AMENDMENT NO.________ Calendar No.______

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

H. R. 3606

To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Referred to the Committee on ____________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, ____________________)

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Invigorate New Ventures and Entrepreneurs to Succeed Today in America Act of 2012" or the "INVEST in America Act of 2012".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—SMALL COMPANY CAPITAL FORMATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Small Company Capital Formation Act of 2012''.

SEC. 102. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

(a) IN GENERAL.—Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended—

(1) by striking ''(b) The Commission'' and inserting the following:

''(b) ADDITIONAL EXEMPTIONS.—

''(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—The Commission''; and

(2) by adding at the end the following:

''(2) ADDITIONAL ISSUES.—The Commission shall, by rule or regulation, add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

"(A) The aggregate offering amount of all securities offered and sold by the issuer within the preceding 36-month period in reliance on such exemption, including the immediate offering, shall not exceed $50,000,000.

"(B) The securities may be offered and sold publicly.

"(C) The securities shall not be restricted securities, within the meaning of the Federal securities laws and the regulations promulgated thereunder.

"(D) The civil liability provision in section 12(a)(2) shall apply to any person offering or selling such securities.

"(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

"(F) The Commission shall require the issuer to file audited financial statements with the Commission as part of the offering statement and annually thereafter.

"(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

"(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, including audited financial statements and a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

"(ii) disqualification provisions under which the exemption shall not be available to the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Investor Protection and Securities Reform Act of 2010 (15 U.S.C. 77d note).

"(3) LIMITATION.—Only equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities, may be exempted under a rule or regulation adopted pursuant to paragraph (2).

"(4) PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission, by rule or regulation, shall require an issuer of a class of securities exempted under paragraph (2) to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.".

(b) TREATMENT AS COVERED SECURITIES FOR PURPOSES OF NSMIA.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in subparagraph (C), by striking "; or" at the end and inserting a semicolon;

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by inserting after subparagraph (C) the following:

"(D) a rule or regulation adopted pursuant to section 3(b)(2), and such security is—

"(i) offered or sold on a national securities exchange; or

"(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale; or".

(c) CONFORMING AMENDMENT.—Section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)) is amended by striking "section 3(b)" and inserting "section 3(b)(1)".

SEC. 103. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS ON REGULATION A OFFERINGS.

Not later than 3 months after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study on the impact of State laws regulating securities offerings (commonly referred to as "Blue Sky laws") on offerings made under Regulation A of the Securities and Exchange Commission (17 C.F.R. 230.251 et seq.); and

(2) transmit a report on the findings of the study to the Committee on Banking, Housing, and

Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 104. STUDY AND REPORT ON EFFECTS OF EXEMPTION.

The Commission, in consultation with State securities administrators with respect to issues over which they have jurisdiction, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committees on Commerce and Financial Services of the House of Representatives 5 years after the date of enactment of this Act on—

(1) the nature, timing, and extent of offerings and issuances in reliance on the exemption under paragraph (2) of section 3(b) of the Securities Act of 1933, as added by this title, during each year of that 5-year period;

(2) an assessment of the risks posed and protections available to investors related to offerings or issuances under such exemption;

(3) the incidence of errors, omissions, misstatements, or fraud associated with offerings in reliance on such exemption;

(4) the impact of such exemption on capital formation for small businesses;

(5) any adjustments to such exemption necessary to protect investors and promote capital formation;

(6) an analysis of the effectiveness and limitations of the civil liability provisions under the Federal securities laws applicable to offerings and issuances in reliance on such exemption, and to any reports or other filings required to be filed by the issuers of such securities with the Commission; and

(7) such other factors as the Commission determines appropriate for inclusion.

TITLE II—REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES

SEC. 201. SHORT TITLE.

This title may be cited as the "Reopening American Capital Markets to Emerging Growth Companies Act of 2012".

SEC. 202. DEFINITIONS.

