to investors and the urgency of addressing the supply and channel issues outlined earlier in this report. Unfortunately, changes in the U.S. market structure have lowered the supply of such IPOs and have limited both the amount of available information and access to the shares of emerging growth companies for long-term growth investors.

In addition to addressing these measures, policymakers can reinforce demand for emerging growth company IPOs and maximize their effectiveness by using the tax code to create an additional incentive for investors. Such an incentive can draw long-term investors to buy at an emerging growth company's IPO, when that purchase will deliver the greatest benefit for the issuer, which is to bring them into the realm of being a publicly traded company and raise capital for growth. Without these first purchasers, an IPO cannot happen.

Recommendation #3:

Lower the capital gains tax rate for investors who purchase shares in IPO and hold these shares for a minimum of two years.

Detailed recommendation on Page 30.

Using tax policy to encourage long-term investing is a time-tested tool in U.S. regulatory practice. By lowering the capital gains rate for buyers of newly issued stock if they hold it for two years from the IPO date, policymakers can assist emerging growth companies in attracting long-term investors to their IPOs at the initial allocation – thereby helping to ensure that the companies successfully access the public markets and bring the benefits of job growth and appreciation in value to employees and investors alike.

Chart K: Demand Exists: Emerging Company IPOs Deliver Returns to Investors

Post IPO Market Cap		1 Day	1 Month	3 Months	6 Months	1 Year
$200M-$500M	Average	27.5%	34.8%	45.1%	43.9%	33.5%
$1B or more	Average	35.9%	39.7%	37.7%	32.8%	28.5%

Source: JMP Securities, Dealogic.
Note: Includes all IPOs from 1/1/2011-9/30/2011.

VII. Detailed Recommendations

The precipitous decline of the U.S. IPO market – driven by a paucity of emerging growth companies going public – has stifled job creation, undermined U.S. economic strength and imperiled America's global technology leadership. Historically one of the most reliable routes to growth for young companies, the small cap IPO market has been damaged and needs immediate repair.

This decline stems from a fundamental shift in the structure of the U.S. capital markets brought on primarily by regulations and related market forces. For some aspects of the new market reality, such as decimalization, there's no turning back – nor should there be, as investors have benefited from greater market access and reduced trading costs. For a number of other factors, however, opportunities exist to make limited and reasonable adjustments that can help restore the access to the public capital that emerging growth companies need to hire new employees, develop their products and grow their businesses globally.

To this end, the IPO Task Force has developed four recommendations that can serve as a roadmap for policymakers and members of the emerging growth company ecosystem to revive America's IPO market and the jobs growth it can generate. Developed to be targeted, scalable and in some cases temporary, these recommendations aim to bring the existing regulatory structure in line with current market realities while remaining consistent with its overarching goals of increased investor protection and participation. The task force's recommendations for policymakers are:

1. **Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.** We recommend that companies with total annual gross revenue of less than $1 billion at IPO registration, and that are not recognized by the SEC as "well-known seasoned issuers" be given up to five years from the date of their IPOs to scale up to compliance. Doing so would reduce costs for companies while still adhering to the first principle of investor protection. (Page 19)

2. **Improve the availability and flow of information for investors before and after an IPO.** We recommend improving the flow of information to investors about emerging growth companies before and after an IPO by increasing the availability of company information and research in a manner that accounts for technological and communications advances that have occurred in recent decades. Doing so would increase visibility for emerging growth companies while maintaining existing regulatory restrictions appropriately designed to curb past abuses. (Page 26)

3. **Lower the capital gains tax rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years.** A lower rate would encourage long-term investors to step up and commit to an allocation of shares at the IPO versus waiting to see if the company goes public and how it trades after its IPO. (Page 30)

In addition to its recommendations for policymakers, the task force has also developed a recommendation for members of the emerging growth company ecosystem:

4. **Educate issuers about how to succeed in the new capital markets environment.** The task force recommends improved education and involvement for management and board members in the choice of investment banking syndicate and the allocation of its shares to appropriate long-term investors in its stock. Doing so will help emerging growth companies become better consumers of investment banking services, as well as reconnect buyers and sellers of emerging company stocks more efficiently in an ecosystem that is now dominated by the high-frequency trading of large cap stocks. (Page 31)

Over the long term, the IPO Task Force believes that enacting these recommended changes will benefit all entrepreneurs who have developed successful, high-growth companies and who qualify for access to public, late-stage growth capital. Each of these action steps is outlined in greater depth in the sections that follow.

> ***"This proposal adds to the ancient rule of caveat emptor, the further doctrine, 'Let the seller also beware.' It puts the burden of telling the whole truth on the seller. It should give impetus to honest dealing in securities and thereby bring back public confidence." President Franklin D. Roosevelt, referring to The Securities Act of 1933.***

A. Recommendation #1:

Provide an "On-Ramp" for emerging growth companies using existing principles of scaled regulation.

Our first recommendation is to modify the current framework for IPO issuers and new reporting companies by expanding the system of scaled securities regulation for these emerging growth companies. Congress and the Securities and Exchange Commission (SEC) have had a history of scaling regulation for companies and transactions when warranted, as discussed in the 2006 Final Report of the Advisory Committee on Smaller Public Companies.(1)

In fact, as a result of the 2006 Report and its recommendations, in 2007 the SEC adopted rules providing regulatory relief and simplification for Smaller Reporting Companies (SRCs) in the form of scaled disclosure, noting at the time that scaled disclosure would "promote capital formation for smaller reporting companies and improve their ability to compete with larger companies for capital" as well as reducing their compliance costs and, in turn, the associated "costs to raise capital".(2) The SEC again provided regulatory relief in a 2010 rule exempting smaller companies from the provisions of Sarbanes-Oxley Section 404(b), which requires an auditor attestation of a registrant's internal control over financial reporting.(3)

Similar to these prior reforms, we believe that the modifications we propose for emerging growth companies are "necessary and appropriate in the public interest" and that the adoption of our proposals clearly would "promote efficiency, competition and capital formation".(4) While helpful for companies with market capitalizations of less than $75 million, the existing small company regulations do not provide relief for most companies considering an IPO, including high-growth, venture-backed companies that generate significant job growth like Apple, Intel, Cisco and Genentech before them. These companies go public in order to finance their growth and typically raise between $50 million and $150 million dollars to do so. While still far smaller and with fewer resources than larger companies, they must adhere to the same rules that the very largest companies do and therefore bear compliance costs disproportionate to their size. Based on interviews with pre- and post-IPO companies, we would expect the On-Ramp scaling recommendations that follow to reduce internal and external compliance costs for such companies by 30 percent to 50 percent.

(1) *See SEC Advisory Committee on Smaller Public Companies, Final Report (2006) ("Advisory Committee Final Report"), Part II, available at http://www.sec.gov/info/smallbus/acspc.shtml.*

(2) *See Release No. 33-8876 (Dec. 19, 2007) at 65 (simplifying the scaled disclosure system and expanding the number of companies that may use the scaled disclosure system available for Smaller Reporting Companies).*

(3) *See Release No. 33-9142 (Sept. 15, 2010); see also Section 989G of the Dodd-Frank Act (providing that non-accelerated filers are completely exempt from Section 404(b) of the Sarbanes-Oxley Act). In addition, all newly public companies, regardless of size, benefit from a phase-in period for Section 404(b) compliance. See Item 308 of Regulation S-K (providing relief for up to two years by permitting newly public companies to wait until their second annual report on Form 10-K to include management's assessment of and the auditor's attestation report on internal control over financial reporting). Separately, Section 404(a) of the Sarbanes-Oxley Act and related SEC rules require all other public companies to provide an annual management's report on internal control over financial reporting.*

(4) *See Securities Act Section 2(b); Exchange Act Section 3(f); Investment Company Act Section 2(c).*

1.1 Create a new category of issuer, "emerging growth company," that lasts up to five years and is transitional.

To address the higher relative compliance burdens that emerging growth companies face, and consistent with the concept of scaling regulation, we recommend creating a new category of issuer — an "emerging growth company" — that will be permitted to benefit from a modified regulatory framework that would provide a transitional five year On-Ramp following the IPO.

1.2 Define an "emerging growth company" according to the following criteria:

1.2.1 Designation as an emerging growth company would begin on the effective date of the IPO registration statement of any non-reporting issuer with total annual gross revenue of less than $1 billion as of the end of its most recently completed fiscal year.

1.2.1.1 Consideration could be given to limiting emerging growth company status to those issuers that are listing on a national securities exchange.

1.2.2 Designation as an emerging growth company would cease on the due date of the first annual report on Form 10-K for the year in which the earliest of the following occurs:

1.2.2.1 total annual gross revenue exceeds $1 billion;

1.2.2.2 the company satisfies the definition of a "well-known seasoned issuer";[1] or

1.2.2.3 the fifth anniversary of the effective date of the IPO registration statement.

The IPO Task Force believes that the temporary and limited nature of these regulations is important and consistent with other regulatory applications. An analysis of the companies that would have fallen under this regulation over the past five years shows that less than 15 percent of listed companies would be impacted at any one time.[2] For this reason, we refer to this as a regulatory "On-Ramp." We believe that the targeted and temporally limited nature of the proposed On-Ramp distinguishes our recommendation from prior proposals for reform and would affect only a small number of companies relative to total market capitalization. We also note that investor protection concerns are further ameliorated in light of the fact that, as indicated in a 10-year study by Audit Analytics released in May 2011, the incidence of restatement by small companies is proportional to their percentage of the public company population (approximately 60 percent in each case).[3]

We believe that the On-Ramp concept will facilitate the SEC's consideration of the effects of new rulemakings upon efficiency, competition and capital formation[4] and, in the interests of promoting capital formation, we recommend that the SEC use the On-Ramp as standing transition relief for any significant new rulemakings in the future.

(1) *Securities Act Rule 405 defines a "well-known seasoned issuer" to include, in part, issuers that (i) are eligible for short-form registration on Form S-3 or Form F-3; (ii) have at least $700 million of common equity held by non-affiliates as of a date within 60 days of filing a shelf registration statement, an annual report on Form 10-K or Form 20-F or a registration statement update amendment mandated by Section 10(a)(3) of the Securities Act; and (iii) do not fall within the definition of an "ineligible issuer" or "asset-backed issuer."*

(2) *See Appendix D*

(3) *See Audit Analytics, "2010 Financial Restatements: A Ten Year Comparison" (May 2011) at 17.*

(4) *Cf. Business Roundtable v. SEC (Case No. 10-1305) (D.C. Cir. July 22, 2011).*

1.3 Build on existing scaled disclosure rules to ease compliance burdens during the transition period while maintaining investor protection.

