



## Consumer Federation of America

February 16, 2012

The Honorable Spencer Bachus  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C.

The Honorable Barney Frank  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Bachus, Ranking Member Frank, and members of the Committee:

I am writing on behalf of the Consumer Federation of America to express our strong opposition to two bills being marked up today in the Financial Services Committee: H.R. 3606, the “Reopening American Capital Markets to Emerging Growth Companies Act of 2011,” and H.R. 2308, the “SEC Regulatory Accountability Act.” Each in its own way would weaken protections for investors and undermine the integrity and stability of our capital markets. The inevitable result would be an increase in the cost of capital, particularly for the “emerging” companies H.R. 3606 purports to benefit. We urge you to vote no on these bills.

### **Vote No on H.R. 3606**

H.R. 3606, also known as the IPO On-Ramp bill, has been put forward as a “jobs creation” bill designed to reduce the cost of going public for “emerging” companies. But, since it ignores the real causes of the drop in early stage, small company IPOs – a decrease in the profitability of small companies, changes in the economics of the broker-dealer business model, and the availability of large amounts of capital from institutional investors through private offerings – there is no reason to believe it can deliver the promised benefits. At the same time, it would significantly increase the risks of investing in these “emerging” companies by delaying implementation of essential investor protections adopted in the wake of the massive and widespread accounting and analyst scandals that rocked our markets just over a decade ago. It is only logical to expect that investors will respond to those increased risks by raising the cost of capital for these companies, negating any compliance cost savings the bill might have provided.

That H.R. 3606 has little if anything to do with eliminating barriers to capital formation can be seen from the inclusion of basic corporate governance requirements among the provisions to be delayed for “emerging” companies. After all, no one could seriously suggest that disclosing executive compensation or requiring a once every three years “say on pay” vote constitutes such a barrier. The bill also includes a particularly poorly thought out provision to phase in new accounting and auditing standards for new companies. That would not only undermine market transparency by reducing comparability of financial statements, it would

increase the cost and complexity of auditing those financial statements. Similarly, the provision to delay implementation of SOX 404(b) would institutionalize one of the leading factors that contributed to the early costs of SOX 404 implementation – that it is much more difficult and costly to retrofit SOX-compliant internal controls onto an existing system than it is to build them in on the front end.

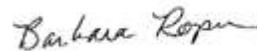
It is ironic that mark-up of this bill is being paired with mark-up of a bill imposing new cost-benefit requirements on the SEC, since no meaningful economic analysis has been conducted showing these measures are either needed or warranted, and no consideration has been given to their effect on investors. We urge you to oppose this bill.

### **Vote No on H.R. 2308**

Since the recent court decision overturning the SEC's proxy access rules, the agency has been virtually paralyzed in its attempts to produce economic analysis that can withstand legal challenge. As one industry executive stated, "As long as we are willing to spend a couple of million dollars, we can overturn pretty much any rule we don't like." H.R. 2308 would take that very troubling situation and make it much, much worse, by imposing a whole new round of cost-benefit requirements on the agency. Among these is an impossible to implement requirement that the agency assess the costs of every conceivable alternative to the regulatory approach it has proposed. If this bill were adopted, industry groups, which already have the upper hand in the rulemaking process by virtue of their superior resources, manpower, and access to agency officials, would be left firmly in control – which appears to be the outcome intended by the legislation. After all, if the intent really were to improve the quality of the SEC's economic analysis, a goal we support, the quickest and most effective way to achieve that goal would be to provide increased funding to enable the agency to hire the economists needed to conduct that analysis. We urge you to vote no on H.R. 2308.

Investors have been devastated by an unrelenting stream of financial scandals and crises over the past dozen years. Their faith in the integrity and stability of our capital markets has been badly shaken. These bills would make that problem worse. They should be rejected.

Respectfully submitted,



Barbara Roper  
Director of Investor Protection

Cc: Members of the Committee on Financial Services