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"

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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

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[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.