(a) SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended by adding at the end the following:

"(19) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under this title shall continue to be deemed an emerging growth company until the earliest of—

"(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

"(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title occurs;

"(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

"(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating the second paragraph designated as paragraph (77) (relating to asset-backed securities) as paragraph (79); and

(2) by adding at the end the following:

''(80) The term 'emerging growth company' means an issuer that had total annual gross revenues of less than $350,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under the Securities Act of 1933 shall continue to be deemed an emerging growth company until the earliest of—

''(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $350,000,000 or more;

''(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 occurs;

"(C) the date on which such issuer is deemed to be a 'large accelerated filer', as defined in section 240.12b–2 of title 17, Code of Federal Regulations (or any successor thereto); or

"(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of $1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.".

(c) OTHER DEFINITIONS.—As used in this title, the following definitions shall apply:

(1) COMMISSION.—The term "Commission" means the Securities and Exchange Commission.

(2) INITIAL PUBLIC OFFERING DATE.—The term "initial public offering date" means the date of the first sale of common equity securities of an issuer pursuant to an effective registration statement under the Securities Act of 1933.

(d) EFFECTIVE DATE.—Notwithstanding section 2(a)(19) of the Securities Act of 1933 and section

3(a)(80) of the Securities Exchange Act of 1934, as added by this section, an issuer shall not be an emerging growth company for purposes of such Acts if the first sale of common equity securities of such issuer pursuant to an effective registration statement under the Securities Act of 1933 occurred on or before the date of enactment of this Act.

SEC. 203. DISCLOSURE OBLIGATIONS.

(a) FINANCIAL DISCLOSURES.—

(1) SECURITIES ACT OF 1933.—Section 7(a) of the Securities Act of 1933 (15 U.S.C. 77g(a)) is amended by adding at the end the following: ‘‘An emerging growth company need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in a registration statement for an initial public offering and in registration statements to be filed with the Commission following an issuer's initial public offering, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any pe-

riod prior to the earliest audited period presented in connection with its initial public offering.''.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) is amended by adding at the end the following: ''In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations (or any successor thereto) for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this title or the Securities Act of 1933 (15 U.S.C. 77a et seq.).''.

(b) OTHER DISCLOSURES.—An emerging growth company may comply with section 229.303(a) of title 17, Code of Federal Regulations (or any successor thereto), by providing information required by such section with respect to the financial statements of the emerging growth company for each period presented pursuant to subsection (b). An emerging growth company may comply with section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), by disclosing the same information as any issuer with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than $75,000,000.

SEC. 204. INTERNAL CONTROLS AUDIT.

Section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)) is amended by inserting '', other than an issuer that is an emerging growth company (as defined in section 3 of the Securities Exchange Act of 1934),'' before ''shall attest to''.

SEC. 205. AUDITING STANDARDS.

Section 103(a)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)(3)) is amended by adding at the end the following:

''(C) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board requiring mandatory audit firm rotation shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any such additional rules requiring mandatory audit firm rotation that are adopted by the Board after the date of enactment of this subparagraph shall not apply to an audit of any emerging growth company if the Commission determines that the application of such additional requirements to emerging growth companies is not necessary or appropriate in the public interest.''.

SEC. 206. AVAILABILITY OF INFORMATION ABOUT EMERGING GROWTH COMPANIES.

(a) PROVISION OF RESEARCH.—Section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)) is amended by adding at the end the following: ''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 of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of section 5(c) and paragraph (10) of this subsection not to constitute an offer for sale or offer to sell a security, provided that any research report published or distributed by a broker or dealer that is participating or will participate in the registered offering that is published or distributed in reliance on such exemption complies with such restrictions, disclosure, and filing requirements as the Commission shall determine, including that such research report does not contain any recommendations to purchase or sell such securities. As used in this paragraph, the term 'research report' means a written or electronic communication that includes an analysis of an equity security or an issuer.''

(b) EXPANDING PERMISSIBLE COMMUNICATIONS.—Section 5 of the Securities Exchange Act of 1933 (15 U.S.C. 77e) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) LIMITATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, an emerging growth company or any person authorized to act on behalf of an emerging growth company may engage in oral or written communications with potential investors that are qualified institutional buyers, as such term is defined in section 230.144A of title 17, Code of Federal Regulations (or any successor thereto), to determine whether such investors might have an interest in a contemplated securities offering, prior to the date of filing of a registration statement with respect to such securities with the Commission, subject to the requirement of subsection (b)(2).