We believe that the primary goals of most emerging growth companies that conduct an IPO are to secure capital to grow their businesses and pursue promising new products and innovations, thereby creating jobs and enhancing macroeconomic growth. Providing emerging growth companies with the ability to reduce regulatory compliance costs through scaled regulation and disclosure for a period of time after their IPOs would allow them to achieve those goals and build the resources to satisfy the additional regulatory burdens to which larger, more mature companies are accustomed. We believe this would help ameliorate the effects of regulations that have, over the course of the last decade, significantly and continuously increased the compliance burden associated with public company status and made IPOs more costly and difficult.[(1)] As the SEC correctly anticipated in 2003, rules relating to the implementation of Section 404 of the Sarbanes-Oxley Act were expected to "discourage some companies from seeking capital from the public markets" because those "rules increase the cost of being a public company."[(2)] We believe our On-Ramp recommendation would mitigate the effects of these increased costs and encourage emerging growth companies to seek capital from the public markets.

Moreover, we believe that disclosure and governance requirements would remain largely unaffected by our recommendations and that this would ensure adequate investor protection. For example, in connection with undertaking an IPO, all companies would continue to be subject to liability for material misstatements or omissions in the registration statement and prospectus. Further, all companies would remain subject to liability for material misstatements or omissions in their current and periodic reports filed with the SEC. We believe that the existing regulatory regime, as modified by our recommendations, would appropriately balance investor protection and the compliance burden on emerging growth companies.

The idea of an On-Ramp for newly-public companies is not new. The SEC already provides an accommodation for IPO companies in the area of internal control over financial reporting, delaying the management assessment and auditor's attestation of internal control over financial reporting until the company's second Form 10-K.[(3)] This concept is also incorporated into Rule 10A-3 under the Exchange Act and self-regulatory organization (SRO) listing

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(1) Release No. 33-7881 (adopting Regulation FD); Release No. 33-8048 (requiring additional disclosures regarding equity awards); Release No. 34-42266 (requiring specific disclosures regarding audit committees); Release No. 34-46421 (requiring accelerated reporting of insider beneficial ownership); Release No. 33-8124 (requiring officer certifications under Sarbanes-Oxley Section 302); Release Nos. 33-8128 & 33-8128A (requiring accelerated filing of periodic reports and disclosure regarding website access to such reports); Release No. 33-8176 (adopting disclosure requirements regarding non-GAAP financial measures); Release No. 34-47225 (restricting officer and director transfers of equity securities during pension fund blackout periods); Release Nos. 33-8177 & 33 8177A (requiring disclosure regarding code of ethics and audit committee financial experts); Release No. 33 8180 (requiring seven-year retention of audit work papers under Sarbanes-Oxley Section 802); Release No. 33 8182 (requiring disclosure regarding off-balance sheet arrangements); Release No. 33-8183 & 33-8183A (requiring audit committee pre-approval of audit and non-audit services, audit partner rotation, auditor reports to audit committees, enhanced disclosure regarding audit and non-audit fees and adopting additional requirements for auditor independence); Release No. 33-8185) (requiring attorneys to report evidence of a material violation of securities laws); Release No. 33-8220 (adopting heightened independent requirements for listed company audit committees); (Release No. 33-8230) (requiring electronic filing and website posting of reports under Exchange Act Section 16); Release No. 33-8238 (implementing Sarbanes-Oxley Section 404 requiring an annual management's report and auditor attestation on internal control over financial reporting); Release No. 33-8340 (requiring disclosures regarding nominating committee functions and security-holder communications); Release No. 33-8350 (adopting guidance regarding management's discussion and analysis of financial condition and results of operations); Release Nos. 33-8400 & 33-8400A (increasing the events reportable on Form 8-K and accelerating the reporting deadline); Release No. 33-8565 (interpreting Regulation M to prohibit certain conduct in connection with IPO allocations); Release No. 33-8644 (adopting accelerated deadlines for periodic reporting); Release Nos. 33 8732 & 33-8732A (adopting additional requirements for disclosures relating to executive compensation, including compensation discussion and analysis); Release No. 33-9002 and 33-9002A (requiring financial statement data in an interactive data format using XBRL technology); Release No. 33-9089 (requiring additional disclosures regarding corporate governance matters in proxy statements); Release No. 33-9106 (providing interpretive guidance regarding disclosure required in respect of climate change issues); Release Nos. 33-9136 & 33-9259 (adopting a implementation of Section 404 of the Sarbanes-Oxley Act were expected to "discourage some companies from seeking capital from the public markets" because those "rules increase the cost of being a public company."

(2) Release No. 33-8238 (June 5, 2003) at text accompanying n.174 (adopting rules to implement Sarbanes-Oxley Section 404). At that time, the Commission estimated the annual costs of implementing Section 404(a) to be $91,000 per company, excluding "the costs associated with the auditor's attestation report, which many commenters have suggested might be substantial." Id. In fact, a survey of large public companies complying with the new rules under Section 404 during the first year indicated that compliance cost an average of $4.36 million and 27,000 hours. See Financial Executives International, FEI Special Survey on SOX 404 Implementation (March 2005).

(3) See Item 308 of Regulation S-K (providing relief for up to two years by permitting newly public companies to wait until their second annual report on Form 10-K to include management's assessment of and the auditor's attestation report on internal control over financial reporting).

standards with respect to audit committee composition, Board independence standards and other governance requirements. Moreover, the SEC previously recognized, when it adopted rules to implement Section 404 of the Sarbanes-Oxley Act, that the rules warranted a significant transition period to (a) alleviate "costs and burdens imposed on companies"; (b) give companies "additional time to develop best practices, long-term processes and efficiencies"; and (c) increase time to find "outside professionals that some companies may wish to retain" to facilitate their compliance efforts.[1] Similarly, given the substantial time and resources needed to provide the additional disclosure and meet the compliance requirements that apply to Exchange Act reporting companies, the On-Ramp would provide emerging growth companies with a transition period to allow them to fully implement those requirements. Our recommendation would extend and expand that On-Ramp until the emerging growth company has sufficient internally-generated resources to maintain growth and emerge into a mature public company.

During the On-Ramp period, any issuer that satisfies the definition of an emerging growth company could elect to participate in a system of scaled regulation that would extend to emerging growth companies select elements of the scaled disclosure requirements currently available to SRCs, as well as additional elements of scaled regulation:

1.3.1 Financial statement requirements:

1.3.1.1 The ability to satisfy financial statement requirements applicable to registration statements and annual reports by presenting two years of audited financial statements that comply with Article 8 of Regulation S-X.

1.3.1.2 Exemption from the requirement to present five fiscal years of selected financial data under Item 301 of Regulation S-K, subject to phase in described below.

1.3.1.3 Presentation of financial statements for additional fiscal years would be phased in incrementally over time:

- **At IPO — 2 years audited balance sheets and statements of operations and cash flows, selected financials (a summary table of key financial indicators) for the same two years, (the same as scaled disclosure requirements for Smaller Reporting Companies);**
- **One year later — 3 years audited statements of operations and cash flows and 2 years balance sheets, selected financial data for the same 3 years;**
- **Two years later — same as above plus 4 years selected financial data; and**
- **Three years later — same as above plus 5 years selected financial data.**

1.3.2 Selected aspects of scaled disclosure in registration statements and annual reports equivalent to requirements applicable to Smaller Reporting Companies for:

1.3.2.1 Management discussion and analysis (MD&A) requirements under Item 303 of Regulation S-K.

1.3.2.2 Executive compensation disclosure under Item 402 of Regulation S-K.

(1) *Release No. 33-8238 (June 5, 2003) at text accompanying n.174.*

1.3.3 **Transition relief from SOX 404b, the outside auditor attestation of internal control over financial reporting under Item 308(b) of Regulation S-K to provide "additional time and defer costs for a newly public company, allowing it to focus on its assessment of internal control over financial reporting without the additional focus of the initial public offering."[(1)]**

1.3.4 **Exemption from administratively burdensome requirements, both currently effective and pending, under the Dodd-Frank Act and related SEC rulemaking, such as:**

1.3.4.1 **Say-on-pay, say-on-frequency and say-on-parachute votes under Section 951 of the Dodd-Frank Act.[(2)]**

1.3.4.2 **Final disclosure requirements (when adopted) relating to conflict minerals.[(3)]**

1.3.4.3 **Other substantive governance-related disclosure requirements (when adopted), such as pay-for-performance and CEO pay ratio.[(4)]**

1.3.5 **We recommend that the FASB take steps to allow emerging growth companies to adopt new accounting standards using the same extended effective dates it allows for private companies.[(5)]**

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(1) *Release No. 33-8760 (Dec. 15, 2006) at 47 (implementing a transitional period of up to two years) (citing Sections 12, 13, 15 and 23 of the Exchange Act as statutory authority for such relief). Under similar statutory authority, the SEC repeatedly exempted non-accelerated filers from compliance with Section 404(b) of the Sarbanes-Oxley Act for the cumulative period of approximately eight years between enactment of the Sarbanes-Oxley Act and the Dodd-Frank Act.*

(2) *The SEC has acknowledged the additional burdens that these requirements impose on smaller companies, which is why the SEC exempted smaller companies from the say-on-pay and frequency votes until annual meetings occurring on or after January 21, 2013. See Release No. 33-9178 (Apr. 4, 2011) (concluding that "it is appropriate to provide additional time before Smaller Reporting Companies are required to conduct the shareholder advisory votes on executive compensation and the frequency of say-on-pay votes" based upon "the potential burdens on Smaller Reporting Companies" associated with the requirements for those advisory votes).*

(3) *Release No. 34-63547 (proposing to require conflict minerals disclosure to implement Section 1502 of the Dodd-Frank Act by adding Item 4(a) of Form 10-K and Item 104 of Regulation S-K).*

(4) *Section 953 of the Dodd-Frank Act directs the SEC to adopt rules requiring public companies to provide additional detailed disclosures regarding executive compensation matters, including disclosure of (a) each public company's executive compensation compared to the company's financial performance; and (b) the median total compensation of all employees and the ratio of that amount compared to the CEO's total compensation. As of August 2011, the SEC has indicated that it will issue proposed rules under Section 953 before 2012.*

(5) *Cf. Advisory Committee Final Report at V.P.2 (recommending a similar phase-in period).*

The FASB, over the last several years, has a history of providing an extended period of time for private companies and smaller public companies to adopt new standards. This is particularly important for complex standards and those that, due to their nature, may require significant time to implement. Similar to the On-Ramp for scaled securities regulation, allowing emerging growth companies additional time to adopt new standards would allow them to implement the standards in a careful, thoughtful manner, while still enabling them to concentrate on the growth of the company.

