

# Jumpstart Our Business Startups Act – H.R. 3606



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# Jumpstart Our Business Startups Act – H.R. 3606



JOBS Act (April 5, 2012) eliminates some red tape:

1. Faced by Emerging Growth Companies (EGCs) going public;
2. Faced by newly public EGCs;
3. Faced by companies raising capital;
4. Faced by private companies wanting to stay private;
5. Faced by rich folk wanting to trade stock; and
6. More...

# Jumpstart Our Business Startups Act – H.R. 3606



Title I – Reopening American Capital Markets to Emerging Growth Companies. [Easier IPOs and public status].

Title II – Access to Capital for Job Creators. [Rich get richer].

Title III – Crowdfunding [Kickstarter for securities].

Title IV – Small Company Capital Formation. [New regime]

Title V – Private Company Flexibility and Growth. [Back door public status].

Title VI – Capital Expansion. [Back door public status redux].

Title VII – Outreach on Changes to the Law. [request for comments].

# Title I

## Reopening American Capital Markets to Emerging Growth Companies



1. EGC has less than \$1 billion in revenue (indexed for inflation).
2. Disclosure exemptions re executive comp, SOX 404b (internal controls), audit firm partner rotation, quiet period restrictions re testing the waters, two years of financials only, etc.
3. Exemptions last minimum 2 years from IPO date.
4. Non-public EGCs may submit secret draft registration statements.
5. Tick size decimalization. [increase liquidity by less price movement?]
6. EGCs may opt-in to all regs.
7. Reg S-K review re simplification and modernization (integrated disclosure system).

# Title I

## Reopening American Capital Markets to Emerging Growth Companies



### Secret draft registration statements.

1. No “filing.”
2. No quiet period.
3. Need to publicly file at least 21 days before earlier of road show and effectiveness.
4. Need not be signed.
5. No auditor consent.
6. SEC expects completeness and may not review if materially deficient.

# Title I

## Reopening American Capital Markets to Emerging Growth Companies



### What does this mean?

1. The new offering and disclosure rules for EGCs will not make much difference.
2. Secret registration statements will help with quiet period problems.
3. Going or being public will be slightly cheaper but not cheap enough to compete with some foreign markets like Britain or Canada.
4. This is tinkering, but tinkering more than usual.
5. Decimalization questions are form over substance.

# Title II

## Access to Capital for Job Creators.



### Restricted Stock:

1. General solicitation (advertising) OK for unlimited Reg D offerings.
2. To accredited investors only.
3. Regs change by end of July.
4. Under 144A may *offer* to non-QIBs as long as *sales* only to QIBs.
5. Exempts persons who assist in 506 sales from BD registration. No investment advice; form docs OK; no customer funds, no sale compensation.

# Title II

## Access to Capital for Job Creators.



### What does this mean?

1. Feds may pre-empt states to a greater extent.
2. General solicitation under 506 may prove useful for offerings to accrediteds (especially to the extent that blue sky laws are pre-empted).
3. “Finder” problem clarified a bit.
4. Trading among accrediteds and QIBs will be less and less regulated. [opt out].
5. Trading among accrediteds and QIBs will increase.
6. More info to QIBs and accrediteds.

# Title III

## Crowdfunding



### **Information Regarding the Use of the Crowdfunding Exemption in the JOBS Act**

On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law. The Act requires the Commission to adopt rules to implement a new exemption that will allow crowdfunding. Until then, we are reminding issuers that any offers or sales of securities purporting to rely on the crowdfunding exemption would be unlawful under the federal securities laws.