''(2) WRITTEN COMMUNICATIONS.—All written communications (as such term is defined in section

203.405 of title 17, Code of Federal Regulations (or any successor thereto)) provided to potential investors in accordance with this subsection shall be—

"(A) filed by the issuer promptly with the Commission by the later of the date of the filing of the registration statement or the date on which the written communication is first used; and

"(B) deemed to be a prospectus for purposes of section 12(a)(2) (15 U.S.C. 77l(a)(2)).".

SEC. 207. OPT-IN RIGHT FOR EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—With respect to an exemption provided to emerging growth companies under this title or an amendment made by this title, an emerging growth company may choose to forgo such exemption and instead comply with the requirements that apply to an issuer that is not an emerging growth company.

(b) SPECIAL RULE.—If an emerging growth company chooses to comply with such standards to the same extent that a non-emerging growth company is required to comply with such standards, the emerging growth company—

(1) shall—

(A) make such choice at the time at which the company is first required to file a registration statement, periodic report, or other report with the Commission under section 13 of the Securities Exchange Act of 1934; and

(B) notify the Securities and Exchange Commission of such choice;

(2) may not select some standards to comply with in such manner and not others, but shall comply with all such standards, to the same extent that a non-emerging growth company is required to comply with such standards; and

(3) shall continue to comply with such standards, to the same extent that a non-emerging growth company is required to comply with such standards, for as long as the company remains an emerging growth company.

SEC. 208. REVIEW OF TICK SIZE ON MARKET LIQUIDITY.

Section 11A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)) is amended by adding at the end the following new paragraph:

"(6) TICK SIZE.—

"(A) STUDY AND REPORT.—

"(i) STUDY.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as 'decimalization', which shall examine—

"(I) the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation;

"(II) the impact that such change has had on liquidity for small and middle capitalization company securities; and

"(III) whether there is sufficient economic incentive to support trading operations in these securities in penny increments.

"(ii) REPORT.—Not later than 270 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study required by clause (i).

"(B) DESIGNATION.—If the Commission determines after the study under subparagraph (A) that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after the date of submission of the report under subparagraph (A)(ii), designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.''.

SEC. 209. OTHER MATTERS.

(a) CONFIDENTIAL SUBMISSION.—Section 6 of the Securities Act of 1933 (15 U.S.C. 77f) is amended by adding at the end the following:

``(e) EMERGING GROWTH COMPANIES.—

``(1) IN GENERAL.—Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 30 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title

17, Code of Federal Regulations (or any successor thereto).

"(2) CONFIDENTIALITY.—Notwithstanding any other provision of this title, the Commission shall not be compelled to disclose any information provided to or obtained by the Commission pursuant to this subsection. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Information described in or obtained pursuant to this subsection shall be deemed to constitute confidential information for purposes of section 24(b)(2) of the Securities Exchange Act of 1934.

"(3) FEES.—The Commission may assess such fees and charges for the submission of a draft registration statement by an emerging growth company pursuant to this section as the Commission determines to be reasonable. Notwithstanding any other provision of law, such fees and charges shall be available for use by the Commission for the purpose of administering the provisions of this subsection.".

(b) STUDY AND REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of, and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on, the implementation of the provisions of this title, as well as on the state of the public markets for initial public offerings, that includes an evaluation of—

(1) the effect of the framework established under this title on facilitating initial public offerings and, if appropriate, ways to improve such framework; and

(2) the adequacy of safeguards and protections for investors in emerging growth companies and, if appropriate, ways to improve such safeguards and protections.

TITLE III—CROWDFUNDING

SEC. 301. SHORT TITLE.

This title may be cited as the "Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012" or the "CROWDFUND Act".

SEC. 302. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:

"(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

"(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than $1,000,000;

"(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

"(i) the greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and

"(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

"(C) the transaction is conducted through a broker or funding portal that complies with the requirements of section 4A(a); and

"(D) the issuer complies with the requirements of section 4A(b).".