1.3.6 The PCAOB, or alternatively the SEC, should exempt the auditors of emerging growth companies from the requirements of such auditing standards until the company completes the On-Ramp period. This would allow these companies to focus precious resources on growth, job creation and new product development.

In implementing new auditing standards, the PCAOB should carefully consider the cost of implementation for emerging growth companies, and other appropriate categories of issuers.

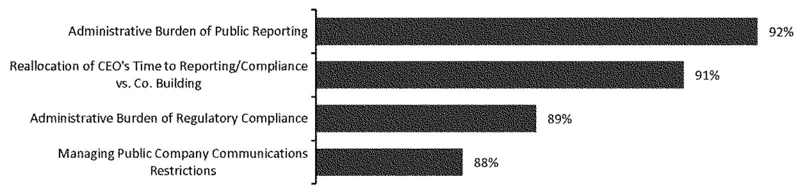
In particular, the PCAOB should consider whether to require the standard in an audit of certain categories of registrants and, if required, whether additional time is necessary for the implementation of the auditing standard for such categories of registrants.

The PCAOB does not yet have a history of providing exemptions or additional time for a certain category(ies) of companies, similar to the FASB, for adoption of new auditing standards.

- Recent concept releases issued by the PCAOB, such as "Auditor Independence and Audit Firm Rotation" and "Possible Revisions to PCAOB Standards Related to Reports on Audited Financial Statements and Related Amendments to PCAOB Standards," if ultimately adopted as auditing standards (depending on the final requirements of course), are likely to be very costly and time-consuming for SEC registrants and their auditors. This is particularly true for emerging growth and small companies who are impacted on a disproportionate basis as these costs represent a larger portion of their revenue and EBITDA and ultimately their market capitalization.
- We believe that mandatory auditor rotation will be extremely disruptive to public companies, will increase audit costs and may even result in reduced audit quality. Several of the PCAOB standards conclude that auditors may consider their experience in prior years' audits of a client and modify or reduce current-year testing as appropriate, which is reasonable to believe occurs in the majority of recurring audits. However, in the first year of a new audit engagement, auditors will require additional time and expense to become familiar with the company. Also, with only four major firms, two situations are likely to occur: (1) many SEC registrants may be limited in the number of firms to choose from as independence issues will most certainly arise, which could reduce the quality of audits if the registrant has no choice but to select a firm that does not have the expertise or geographic reach required for the audit and (2) competition would be significant, which could distract auditors by requiring more frequent solicitation of new business. In addition, each of the Big 4 firms has developed specific regional and industry expertise, which expertise these firms will have less incentive to develop with mandatory rotation. Finally, it is unclear whether rotation will actually reduce the conflicts cited by the PCAOB.

1.4 Apply scaled On-Ramp regulations only as long as a company qualifies as an emerging growth company.

Chart L: Public Company CEOs: Most Significant IPO Challenges



Source: IPO Task Force August 2011 CEO Survey.

B. Recommendation #2:

Improve the availability and flow of information for investors before and after an IPO.

Investment research coverage has declined dramatically in recent years as a result of economic and regulatory pressures that have reduced research budgets. Lack of research coverage adversely impacts trading volumes, company market capitalizations and the total mix of information available to market participants. In addition, existing restrictions on communications surrounding the offering process were designed for a pre-Internet era dependent upon paper-based communications between issuers and investors, and should be updated to reflect advances in technology and market expectations.[1]

Recommendations

2.1 Improve the availability and flow of research coverage.

Adopt policies to promote research and improve the flow of information available to investors. We recommend a greater role for research in the capital formation process, subject to protections such as specified codes of conduct and disclosure of conflicts of interest and disclosure, consistent with Section 17(b) of the Securities Act of 1933, of any consideration received for paid research. We support and endorse the recommendations of the SEC Advisory Committee on Smaller Public Companies (the "Advisory Committee")[2] regarding policies to encourage research coverage of smaller public companies. Existing limitations are unnecessarily restrictive and unfairly favor institutional investors that have greater access to research analysts than retail investors.

2.2 Expand and clarify existing safe harbors.

Expand SEC safe harbors with respect to research reports (Securities Act Rules 137, 138 and 139) to (i) permit broker-dealers to initiate coverage and distribute research on IPO issuers without being deemed to have "offered" securities through the research reports and (ii) include "oral" (in addition to written) communications.[3]

Nearly a decade ago, structural reforms and increased disclosure requirements introduced substantial regulatory requirements for research reports, including Section 501 of the Sarbanes-Oxley Act, Regulation AC and the provisions of the Global Research Analyst Settlement. As a result, analyst research reports are comprehensively regulated and include disclosure to investors regarding potential conflicts of interest that research analysts may face.

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(1) *See SEC Release No. 33-8591 (Dec. 1, 2005), at 41-42 (noting that "the gun-jumping provisions of the Securities Act were enacted at a time when the means of communications were limited," recognizing that "capital markets, in the United States and around the world, have changed very significantly since those limitations were enacted," acknowledging that today's "communications technology, including the Internet, provides a powerful, versatile, and cost-effective medium to communicate quickly and broadly" and concluding that "the gun-jumping provisions of the Securities Act impose substantial and increasingly unworkable restrictions on many communications that would be beneficial to investors and markets and would be consistent with investor protection"); see also SEC Release 34-58288 (Aug. 7, 2008) (recognizing "the speed at which technological advances are developing" and indicating that the SEC will continue to revisit its prior guidance "to update and supplement it as appropriate" as new technologies produce new investor tools); SEC Release No. 34 55146 (Mar. 30, 2007) (observing that "approximately 87.8% of shares voted were voted electronically or telephonically during the 2006 proxy season" and that "approximately 80% of investors in the United States have access to the Internet in their homes").*

(2) *See Final Report of the Advisory Committee to the SEC (April 23, 2006) ("Advisory Committee Report"), Recommendation IV.P.4.*

(3) *Currently available safe harbors contain conditions that limit their availability in the IPO context. See Rule 138 (allowing an underwriter to publish or distribute research about a different security of the issuer, such as research about the nonconvertible debt of an issuer offering common stock, if (a) the issuer is Form S-3 or F-3 eligible (or is a foreign private issuer meeting certain specified criteria); and (b) the underwriter publishes or distributes reports on those types of securities in the regular course of its business); Rule 139 (allowing an underwriter to continue to publish or distribute research, but not to initiate coverage, (a) issuer-specific research on companies that are already public and eligible to use Form S-3 or F-3 (or that are foreign private issuers meeting certain specified criteria) if the underwriter publishes or distributes those reports in the regular course of its business; and (b) industry research for Exchange Act reporting companies if the underwriter publishes or distributes research in the regular course of its business and similar reports have included similar information about the issuer or its securities). In addition, although Rule 137 is available to broker-dealers that are not participating in a registered offering, Rule 137 (unlike Rules 138 and 139), does not provide a safe harbor from the research report being deemed an "offer" for purposes of Securities Act Section 2(a)(10) or 5(c). See Rule 137 (allowing a broker-dealer to publish or distribute research without becoming a statutory underwriter if the broker-dealer (a) is not a participant in a registered offering; (b) has not received compensation for participating in the securities distribution; and (c) publishes or distributes research in the regular course of its business).*

The SEC adopted changes in 2005 that were intended as "measured amendments" making "incremental modifications" to Rules 137, 138 and 139, recognizing that "value of research reports in continuing to provide the market and investors with information about reporting issuers cannot be disputed."[(1)] However, in practice, the existing rules do not allow research analysts to publish concurrently with an IPO.

We believe that further amendments are warranted to allow broker-dealers to initiate research coverage on IPO issuers, based upon the extensive and robust nature of substantive regulations currently in place, which we would leave unchanged, and based upon experience over the last six years following prior incremental modifications to these rules. Based on "enhancements to the environment for research imposed by recent statutory, regulatory, and enforcement developments," as the SEC explained in 2005, "we believe it is appropriate to make measured revisions to the research rules that are consistent with investor protection but that will permit dissemination of research around the time of an offering under a broader range of circumstances."[(2)]

2.3 Eliminate unnecessary research quiet periods.

2.3.1 Post-IPO: Eliminate the SEC's effective 25-day post-IPO research quiet period and FINRA's mandated post-IPO research quiet periods, as these restrictions do not benefit investors (particularly retail investors).[(3)]

(1) Release No. 33-8591 (Dec. 1, 2005) at 156-57.

(2) Id. at 156.

(3) Rule 2711(f) of the Financial Industry Regulatory Authority ("FINRA") prohibits member firms from publishing or distributing research reports, or permitting research analysts to make any public appearance about an issuer, for (i) 40 calendar days, in the case of managers and co-managers of the IPO, and (ii) 25 calendar days, in the case of other participating FINRA members.