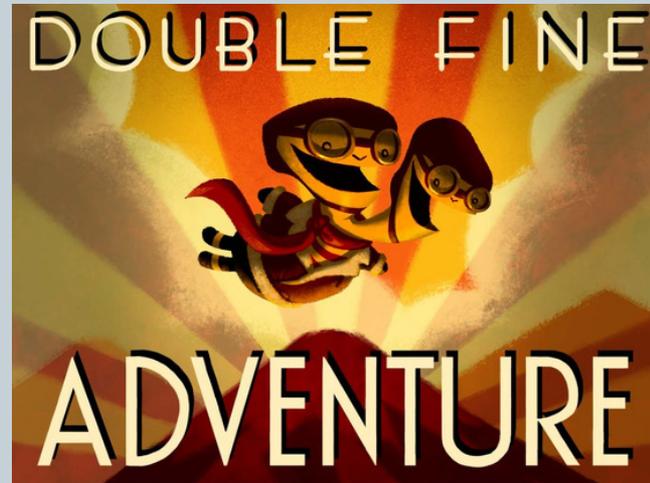
# Title III

## Crowdfunding



**87,142**  
**Backers**  
**\$3,336,371**  
**pledged of \$400,000 goal**

**Funding Successful**  
This project successfully raised its  
funding goal on March 13.



# Title III

## Crowdfunding



### Portals may not:

- (i) offer investment advice or recommendations;
- (ii) solicit purchases, sales, or offers to buy securities offered or displayed on its website or portal;
- (iii) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;
- (iv) hold, manage, possess, or otherwise handle investor funds or securities; or
- (v) engage in such other activities as the SEC, by rule, determines appropriate.

# Title III

## Crowdfunding



### Additionally:

1. Rules expected by early 2013.
2. Portals need to join FINRA.
3. Can brokers crowdfund now?
4. Portals can't: (i) Compensate people for providing information about potential investors, or (ii) allow its directors and officers to own an issuer.
5. Exempt from State regulation.

# Title III

## Crowdfunding



### Portals Need To:

1. Ensure provision of proper disclosures at least 21 days prior to any sale.
2. Ensure investors know what they are doing.
3. Protect the privacy of information collected from investors.
4. Take steps to reduce the risk of fraud or participation by persons enjoined from participating in securities sales.
5. Ensure proceeds only go to the issuer when targets are met.
6. Take efforts to ensure that no investor exceeds their annual limits.

# Title III

## Crowdfunding



### Investment Limitations:

1. Aggregate amount sold by issuer in 12 months (including crowdfunding) is not more than \$1 million.
2. Disclosure thresholds increase at \$100,000, and \$500,000.
3. No investment by any person with income < \$100,000, in all deals, over greater of \$2,000 [\$40,000 equivalent] or 5% of annual income.
4. No investment by any person with income OR net worth > \$100,000, in all deals, over 10% of income or net worth, capped at \$100,000 per year.
5. All dollar amounts adjusted at least every 5 years.

# Title III

## Crowdfunding



### What does this mean?

1. Crowdfunding may prove useful. Only regs will tell.
2. Crowdfunding will help some small companies prove their market.
8. Dishonest people will abuse the system and some will call for more regulation or reregulation.
9. Small investors will lose some money but a hit or two will emerge and some investors may make good returns.

# Title IV

## Small Company Capital Formation.



### Small Issues Exemption:

1. A 3(b) regulatory exemption.
2. SEC shall create exemption.
3. Less than \$50 million in 12 month period.
4. Publicly offered and sold.
5. Not restricted securities (freely trading).
6. May test the waters prior to “offering statement.”
7. Audited financials filed annually.
8. SEC may require periodic reporting.
9. Review of exemption every two years.
10. Comptroller General to study impact of “blue sky” laws on securities offerings and Reg A.

# Title IV

## Small Company Capital Formation.



### What does this mean?

1. Rulemaking authority for deals under \$50 million may prove most useful of all.
2. This could be the biggest change if a new regime arises that is easy to use.
3. States will lose more power to feds.

# Title V and Title VI

## Private Company Flexibility and Growth, and Capital Expansion



### Registration Threshold:

1. The Facebook Exception – Need to register if \$10 million in assets AND either (i) 500 non-accredited shareholders, or (ii) 2,000 shareholders.
2. Employees receiving options and crowdfunding investors not counted (immediately applicable).
3. Similar threshold changes for banks.
4. Deregistration for banks increased from 300 people to 1,200.

# Title V and Title VI

## Private Company Flexibility and Growth, and Capital Expansion



### What does this mean?

1. Less pressure to start filing periodic reports.
2. Maybe a consequence of more use to stock.
3. Companies may stay private longer.
4. Secondary private markets like SecondMarket.com will grow.

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