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by inserting after section 4 the following:

"SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

"(a) REQUIREMENTS ON INTERMEDIARIES.—A person engaged in the business of effecting transactions in securities for the account of others pursuant to section 4(6) shall—

"(1) register with the Commission as—

"(A) a broker; or

"(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

"(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);

"(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

"(4) ensure that each investor—

"(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

"(B) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

"(C) answers questions demonstrating—

"(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

"(ii) an understanding of the risk of illiquidity; and

"(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

"(5) take such measures to reduce the risk of fraud, money laundering, or other misconduct with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

"(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

"(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate;

"(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

"(9) take such steps to protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate;

"(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

"(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services; and

"(12) meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

"(b) REQUIREMENTS FOR ISSUERS.—For purposes of section 4(6), an issuer who offers or sells securities shall—

"(1) be organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

"(2) not be—

"(A) subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78p(d)); or

"(B) treated as—

“(i) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

“(ii) an issuer excluded from the Investment Company Act of 1940 (15 U.S.C. 80a et seq.); or

“(iii) such other company as the Commission, by rule or regulation, determines appropriate;

“(3) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

“(C) a description of the business of the issuer and the anticipated business plan of the issuer;

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

"(i) $100,000 or less—

"(I) the income tax returns filed by the issuer for the most recently completed year (if any); and

"(II) financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

"(ii) more than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

"(iii) more than $500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

“(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

“(H) a description of the ownership and capital structure of the issuer, including—

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

"(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

"(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

"(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

"(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(4) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(5) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

“(6) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(7) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

"(c) Liability for Material Misstatements and Omissions.—

"(1) Actions authorized.—

"(A) In general.—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

"(B) Liability.—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

"(2) Applicability.—An issuer shall be liable in an action under paragraph (1), if the issuer—

"(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

"(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

"(3) DEFINITION.—As used in this subsection, the term 'issuer' includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

"(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

"(e) RESTRICTIONS ON SALES.—Securities issued pursuant to a transaction described in section 4(6)—

"(1) may not be transferred by the purchaser of such securities during the 1-year period beginning on the date of purchase, unless such securities are transferred—

"(A) to the issuer of the securities;

"(B) to an accredited investor;

"(C) as part of an offering registered with the Commission; or

"(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

"(2) shall be subject to such other limitations as the Commission shall, by rule, establish.

"(f) RULE OF CONSTRUCTION.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

"(g) CERTAIN CALCULATIONS.—

"(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsections (a)(9) and (b)(2) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

"(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B)(ii) and subsection (a)(9) of this section shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.".

(c) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the "Commission") shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this Act; and

(B) a broker or funding portal shall not be eligible to effect or participate in transactions pursuant to that section 4(6).

(2) INCLUSIONS.—Disqualification provisions required by this subsection shall—

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

"(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.".

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

SEC. 304. FUNDING PORTAL REGULATION.

(a) EXEMPTION.—

(1) IN GENERAL.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following:

"(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

"(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

"(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

"(B) is a member of a national securities association registered under section 15A; and

"(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

"(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term 'broker or dealer' includes a funding portal and the term 'registered broker or dealer' includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.''.

(2) RULEMAKING.—The Commission shall issue a rule to carry out section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this subsection, not later than 270 days after the date of enactment of this Act.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as amended by title II of this Act, is amended by adding at the end the following:

``(81) FUNDING PORTAL.—The term 'funding portal' means any person engaged in the business of effecting transactions in securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

``(A) offer investment advice or recommendations;

``(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

``(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

"(D) hold, manage, possess, or otherwise handle investor funds or securities; or

"(E) engage in such other activities as the Commission, by rule, determines appropriate.".

SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following:

"(C) section 4(6);".

(b) CLARIFICATION OF THE PRESERVATION OF STATE ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The amendments made by subsection (a) relate solely to State registration, documentation, and offering requirements, as described under section 18(a) of Securities Act of 1933 (15 U.S.C. 77r(a)), and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, funding portal, or any other person or entity using the exemption from registration provided by section 4(6) of that Act.