2.3.2 **Pre- and Post-Lock Up: Eliminate the FINRA-mandated research quiet period before and after the expiration, termination or waiver of an offering-related lock-up agreement.**[(1)] Limiting the amount of information available to investors during such periods does not improve their ability to make informed decisions. In each case above, we believe any potential conflicts of interest would be sufficiently addressed through (a) prominent disclosure clearly indicating that the research is prepared by an analyst associated with a participating underwriter or dealer; as well as through existing protections under (b) SEC Regulation AC certification requirements;[(2)] (c) FINRA conduct and communications rules and (d) existing antifraud and anti-manipulative provisions.[(3)]

2.4 **Eliminate unnecessary restrictions on analyst communication:** Although current SEC and FINRA restrictions implemented to prohibit investment banking revenues and considerations from influencing research analysts and the content of research reports are important and should remain, we believe, while an issuer is in registration, that:

2.4.1 **Investment banking personnel should be permitted to assist in arranging calls between investors and research analysts so that research analysts can educate investors about an offering.** Today's process requiring a sales person (or other non-banking personnel) to set up these calls offers no meaningful investor protection. Whether the analyst chooses to engage in the communication, and what the analyst communicates to the investor, would still be at the analyst's own discretion and subject to applicable laws, rules and regulations.[(4)]

2.4.2 **Research analysts should be permitted to participate in company management presentations with sales force personnel so that the issuer's management does not need to make separate and duplicative presentations to analysts at a time when senior management resources are limited.**[(5)]

2.5 **Facilitate capital formation by expanding permissible communications between issuers and prospective investors and by providing for confidential IPO filings.**

2.5.1 **Permit a broader range of pre-filing communications:** The SEC has recently recognized, in proposing amendments to Securities Act Rule 163, that additional accommodations are necessary to allow "well-known seasoned issuers," acting through underwriters, to "assess the level of investor interest in their securities before filing a registration statement."[(6)]

2.5.1.1 **More broadly, we recommend allowing private companies to "test the waters" to gauge preliminary interest among prospective investors in advance of an initial filing of a registration**

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(1) *See FINRA Rule 2711(f)(4) (requiring a 15-day quiet period surrounding the expiration of an offering-related lock-up agreement).*

(2) *Regulation AC requires broker-dealer research analysts to (a) certify in their research reports that the views expressed in the report accurately reflect their personal views; (b) disclose whether the analyst received compensation or other payments in connection with the recommendations or views given in the report; and (c) provide similar certifications in connection with the analyst's public appearances. The SEC adopted these requirements "to promote the integrity of research reports and investor confidence in those reports." Release No. 33-8193 (Apr. 14, 2003).*

(3) *We note that FINRA had previously proposed (i) the reduction of the post – IPO research quiet period to 10 days for all IPO participants, and (ii) the complete elimination of the secondary offering and lock-up related research quiet periods. See FINRA Regulatory Notice 08-55 (October 2008) ("Notice 08-55"); see also SEC Release No. 34-55072 (Jan. 9, 2007) (in which then NASD and NYSE (now FINRA) proposed various rule changes to implement certain recommendations made in the December 2005 "Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules"; the 2007 proposed rule changes included the reduction of the post-IPO research quiet period to 25 days, the elimination of the post-secondary offering research quiet period, and the elimination (as proposed by NASD) or reduction to 5 days (as proposed by NYSE) of the lock-up related research quiet period). Notice 08-55 effectively superseded the 2007 rule change proposals, but the proposals set forth in Notice 08-55 have not yet been adopted and it is likely that FINRA will submit a new rule proposal in this regard in the near future.*

(4) *See, e.g., Rule 2711(c)(7).*

(5) *FINRA Rule 2711 does not, by its express terms, prohibit "three way" meetings attended by company management, research analysts and internal sales personnel, although FINRA guidance issued in May 2005 states that the "rule expressly permits research analysts to educate investors and member personnel about a particular offering or other transaction, provided the communication occurs outside the presence of the company or investment banking department personnel. See FINRA (then NASD) Notice to Members 05-34.*

(6) *Release No. 33-9098 (Dec. 18, 2009) (proposing to amend Securities Act Rule 163 to allow underwriters, acting on behalf of "well-known seasoned issuers," to offer securities before filing a registration statement to gauge investor interest without requiring public disclosure of an intent to conduct an offering).*

statement. Doing so would allow companies to remove a significant amount of uncertainty regarding the feasibility of a successful IPO.[1] This approach could be implemented in a balanced manner by adopting a new rule defining certain offering communications as outside the scope of an "offer" for purposes of Section 5 of the Securities Act but otherwise subject to the antifraud provisions of the federal securities laws.[2]

2.5.1.2 **More specifically, we recommend expanding permissible communications before and after filing a registration statement provided prospective investors meet certain qualitative standards and purchasers receive a statutory prospectus prior to purchase.** For example, road shows and other communications should be permitted before the filing of the registration statement becomes public, assuming that confidential filings are permitted as described above.

2.5.2 **We recommend permitting pre-IPO road shows to investors deemed not to require registration-level protection, such as qualified institutional buyers and accredited investors, provided that each purchaser receives a statutory prospectus prior to the time of sale, consistent with Exchange Act Rule 15c2-8 and Securities Act Rule 159.** This would facilitate initial meetings between investors and management and would allow investors to become better prepared to make investment decisions at the time of the IPO. The limited context of a formal road show presentation can make it more difficult for some investors to engage in a meaningful deliberative process, particularly for the type of long-term investors whose participation is most desirable to IPO issuers. Moreover, investors have repeatedly asked for more contact with management during the marketing process.

2.5.3 **Permit confidential initial filing of IPO registration statements:** Permit U.S. issuers to file initial registration statements confidentially, similar to foreign private issuers. The SEC Staff's current practice permits non-reporting foreign private issuers to submit initial registration statements confidentially to the Staff, which "often reviews and screens draft submissions of foreign registrants on a non-public basis."[3] In contrast, U.S. issuers currently must file their initial registration statements publicly. Confidential submissions offer foreign private issuers a significant advantage by facilitating resolution of the often complex issues encountered during an initial SEC review. Permitting the confidential review of U.S. issuers' initial registration statements would remove for U.S. issuers a significant impediment to the IPO process. Doing so would allow U.S. issuers to initiate a potential IPO process, even during turbulent and uncertain market conditions, without immediately disclosing competitively sensitive or otherwise confidential information. Investors would be protected by ensuring that any prospectus with pricing information be made publicly available to investors prior to the SEC declaring the registration statement effective.

(1) *Securities Act Rule 254 was intended to allow an issuer employing the SEC's "small issues" exemption in Regulation A to use a written statement to gauge investor receptiveness to a possible offering so that the issuer could "determine whether to incur the expense of proceeding with a public offering of its securities . . . or to follow some other capital-raising plan." SEC Release No. 33-6924 (Mar. 11, 1992). In practice, however, Regulation A has had no meaningful impact on capital formation due to its very limited scope. We recommend expanding the "test the waters" concept so that IPO issuers could meaningfully and cost-effectively gauge investor receptiveness to an IPO and determine whether to incur the time, effort and expense of going public.*

(2) *Advisory Committee Report, Recommendation IV.P.5.at 79 n.159 (citing Linda Quinn, "Reforming the Securities Act of 1933: A Conceptual Framework," 10 Insights 1, 25 (Jan. 1996)).*

(3) *See Division of Corporation Finance, "Current Issues and Rulemaking Projects: Quarterly Update" (Mar. 31, 2001), Part V., available at http://www.sec.gov/divisions/corpfin/cfcrq032001.htm#secv.*

C. Recommendation #3:

Lower the capital gains tax rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years.

Recent regulations and subsequent changes in related market practices have made it more difficult for long-term investors to gain access to emerging growth company stocks. From the issuer's perspective, it is especially critical for the IPO to attract such long-term investors at the initial allocation because that determines how much capital the company raises through the IPO.

Policymakers can reinforce demand for emerging growth stocks by lowering the capital gains rate for investors who purchase shares in an IPO and hold these shares for a minimum of two years. The capital gains tax rate has served as an effective tool for encouraging and rewarding long-term investing for decades, so this action would be wholly consistent with current practice.

D. Recommendation #4:

Members of the emerging growth ecosystem must educate issuers about how to succeed in the new capital markets environment.

Regulations and their effects on related market practices have triggered a fundamental change in the structure of the U.S. capital markets. This new market structure has shifted the economics for large investment banks toward high-frequency, short-term trading of large-cap stocks based on volatility and changes in market price, and away from long-term investing in an emerging company's fundamental growth. The result is a radically different and much less hospitable environment for emerging growth IPOs. Some of the drivers of this shift – most notably electronic trading and decimalization – are permanent. Therefore, emerging growth companies looking to go public must develop a greater understanding of the new market's realities, understand how investment banks have shifted their business models to capitalize on these changes, and use this understanding to inform their IPO strategies – including the choice of an investment banking syndicate, the optimal mix of investors at IPO, and the most effective investor communications activities.

Nearly 90% of pre-IPO emerging growth companies surveyed expressed concern about the size and vibrancy of the small cap buyer universe.[1]

The IPO Task Force believes that responsibility for aiding issuers in this effort rests not with policymakers, but rather with all participants in the small-company IPO ecosystem. Toward this end, the task force has developed a number of recommendations for issuers that address the most common areas where knowledge deficits exist – based on the task force's findings and input from its members and third-party advisors. While they do not require action on the part of policymakers, the IPO Task Force has included these recommendations below to demonstrate the breadth and the depth of the challenge that emerging growth IPOs now face and the urgency with which the preceding recommendations must be treated.

4.1 Choice of balanced investment banking syndicate.

4.1.1 Conduct thorough research on potential investment banking partners.

4.1.2 Understand the interplay between boutique firms and the largest advisory firms.

4.1.3 Understand the implications of different investment banking syndicate structures and align incentives around performance.

4.2 Increase the issuer's role in the IPO allocation process with the goal to create an optimal mix of investors for the company.

4.2.1 Allocate shares of the initial public offering to a mix of short- and long-term investors.

4.2.2 Put at least one firm in a leadership position (sole or joint book runner) that will allocate stock to long-term holders of your shares versus traders.

4.2.3 Limit the number of investors to whom the IPO shares get allocated.

4.3 Improve practice of investor communication.

4.3.1 Conduct pre-IPO road shows and teach-ins with investors long before an IPO.

4.3.2 Provide frequent information to investors post-IPO. This should include attending investor conferences to maintain the relationships and build company exposure.

(1) *IPO Task Force August 2011 CEO Survey (see Appendix C).*

VIII. Conclusion

With the U.S. economic recovery stalled, unemployment entrenched at more than 9 percent and global competition ramping up, the time to revive the U.S. IPO market and to jumpstart job creation is now. The IPO Task Force believes that by pursuing the recommendations presented in this report, policymakers can re-energize U.S. job creation and economic growth by helping reconnect emerging companies with public capital – all while enabling the broadest range of investors to participate in the growth of those companies through a healthy and globally respected U.S. capital markets system.

