



## Legislative Bulletin ..... March 7, 2012

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**Amendments to H.R. 3606** – Reopening American Capital Markets to Emerging Growth Companies Act of 2011

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## **Amendments to H.R. 3606 – Reopening American Capital Markets to Emerging Growth Companies Act of 2011 (Fincher, R-CA)**

**Order of Business:** H.R. 3606 is scheduled to be considered under a structured rule on Wednesday, March 7, 2012. The bill shall be considered as read and the bill shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The rule makes in order only those further amendments printed in the Rules Committee report accompanying the resolution. The rule waives all points of order against the amendments printed in the Rules Committee report and provides one motion to recommit with or without instructions.

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### **AMENDMENTS MADE IN ORDER**

1. **Reps. Fincher (R-TN) and Carney (D-DE)** – The amendment makes a couple technical corrections to the bill by capitalizing Emerging Growth Companies (EGC), adding and removing parenthesis, and removing two sentences to the bill.
2. **Rep. McIntyre (D-NC)** – The amendment adds language to require that Emerging Growth Companies, which is defined as issuers that had total annual gross revenues of less than \$1 billion during its most completed fiscal year, are adjusted for inflation.
3. **Reps. Himes (D-CT) and Capuano (D-MA)** – The amendment strikes the \$1 billion cap language from the bill for Emerging Growth companies, and replaces the cap at \$750 million.

4. **Rep. Jackson Lee (D-TX)** – The amendment adds language requiring that an issuer that has, during the previous 3-year period, issued more than \$1 billion in non-convertible debt not be considered an Emerging Growth Company.
5. **Reps. Ellison (D-MN), Capuano (D-MA), and Lynch (D-MA)** – The amendment strikes language that exempts EGCs from complying with say-on-pay and golden parachute rules under Dodd-Frank.
6. **Rep. Waters (D-CA) and Capuano (D-MA)** – The amendment adds language to require that any such research report published or distributed by a broker or dealer that is participating or will participate in the registered offering of the securities of the issuer shall be filed with the SEC by the later of the date of the filing of such registration statement or the date such report is first published or distributed. The research report shall be deemed a prospectus, and any written communication provided to potential investors in accordance with an IPO for an EGC shall be filed with the SEC by the later of the date of the filing of such registration statement or the date the written communication is first engaged in.
7. **Rep. Jackson Lee (D-TX)** – The amendment strikes language that allows an EGCs or any person authorized to act on behalf of a EGC from engaging in oral communications with institutions that are accredited investors.
8. **Rep. Jackson Lee (D-TX)** – The amendment adds language in order to discourage frivolous filings with the SEC, the SEC shall establish a fee that shall apply to any draft registration statement submitted to the SEC for confidential nonpublic review.
9. **Rep. Connolly (D-VA)** – The amendment adds language to the bill that requires a study on the effects of market speculation on Emerging Growth Companies. The amendment requires the SEC, in consultation with the Commodity Futures Trading Commission, to carry out the study. The amendment requires a report to Congress not later than the end of 60 year period beginning on the date of enactment of this act, and every annually thereafter.
10. **Rep. McCarthy, Kevin (R-CA)** – The amendment requires that not later than 90 days after the date of enactment of this Act, the SEC shall revise the Code of Federal Regulations to provide that securities sold under the revised exemption may be offered to persons other than qualified institutional buyers, including by means of general solicitation or general advertising, provided that securities sold only to persons that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.
11. **Rep. McHenry (R-NC)** – The amendment clarifies the modification of exemption by adding language that requires with respect to securities offered and sold in in compliance with Rule 506 of Regulation D, no person who meets the conditions set forth in this bill shall be subject to registration as a broker or dealer solely because:

- a. that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;
  - b. that person or any person associated with that person co-invests in such securities; or
  - c. that person or any person associated with that person provides ancillary services with respect to such securities.
  - d. The exemption provided shall apply to any person described if—
    - i. such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;
    - ii. such person and each person associate with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and
    - iii. such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title and does not have any person associated with that person subject to such a statutory disqualification.
12. **Reps. Miller, Brad (D-NC) and Schweikert (R-AZ)** – The amendment amends the Private Company Flexibility and Growth by increasing the total number of investor allowed being holders of record before registration is required from 1,000 to 2,000, and limiting the number of non-accredited investors to 500.
13. **Rep. Schweikert (R-AZ)** – The amendment requires the SEC to study the enforcement authority under Rule 12G5-1 to determine if new enforcement tools are needed to enforce the anti-evasion provision, and for the SEC to transmit its recommendations from this study to Congress.
14. **Rep. Capuano (D-MA)** – The amendment requires the SEC to conduct a study regarding whether the term “held of record” should be changed to mean the beneficial owner of the security, and to address anti-evasion concerns.
15. **Rep. Peters (D-MI)** – The amendment adds a Title VII to the legislation that requires disclosure of number of domestic and foreign employees and it would require publicly traded companies to disclose on an annual basis the total number of employees they have in each country and the percentage increase or decrease in employment in each country.
16. **Reps. Capps (D-CA)** – The amendment requires after the end of the 1-year period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall issue a report to the Congress on the increase in initial public offerings that resulted from this Act and the amendments made by this Act, including the specific increases in offerings by companies in the manufacturing industry and the high technology industry
17. **Rep. Loeb sack (D-IA)** – The amendment requires the SEC to coordinate with the Small Business Administration, the Department of Veterans Affairs, and the Department of

Commerce to provide online information and conduct outreach to inform small and medium sized businesses, women owned businesses, veteran owned businesses, and minority owned businesses of the changes made by this Act.