These outcomes are not only consistent with the spirit and intent of the current regulatory regime, but also essential to preserving America's global economic primacy for decades to come. For this reason, the members of the IPO Task Force pledge their continued participation and support of this effort to put emerging companies, investors and the U.S. job market back on the path to growth.

> ***"When I talk to entrepreneurs in emerging international markets today, most of them share a strong desire and stated goal: They want to grow their businesses into large public companies. In the U.S., I often hear the opposite from entrepreneurs – due to the costs, uncertainties and liabilities now involved with going public. They just don't think the rewards are worth it – and that's killing the capital formation cycle we've relied on for so long." Scott Cutler, Sr. Vice President, Global Corporate Group, NYSE Euronext.***

IX. Appendices

Appendix A

About the IPO Task Force

Arising independently from working group conversations at the U.S. Treasury Department's Access to Capital Conference in March 2011, the IPO Task Force aims to illuminate the root causes of the U.S. IPO crisis and provide recommendations to policymakers for restoring access to the public markets for emerging, high-growth companies. It represents the entire emerging growth company ecosystem, including venture capitalists, experienced CEOs, public investors, securities lawyers, academicians and investment bankers. Upon completion of its activities, the IPO Task Force will report its findings and recommendations to the U.S. Department of the Treasury, as well as share this information with the Securities & Exchange Commission, Congress, the Small Business Administration, the Council on Jobs and Competitiveness, the National Advisory Council on Innovation and Entrepreneurship (NACIE), the Startup America Partnership, and the general public.

Members

We should note the members of the task force listed below participated as individuals and not as representatives of their organizations. Thus, their input for this report and the positions contained herein do not necessarily reflect the views or positions of the organizations for which they work or are affiliated.

Venture Capitalists:

- Kate Mitchell – Managing Director, Scale Venture Partners, Task Force Chairman
- Mark Gorenberg – Managing Director, Hummer Winblad Partners
- Tom Crotty – General Partner, Battery Ventures

Entrepreneurs

- Magid Abraham Ph.D. – President, CEO and Co-Founder, ComScore
- Josh James – former CEO, Omniture; CEO & Founder of Domo Technologies
- Desh Deshpande – former CEO and Co-Founder, Cascade Communications and Sycamore Networks; Chairman, Sparta Group; and Co-Chair of NACIE

Securities Attorneys

- Joel Trotter – Deputy Chair of the Corp. Dept., Latham & Watkins
- Steve Bochner – CEO and Member of the Board of Directors, Wilson, Sonsini, Goodrich & Rosati

Academicians/Accountants

- Bill Sahlman – Dimitri V. D'Arbeloff Chair, and Sr. Associate Dean for External Relations, Harvard School of Business
- Carol Stacey – Vice President, S.E.C. Institute
- Charles "Chuck" Robel – former Chairman, McAfee; private investor and retired head of PWC Tech Practice

Public Investors

- Karey Barker – Managing Director, Wasatch Advisors

- Henry Ellenbogen – Portfolio Manager, T. Rowe Price

Investment Bankers

- Paul Deninger – Sr. Managing Director, Evercore
- Carter Mack – President and Founder, JMP Securities
- Kevin McClelland – Managing Director, Head of Tech. Inv. Banking, JMP Securities
- Brent Gledhill – Head, Global Corporate Finance; Member of Executive Committee, William Blair & Company
- Brett Paschke – Managing Director, Head of Equity Capital Markets, Corp. Finance, Commitment Committee, William Blair & Company

Appendix B

Acknowledgments

The IPO Task Force wishes to express its gratitude to the following individuals, whose input and expertise contributed to the preparation of this report. Please note that their appearance on this list does not imply endorsement of this report or its recommendations.

Chuck Newhall, General Partner, Co-Founder, NEA

Dixon Doll, Co-Founder & General Partner, DCM

Mark Heesen, President, NVCA

Duncan Neiderauer, CEO and Director, NYSE Euronext, Inc.

Scott Cutler, Senior Vice President, Global Corporate Group, NYSE Euronext, Inc.

David Weild, Capital Markets Advisor at Grant Thornton; Founder & Chairman of Capital Markets Advisory Partners; former Vice Chairman of NASDAQ

Ed Knight, Executive Vice President, General Counsel, Chief Regulatory Officer, NASDAQ

Bob McCooey, Senior Vice President, NASDAQ

Jeff Cardon, Portfolio Manager, CEO and Director, Wasatch Advisors

Frank Currie, Partner, Davis Polk

Lise Buyer, Founder, Class V Group

Tom Baruch, Founder & Partner Emeritus, CMEA and member of NACIE

Joseph A. Grundfest, Senior Faculty and W.A. Franke Profesor of Law and Business; Arthur and Tom Rembe Rock Center for Corporate Governance, Stanford Law School, Former Commissioner of the S.E.C.

Bob Huret, Founding Partner, FTV Capital

David York, CEO & Managing Director, Top Tier Capital

Herb Wander, Partner, Corporate Practice, Katten Muchin Rosenman LLP

Robert Bartlett, Assistant Professor of Law, Berkeley Law

Greg Becker, President and CEO, Silicon Valley Bank

Various CEOs and institutional investors surveyed by the IPO Task Force

Appendix C

IPO Task Force August 2011 CEO Survey

Objective and Methodology

In August of 2011, the IPO Task Force set out to gather the perspectives of pre-IPO and Post-IPO CEOs regarding their top concerns, largest hurdles, and the greatest benefits of going public. The purpose was to inform the task force's efforts to examine the causes of the decline of the U.S. IPO market and develop recommendations for restoring access to capital for emerging growth companies. The task force distributed the survey to pre- and post-IPO companies through the membership of the National Venture Capital Association (NVCA) and by NASDAQ (targeting listed companies that went public since 2006). Responses were collected anonymously during a three-week period in August 2011.

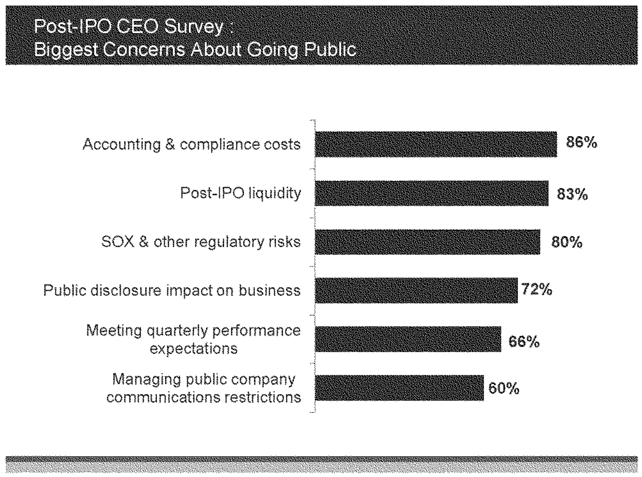
Post–IPO CEOs: Survey Respondents

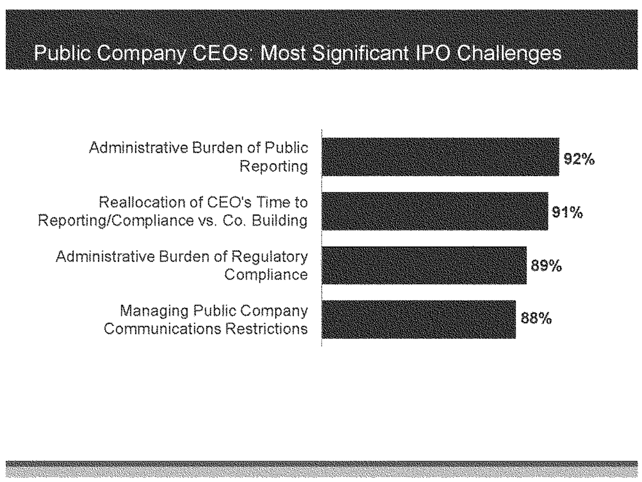
- 35 Public Company CEOs (IPO 2006 or later)
- Industry Sector:
  - –57% IT
  - –29% Life Sciences
  - –9% Non-High Technology
- Average Employment in 2011 = 828
- ***Average job growth since IPO = 86%***

Public Company CEOs: IPOs Are Important But Increasingly Difficult

	Agree	Neutral	Disagree
Strong & Accessible IPO Market Is Important to U.S. Economy & Global Competitiveness	**100%**	0%	0%
U.S. IPO Market Is Accessible for Small Companies	23%	11%	**66%**
It Is Not as Attractive an Option to Go Public Today as It Was in 1995	**86%**	3%	12%
Going Public Was a Relatively Painless Experience	17%	14%	**69%**
Going Public Has Been a Positive Event in My Company's History	**83%**	14%	3%

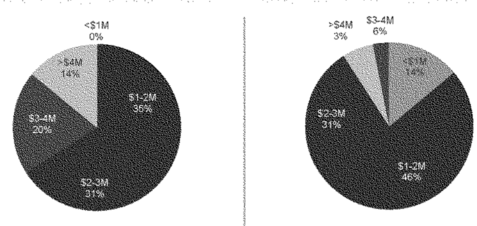
Why Post-IPO Companies Went Public


Post-IPO CEO Survey :
Biggest Concerns About Going Public
Accounting & compliance costs
86%
Post-IPO liquidity
83%
SOX & other regulatory risks
80%
Public disclosure impact on business
72%
Meeting quarterly performance expectations
66%
Managing public company communications restrictions
60%


Public Company CEOs: Most Significant IPO Challenges
Administrative Burden of Public Reporting
92%
Reallocation of CEO's Time to Reporting/Compliance vs. Co. Building
91%
Administrative Burden of Regulatory Compliance
89%
Managing Public Company Communications Restrictions
88%

Post-IPO CEO Survey: Costs of Going and Staying Public Are High

Average Cost $2.5M to Go Public | **Annual Cost $1.5M to Stay Public**



Costs Including SOX, Legal, Accounting

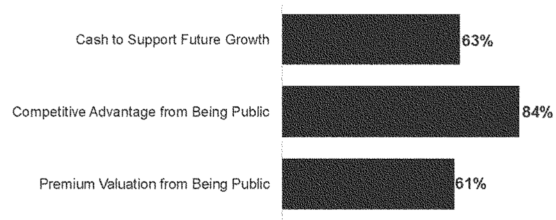
Source: IPO Task Force CEO Survey August 2011. of incremental costs of an IPO, Sample set consists of 35 CEOs of companies that went public since 2006; Consistent With Independent Review of Public Filings for 47 2011 IPO's Raising Less Than $200M (Avg. Cost of $3M for IPO)

Pre-IPO CEOs: Survey Respondents

- 109 CEOs of venture-backed companies considering an IPO in the next 24 months.
- Average Employment: 168
- Industry Sector Breakdown:
  - –42% IT
  - –11% Cleantech
  - –42% Life Sciences
  - –1% Non-High Technology

Pre-IPO CEOs Target IPOs To Finance Growth

Motivation for Pre-IPO Companies

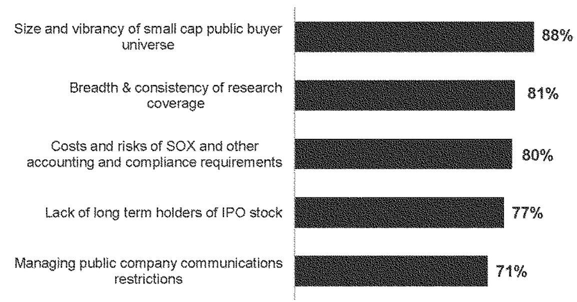


Source: IPO Task Force CEO Survey August 2011.

Pre-IPO CEO Sentiments Regarding U.S. IPO Market

	Agree	Neutral	Disagree
Strong & accessible small cap IPO market is critical to maintain U.S. competitiveness	**94%**	6%	0%
Currently, the U.S. IPO market is easily accessible for small cap companies	9%	11%	**79%**
It is not as attractive an option to go public today as it was in 1995	**85%**	7%	8%

Pre-IPO CEO Survey: Concerns Regarding Implications of Going Public



Appendix D

Size Of Cohort That Qualifies For Regulatory "On Ramp"

For companies that went public in the previous 5 years	6/30/2011	2010	2009	2008	2007	
Number of Companies						
Less than $1B revenue and IPO less than $700mm	556	558	571	732	777	
as % of total public companies	*11%*	*11%*	*11%*	*15%*	*14%*	
Total Market Capitalization at IPO						
Less than $1B revenue and IPO less than $700mm	$305	$288	$279	$338	$355	*$B*
as % of total market capitalization	*2%*	*2%*	*2%*	*3%*	*2%*	

Sources: Dealogic, Capital IQ, World Federation of Exchanges

Silicon Valley Bank

A Member of SVB Financial Group

Mike Selfridge

Head of Regional Banking

Silicon Valley Bank

U.S. House of Representatives

Committee on Financial Services

Subcommittee on Capital Markets and Government Sponsored Enterprises

Hearing on

"H.R. 3606, The Reopening American Capital Markets to

Emerging Growth Companies Act of 2011"

December 15, 2011

Chairman Garrett, Ranking Member Waters, and members of the Subcommittee: My name is Mike Selfridge, and I am the head of regional banking at Silicon Valley Bank. I appreciate the opportunity to testify today on H.R. 3606, a bill that will help companies obtain the capital they need to grow while also protecting investors.

Silicon Valley Bank is a unique institution. For nearly thirty years, we have focused our efforts on helping entrepreneurs succeed. We work almost exclusively with high growth technology and life science companies and with the investors who finance them.

At our core, we are a commercial bank, dedicated to serving clients in the technology, life science, clean tech, venture capital, and private equity sectors. We provide a comprehensive suite of financing solutions and other financial services to our clients worldwide. Silicon Valley Bank serves nearly half of the high growth technology companies across the United States, working through 26 U.S. offices and seven offices in innovation centers outside of the United States.

We often begin working with our clients when they are first formed, and we are one of the only banks that will lend to start-ups before they are profitable – in many instances, even before they are generating revenues. We work hard to be creative, to take the longer term view, and to retain a consistent approach to lending, even when events are challenging for our clients. For nearly thirty years, we have proven we can take this approach and also lend safely and soundly on behalf of our depositors and shareholders. We have also seen how critical our approach to lending is for innovative startups and for the American technology and venture capital ecosystems.

Many technology clients innovate in the United States but sell their products in countries around the world. To assist our clients in pursuing these global growth opportunities, we provide various forms of export financing. We are one of the leading lenders under the U.S. Export-Import Bank's working capital guarantee program. Just last year, for example, Silicon Valley Bank helped make Ex-Im guaranteed working capital loans to over 65 small businesses. This helped our clients generate approximately $1.4 billion in export sales and supported 6,400 existing and new American jobs.

But we do much more than lend money. Through our exclusive focus on the innovation sector and our extensive knowledge of the clients we serve, SVB provides a level of service and partnership that measurably impacts our clients' success. For example, we hold "Showcase" events, which help our start-up clients gain access to potential investors. Another example is our "CEO Accelerator" events, which bring start-up CEOs and entrepreneurs together to allow them to engage with peers, learn from one another, and develop networks and connections that are critical to building a young, emerging growth company.

There is one thing, however, that Silicon Valley Bank *doesn't* do. We don't make money by helping companies go public. As a result, H. R. 3606 won't help SVB ... but it *will* help our clients. I am here, in effect, to speak for our clients and to help you understand the positive effect H.R. 3606 can have on these companies, on their employees, and on the broader U.S. economy.

I have spent nearly eighteen years at SVB. I have worked with hundreds of entrepreneurs and venture capital investors during my career. I have seen first-hand the optimism and energy with which these individuals approach the world, and change it for the better. I have watched them take ideas and transform them into companies – companies that create hundreds and thousands of jobs for this country. I have had the good fortune to work alongside a host of wonderful people as they have turned small companies into large, global corporations.

Almost every day I hear about a new company that may help the world communicate more freely, or diagnose and cure diseases more effectively, or more securely protect cyber-space for our government and corporations, or help solve the world's energy and resource challenges.

With all the bleak news about the broader economy, I feel very fortunate to be able to spend most of my time talking to people who are building and growing companies. While many sectors still struggle due to the financial downturn, I can say that the innovation economy is vibrant, full of new ideas, and led by passionate and committee visionaries.

Sometimes people equate Silicon Valley with a region. But that is not the case. It is a mindset, and that mindset exists throughout the United States. I saw this firsthand during the six years I spent leading our technology team here in the Washington D.C. region, and also during the four years I spent working with innovative companies throughout the East Coast. Today, I am responsible for our technology and life science clients across the United States. This gives me the privilege and honor to meet many entrepreneurs, and also to witness first-hand the changing face of the innovation sector in America. For example, in the last few years I have seen strong growth in areas such as New York, Chicago, Utah, and of course the Silicon Valley. As I travel across the country working with companies and entrepreneurs, one thing strikes me again and again: the more we help these innovative companies grow, the more we will help our entire economy thrive.

But while I am justifiably optimistic about the innovation sector's capacity to generate ideas and create new companies, this Subcommittee today addresses a very real problem. Companies need capital to grow. Such capital helps companies develop new products, hire new employees, and expand globally.

Historically, public equity markets have been an important source of that capital. But in the past decade or so, a variety of factors have created roadblocks to accessing capital. Increasingly, companies need to be much bigger, and have far greater resources, to contemplate an initial public offering, or IPO. As a result, many entrepreneurs need to spend the better part of a decade building their companies before they can realistically contemplate an IPO.

This reality has a number of implications. First, it is daunting to start a company – which may be driving entrepreneurs and investors to focus on sectors that can grow faster and do not require as much capital. That has serious implications for our continued ability to create innovative solutions in fields such as health care and energy – two critically important areas for our country's future. Second, many growing companies are finding it is harder to raise the capital they need to grow. In turn, this means they grow more slowly or, in the worst case, fail to survive. Third, companies are more likely to let themselves be acquired by a larger corporate that can finance their growth, rather than attempting to go public.

My experience in the innovation sector confirms what the IPO Task Force found empirically. Back in the 1990s, the vast majority of startups grew by "going public." Today, the vast majority "grow" by being acquired. That can be a great outcome for the company and its investors. However, I believe it has negative implications for our economy and society, since the most significant job creation occurs after companies go public.

As an example, I worked with a company doing cutting edge work in regenerative medicine – medicine that repairs damaged human tissue and enables the body to heal itself. As you can imagine, companies in the biopharmaceutical field need large amounts of capital to develop treatments and prove they are safe and effective, in order to obtain the necessary FDA approvals. All of this has to happen *before* the company can start generating revenues and profits. In the case of the company I'm thinking of, I know they debated a great deal about how to raise the capital needed to fund future growth. They seriously considered an IPO. Yet in the end, the executive team and their shareholders opted to sell the company to a larger, non-U.S. biopharmaceutical company. I am glad they succeeded in a very successful "exit"... but I also wish the IPO path had been a more viable option for this company. Had that been the case, it could have meant U.S. shareholders, rather than a foreign company, would now be the owners of what I think is an amazing company, with so much potential for growth. I also do not know where the next phase of job growth will occur for this company, though I surmise it will be outside of the United States.

That is why I commend the work of this Committee. Legislation like the bill you are considering will help unleash the promise that exists in growing, innovating companies throughout the country. It will allow these companies to achieve their full potential, and it will give investors across the country the chance to participate in that growth.

There are no silver bullets here. But there are smart policies that lay the foundation for a better future. In my view, H.R. 3606 is exactly that. By providing an "on-ramp" to public markets, H.R. 3606 will meaningfully improve growing companies' ability to obtain the capital necessary to fund continued growth. By selecting the regulations covered by the on-ramp, the bill strikes a wise and sensible balance between investor protection and more open, effective capital markets. And by sunsetting the on-ramp when companies reach critical mass or have been publicly traded for five years, this bill retains more robust investor protections for larger, more complex companies who are better able to absorb the financial burdens of those stricter regulations.

The IPO Task Force and the others members of this panel have done an excellent job describing why "small cap" IPOs have more or less disappeared from the capital markets landscape. They have also effectively described, at a macro level, what that means for our country and, in particular, what it means for job creation. They have summarized the key provisions of H.R. 3606, and how this legislation will help reinvigorate the "small cap" IPO market. Rather than repeat what they have said so articulately, I would like to put a human face on the problem.

For the CEO of a growing company, one has to deal with a very fundamental reality: there are only so many hours in a day, and only so much money in the bank. Time to market is critical for the companies I serve, who face immense talent wars and fierce completion from global competitors, many of whom have far more financial resources available to them. So if it will cost $2.5 million, or more, to get a company ready to go public, and then another $1.5 million for a company to be a public company, then how can these emerging companies afford to go public? If executives end entrepreneurs need to divert energy away from leading a successful business in order to spend months drafting and reviewing disclosures, and implementing processes that are as complex as those required of the largest publicly traded companies, then is it wise to go public? Should entrepreneurs instead focus on serving the company's clients, developing new products, and hiring new people – and push an IPO down the road? Based on my experience, it does not surprise me that the nine out of ten of the public company CEOs surveyed by the IPO Task Force said a major challenge of going public was that it forced them to reallocate their time away from building the company and toward reporting and compliance issues.

In addition, if a company is serious about going public, it needs to confront a daunting reality. The executive team needs to be confident that it will be able to attract and retain shareholders that will hold stock for the longer term, and not end up with short term investors who will buy and sell stock in a way that creates unnecessary volatility, which in turn can de-motivate employees as well as shareholders. That is why research is so important for these smaller companies. If there are no intermediaries in the market educating potential shareholders about a particular company, then in effect that company can become "invisible" to the market. And that is not a formula for continued growth.

Now I would like to tell you about three companies, which I think illustrate the problem this legislation, H.R. 3606, will help.

The first company, Broadsoft, is one of the relatively few companies that successfully completed an IPO in the last few years. Broadsoft is headquartered here in the D.C. region; specifically in Gaithersburg, Maryland. The company was founded about 12 years ago, and went public in 2010. Broadsoft is a leading, global innovator of residential and business Voice over IP (also known as VoIP) applications. It serves 16 of the 25 largest telecommunications carriers in 65 countries, and has employees in 21 countries.

The money Broadsoft raised from its IPO has been critical in allowing it to grow operations globally, while also allowing the company to make strategic acquisitions and compete even more effectively in its market. Since the IPO, Broadsoft has continued to demonstrate it is a great American entrepreneurial success story. When it released its earnings at the end of last quarter, for example, Broadsoft announced it had increased revenues 60% year-over-year. Broadsoft has also continued to add jobs, growing from 372 employees at the end of 2010 to 424 as of the end of September.

Broadsoft had a successful IPO. But prior to the IPO, the regulatory burden of Sarbanes-Oxley and other public compliance costs nevertheless forced it to seriously consider whether to pursue an IPO or not. As a company executive at Broadsoft said to me, "knowing that the company is out of pocket by at least $2 million for lawyers and accountants before we even know the company can get public" gives real pause to accessing the public markets, particularly for companies of its size. To pursue an IPO, a company must re-allocate a great deal of capital that it would otherwise spend on hiring new engineers, new sales people, or developing product to instead generate complex governance policies and disclosure documents. And it must do so knowing it is adopting a "roll the dice" strategy, trying to make it through an IPO window that may, or may not, be receptive when it is ready to proceed with its offering. The executive also told me that the compliance costs "hurt" from a business model and profitability perspective. For companies such as Broadsoft, there is an expectation that the cost of going public, and the ongoing expenses of staying a public company, adds $2 million or more per year. That cost burden can erase a meaningful amount of profits at the time of an IPO, which companies like Broadsoft have worked so hard to achieve.

Another company I want to discuss is SAY Media, based in San Francisco, CA. Matt Sanchez co-founded SAY Media, formerly known as VideoEgg, in 2005. SAY Media is a modern media company designed for consumers of online content in an increasingly social environment typified by, among other things, the "Facebook" experience. SAY Media enables advertisers to reach passionate consumers of independent content by means of a scalable technology platform that delivers premium brand messages for Fortune 100 companies to a U.S. online audience of over 150 million users. SAY Media's growth has been extraordinary in a very competitive industry. Over six years, SAY Media has grown from the founding trio to a company of over 400 employees, and the company has gained widespread acceptance in all English language media markets. For companies such as SAY Media, capital is critical to assist with rapid hiring plans, global expansion, research, and development. Accessing the public markets for capital will make a significant difference in the growth trajectory for SAY Media. However, the time period in which a company such as SAY Media can access the public markets will most likely be a longer path versus an equivalent company in the pre-Sarbanes Oxley era. SAY Media, and many other companies like it, would benefit from the successful passing of H.R. 3606.

The third company I want to highlight is one co-founded by a gentleman named Paige Craig.

Mr. Craig attended West Point, served in the Marine Corps and worked in the defense, intelligence and counter-terrorism communities. He founded his first company in 2003, when he drove into Iraq alone, with almost no money in his pocket, and then spent the next five years as a contractor in Iraq, Afghanistan, Asia and Africa. In 2008 he returned to the United States and became an angel investor, directly helping to fund 45 technology startups.

Paige is an American entrepreneur, and is today the co-founder of a BetterWorks, Inc. which is based in Santa Monica, CA. BetterWorks provides a platform designed to enable small and medium-sized businesses to engage, retain, and reward employees. The company passionately believes that great companies are built by great teams and ultimately by happy, engaged, and more productive employees. Each week since the release of its product, BetterWorks has been signing hundreds of new customers across the United States. Today, one year after its founding, BetterWorks is assisting over 350 companies, and thousands of employees, who are using its technology to foster a better workplace, and ultimately building better companies in America. Today, BetterWorks has over 60 employees, and it continues to grow.

BetterWorks also has an incredible opportunity to build a global enterprise. Yet, for all the speed and agility that this company enjoys today, Paige knows that its future growth, and ability to access public capital markets, will take him longer due to the current laws and regulations. At some point, Paige and his team will face the difficult choice of selling this business or raising money in the public markets. I know Paige remains focused on building an enduring enterprise, and he would most likely prefer to take his company public. But in his words, "even with that conviction, we know that selling early can be far easier, and attractive, given the cost and distraction of going public for a smaller, emerging company like ours."

And as I mentioned earlier in my testimony, many companies are foregoing the IPO path altogether and being sold to a larger company. H.R. 3606 will improve this situation in a tangible way. It retains core regulations that will help ensure that public companies are well run and provide relevant, accurate financial and other information to their shareholders. But it will allow companies to scale themselves into the broader, deeper disclosure obligations imposed today on public companies. For example, it will reduce the number of years of audited financials a company must provide at the time of its IPO, and eliminate the requirement for newly public, emerging growth companies to pay an outside audit firm to attest to internal controls and procedures pursuant to Sarbanes Oxley section 404(b). That will save real money and, even more importantly, allow the CEO, CFO, other Board members and teams to spend more of their valuable time and energy managing and building the company. It will also help by letting CEOs "test the water" before proceeding with an IPO, and improve their ability to communicate more directly and more effectively with potential shareholders. This will be better for companies, and better for shareholders.

For decades, the United States has been the envy of the world. We have demonstrated a unique and enormously powerful capacity to create companies, to grow good companies into great companies, and to transform our economy by inventing new technologies and entirely new industries.

But when you are out in front, maintaining that position is difficult. I have seen how aggressively other countries are working to displace the United States as the dominant player in the innovation ecosystem. In order to continue leading the world, we need to adapt to changing times. We need to build on our strengths, and aggressively confront and eliminate unnecessary impediments that may hinder our success.

The legal and regulatory environment is an important piece of that puzzle. In a survey Silicon Valley Bank conducted earlier this year, CEOs of start-up companies listed the regulatory and political environment as their third greatest challenge – a bigger challenge than competition, a bigger challenge than recruiting employees and managing talent, and a bigger problem than obtaining the credit they need to expand into new markets.

This legislation will help address one part of the equation, by removing legal and regulatory impediments that are a barrier for a growing companies' ability to access public equity markets. Legislation such as H.R. 2940, which the House passed recently on a broad, bipartisan basis, will help address another part of the equation by updating the general solicitation rules under our securities laws. By systematically removing impediments that are outdated or misplaced, this Subcommittee and this Congress can help pave the way for our continued success.

I commend you for the work you have done, and support you in the work has yet to be done. Looking forward, for example, I hope this Committee will help ensure that section 619 of the Dodd-Frank Act, often referred to as the Volcker Rule, does not artificially restrict the amount of capital flowing into start-ups by subjecting bank investments in venture capital funds to the same rigid, "one-size fits all" requirements imposed on bank investments in hedge funds and private equity funds.

Every day in my job, I see the enormous potential of the entrepreneurs and emerging growth companies of America. This legislation, and other legislation like it, can help unleash that potential for the benefit of entrepreneurs, investors, individuals and communities across this great country. I congratulate this Committee for working to strengthen the vitality of an essential and exciting part of our economy.

Thank you for your time.

*****

Bio
BIOTECHNOLOGY
INDUSTRY ORGANIZATION
James C. Greenwood
President & CEO

December 15, 2011

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets
and Government Sponsored Entities
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Subcommittee on Capital Markets
and Government Sponsored Entities
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Garrett and Ranking Member Waters:

On behalf of the Biotechnology Industry Organization (BIO) and its more than 1,100 members, I am writing in strong support of H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act, introduced by Congressmen Stephen Fincher and John Carney. By instituting a new category of issuers, called "emerging growth companies," this bill will give newly public companies much-needed relief by allowing them to transition into full regulatory compliance over time as they grow. This transitional "on-ramp" will encourage biotechnology companies and other small businesses on the cusp of going public to venture onto the public market.

In addition to the research and development hurdles that biotechnology companies face on their search for cures and breakthrough medicines, biotech leaders must also deal with the day-to-day challenges of running a small business with the hopes of one day entering the public market. Of great import in the biotechnology industry is the constant struggle to find working capital. It takes eight to twelve years for a breakthrough company to bring a new medicine from discovery, through Phase I, Phase II, and Phase III clinical trials, and on to FDA approval of a product. The entire endeavor costs between $800 million and $1.2 billion. For the majority of biotechnology companies that are without any product revenue, the significant capital requirements necessitate fundraising through venture capital firms. These venture capital investors need to know that the companies they support will have the opportunity to be successful on the public market. Unfortunately, due to the current economic climate, it is becoming harder for biotech companies to go public. As a result, venture capital firms are turning elsewhere to make their investments, leading to a dearth of innovation capital in the biotechnology industry.

A recent survey conducted by the National Venture Capital Association (NVCA) found that 41 percent of venture capital firms have decreased their investments in the biopharmaceutical sector in the past three years. Additionally, 40 percent of venture capitalists reported that they expect to further decrease their biopharmaceutical investments over the next three years. Therapeutic areas that affect millions of Americans will be hit by this change in investment strategy, including cardiovascular disease, diabetes, and cancer.

These disturbing trends in venture investing could be ameliorated by allowing emerging growth companies increased access to the public markets. If burdens on public financing were removed, private investors would have greater certainty that the companies they help take public will have the chance to succeed. This confidence will lead to augmented venture capital investment, the lifeblood of the biotechnology industry.

The Reopening American Capital Markets to Emerging Growth Companies Act rightfully targets compliance costs, one of the major obstacles that companies face when entering the public markets. In a recent survey conducted by NASDAQ and the NVCA, 86 percent of chief executive officers cited "accounting and compliance costs" and 80 percent cited "regulatory risks" as key concerns about going public. The greatest compliance burden that growing biotechnology companies face is Sarbanes-Oxley (SOX) Section 404(b). Though BIO continues to support an increase in the permanent exemption ceiling set by Dodd-Frank for companies with public floats below $350 million, the Reopening American Capital Markets to Emerging Growth Companies Act provides important regulatory relief by exempting small companies for their first five years on the public market. This reprieve will provide for a much smoother transition from private to public and spur future public offerings. Easing the regulatory burden of SOX Section 404(b) and limiting the look-back requirements for audited financials will save emerging biotech companies valuable innovation capital that could be used for important research and development. Additionally, making company information more available to investors will increase visibility for emerging biotech companies before and after their IPOs. By making these compliance changes, the Reopening American Capital Markets to Emerging Growth Companies Act will allow biotech companies to continue their main focus on speeding cures and treatments to patients who need them.

Thank you for your continued leadership in the House of Representatives, and we look forward to working with you on this important issue.

Sincerely,

Jim Greenwood

James C. Greenwood
President and CEO
Biotechnology Industry Organization

NVP
NORWEST
VENTURE
PARTNERS

December 14, 2011

The Honorable Spencer Bachus
Chairman
House Committee on Financial Services
Washington DC 20515

RE: The Reopening American Capital Markets to Emerging Growth Companies Act of 2011 (the "Reopening Capital Markets Act")

Chairman Bachus:

We write to urge the support of your Committee for passage of the Reopening Capital Markets Act. The Act and the recommendations of the IPO Task Force of the National Venture Capital Association ("NVCA") that gave rise to it set forth a well reasoned approach to addressing the many obstacles to accessing the capital markets faced by America's most innovative emerging growth companies. As you are no doubt aware these companies are critical to job creation and economic growth in the United States. Venture backed companies currently generate nearly $3 trillion in annual revenues (representing approximately 21% of U.S. GDP in 2010) and employ nearly 11 percent of the U.S. private sector workforce.

Over the past decade, however, the access to public capital markets for emerging companies has become far more restrictive. We believe that this is largely the result of the ever expanding cost of compliance with a web of new regulations designed to address risks and behaviors exhibited nearly exclusively by larger public enterprises. Evidence suggests that the inability of emerging companies to afford these compliance regimes and tap the public markets has a significant adverse impact on job creation in the U.S.

We believe that the NVCA's IPO Task Force recommendations, which would largely be implemented by passage of the Reopening Capital Markets Act, represent a common sense approach to balance the benefits of allowing the country's most innovative and rapidly growing enterprises to access needed capital in the public markets with the need to educate and protect investors. In particular, limited temporary relief from compliance with certain of the most onerous and costly regulations impacting public companies today will permit these companies to undertake the growth and job creation initiatives which access to the public markets facilitate, without significantly impacting investor protection.

NVP

NORWEST
VENTURE
PARTNERS

In the long run we believe the passage of the Reopening Capital Markets Act will benefit entrepreneurs, the American job market and the US economy in general. We urge your committee to carefully consider and recommend passage of the proposed legislation.

Respectfully,

John Geschke
General Counsel

cc: Promod Haque
Kurt Betcher
Karin McKinnell

NYSE Euronext

United States House of Representatives

The Committee on Financial Services
Subcommittee on Capital Markets and
Government Sponsored Enterprises

"H.R. 3606, the Reopening American Capital Markets to Emerging Growth Companies Act of 2011"

December 15th, 2011

NYSE Euronext is the world's leading and most diverse exchange group with equities, futures and options markets throughout the United States and Europe and the number one capital-raising venue in the world. We appreciate the opportunity to submit a statement for the record in support of H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011."

Young, innovative, emerging growth companies are the engines of job creation, and access to capital through initial public offerings (or IPOs) is key to allowing these innovative companies to grow and hire new employees. From 1980 to 2005, firms less than five years old accounted for all net job growth in the U.S. For those companies that "go public," 92% of job growth occurs after the company's IPO, and most of that within the first five years after the IPO.[1] Clearly, an IPO provides these young and growing companies an opportunity to expand their business and hire more workers.

Our public markets provide significant benefits for issuers, investors and our economy. Public companies obtain permanent access to capital, the ability to reach the deepest pool of both institutional and retail investors, and the power to use their stock as currency for future acquisitions. Founders, employees and public shareholders obtain liquidity for their investments and the opportunity to transact in real-time, in a transparent and well-regulated market that provides extensive issuer disclosures while protecting both buyers and sellers. It is this symbiotic relationship between issuers and investors that makes our markets function so well.

However, over the past decade, the number of young companies going public has declined significantly, and the age of companies at the point of their IPO has increased. While in 1996, there were 761 companies that underwent an IPO, an average of fewer than 157 companies went public per year between 2001 and 2008, and the number remains well below historical norms. At the same time, the average age of a company at the time of its IPO has increased from five and a half years during the period from 1997 to 2001, to nine years from 2006 to 2011.[2]

Rather than pursue an IPO, early investors have shifted toward gaining liquidity for their investment by selling their young companies to larger enterprises. While in 1991, about 90% of venture investor exits occurred through an IPO and about 10% through a merger and acquisition (M&A) event, this

[1] Venture Impact Study 2010 by IHS Global Insight. http://www.nvca.org/index.php?option=com_content&view=article&id=255&Itemid=103.

[2] Rebuilding the IPO On-Ramp: Putting Emerging Companies and the Job Market Back on the Road to Growth, page 6. http://www.nvca.org/index.php?option=com_docman&task=doc_download&gid=805&Itemid=93.

trend has completely reversed in recent years: in 2010, about 80% of exits were through M&A compared to 20% through an IPO.[3] This shift is critically important because an M&A event does not generally produce the same rapid job growth as an IPO, and often results in job losses over the short term as the acquirer eliminates redundant positions.

The movement away from IPOs has been driven in large part by burdensome regulatory hurdles. In particular, extensive regulatory reporting requirements in order to go public and remain a public company have increased the cost of going public. This is a significant barrier that every CEO we meet highlights as an obstacle to pursuing an IPO.

At the same time, regulatory requirements have also limited the amount of research about these emerging companies available to investors, constraining investor interest. We believe that additional research enhances investors' understanding of emerging companies and facilitates the demand side of the equation.

Removing these barriers to going public is critical to unlocking emerging growth companies' job creation potential.

NYSE Euronext commends Representatives Fincher and Carney for their leadership in introducing H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011," which would significantly reduce the obstacles that prevent emerging growth companies from going public—and accessing the capital to hire more employees—while maintaining important investor protections. The bill would tackle both sides of the equation: addressing companies' reduced interest in an IPO due to the costs of going public, while facilitating the sharing of information with investors to stimulate awareness and demand.

The bill would create a transitional category of companies pursuing an IPO called "emerging growth companies." This category would generally include those companies pursuing an IPO that have less than $1 billion in annual revenue and less than $700 million in public float (common equity held by non-affiliates) and would not affect any company that has already completed its IPO. For this small number of emerging growth companies, certain disclosure and other public company regulatory requirements would be reduced or phased-in, thus lowering the costs associated with an IPO and complying with public company requirements. The maximum phase-in period would be five years

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[3] Ibid at 7.

from the IPO date (with the phase-in being eliminated earlier if a company reached the $1 billion in revenue or $700 million in public float levels). In particular:

- Emerging growth companies would have scaled-back financial information requirements and scaled-back requirements in their "Management's Discussion and Analysis" and "Executive Compensation" disclosures. Many of these scaled-back requirements are already permitted for microcap companies with less than $75 million of public float.

- One of the largest expenses associated with becoming a public company is the cost of complying with the requirement to obtain an auditor attestation of a company's internal controls over financial reporting, under Section 404(b) of the Sarbanes-Oxley Act. The bill would phase-in this requirement, giving emerging growth companies the chance to go public, expand and hire before incurring this expense.

At the same time, emerging growth companies would be able to "test the waters" to gauge investor interest and provide more research information to prospective investors:

- Many emerging growth companies may consider an IPO, but are unsure of whether there is sufficient investor interest. Because current law makes it difficult for companies to test the waters and gauge interest before actually undergoing the expense of preparing an IPO registration statement, companies may forgo an IPO altogether. The bill would allow these pre-IPO companies to communicate with sophisticated investors about a potential IPO, and consider the probability of an IPO's success, before undergoing the expense of preparing a registration statement.

- On the other side of the equation, restrictions on investment banks providing research coverage on emerging growth companies undergoing an IPO have limited investors' ability to obtain information—and thus their ability to assess whether to invest in an emerging growth company. The bill would improve the availability and flow of research coverage by scaling back regulatory restrictions that prevent such coverage.

By phasing-in some of the more expensive regulatory requirements of being a public company, and scaling back restrictions on research coverage, the bill will allow more emerging growth companies to access the public capital markets, finance their growth and create more American jobs. Our system of securities regulation, including the robust disclosures required of large or seasoned public companies, would be maintained—while the largest obstacles preventing our most promising young companies from growing and hiring would be removed.

NYSE Euronext applauds this Committee's focus on finding ways to encourage job creation through facilitating capital formation. The reforms contained in H.R. 3606 reflect a measured approach that would remove the major roadblocks preventing emerging growth companies from raising capital in the public, transparent markets, while avoiding the potential for fraud and investor abuse that may arise from opening up the illiquid and private markets to average investors.