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking "with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." and inserting the following: ", in connection with securities or securities transactions

"(A) with respect to—

"(i) fraud or deceit; or

"(ii) unlawful conduct by a broker or dealer; and

"(B) in connection to a transaction described under section 4(6), with respect to—

"(i) fraud or deceit; or

"(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.".

(c) NOTICE FILINGS PERMITTED.—Section 18(c)(2) of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is amended by adding at the end the following:

"(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term 'State' includes the District of Columbia and the territories of the United States.''.

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following:

''(2) FUNDING PORTALS.—

''(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

"(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

"(C) DEFINITION.—For purposes of this paragraph, the term 'State' includes the District of Columbia and the territories of the United States.".

(2) STATE FRAUD AUTHORITY.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by striking "or dealer" and inserting ", dealer, or funding portal".

SEC. 306. REPORTS TO CONGRESS.

(a) IN GENERAL.—The Commission, after consultation with the securities commission (or any agency or office performing like functions) of the States and State attorneys general, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 1 year after the date on which the Commission issues final rules under section 2(c), and every 2 years thereafter through the date that is 7 years after that date of issuance.

(b) REPORTS.—Each report provided pursuant to subsection (a) shall include—

(1) a description of the material risks posed to investors in securities issued pursuant to section 4(6) of the Securities Act of 1933, as added by this title, including risks related to valuations, subsequent corporate actions by the issuer, dilution of ownership interests or rights, and any other risks to investors that the Commission shall determine;

(2) a description of the performance of investments made in securities issued pursuant to that section 4(6), to the extent that such information is available to the Commission;

(3) a description of fraud or misconduct allegations related to issuances made pursuant to that section 4(6), including a description of actions by and complaints to the Commission involving material misstatements, material omissions, or other material

problems associated with offerings in reliance on such exemption, provided that the description shall be limited to concluded enforcement actions or information that is otherwise publicly available;

(4) the approximate number of offerings made pursuant to that section 4(6);

(5) a summary of information relating to purchasers of securities offered pursuant to that section 4(6), including investor income and net worth levels, the number of investments in such offerings made by such investors, and the average sizes of such investments, to the extent that such information is available to the Commission;

(6) a summary of information relating to issuers of securities relying on that section 4(6), including their asset sizes, revenues, numbers of investors, and the amounts raised, to the extent that such information is available to the Commission;

(7) a description of any emerging trends in offerings or issuances made pursuant to that section 4(6);

(8) recommendations regarding enhancements, including additional issuer, broker, dealer, or funding portal requirements, regulatory oversight, or disclosures, that may improve protections for investors

purchasing securities issued pursuant to that section 4(6); and

(9) any other information that the Commission deems necessary or appropriate.

(c) STATE REPORTS.—

(1) IN GENERAL.—If the securities commission (or any agency or office performing like functions) of a State or State attorney general issues a report in writing to the Commission identifying any emerging trends that have undermined investor protections, or other risks pertaining to investor protection, in offerings or issuances relying upon section 4(6) of the Securities Act of 1933, as added by this title, other than in connection with a review conducted by the Commission pursuant to this section, the Commission shall—

(A) conduct a preliminary review of such report; and

(B) respond in writing to such report, not later than 120 days after the date of receipt of such report, with the results of its preliminary review.

(2) COPIES OF REPORT.—The Commission shall provide a copy of any report of the securities commission (or any agency or office performing like

functions) of a State or State attorney general described in paragraph (1) and the response of the Commission to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 90 days after the date on which such response is provided.

(d) DEFINITION OF STATE.—For purposes of this section, the term ''State'' includes and territory of the United States and the District of Columbia.

TITLE IV—EXPORT-IMPORT BANK REAUTHORIZATION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Export-Import Bank Reauthorization Act of 2012''.

SEC. 402. EXTENSION OF AUTHORITY.

Section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking ''2011'' and inserting ''2015''.

SEC. 403. FOREIGN CREDIT INSURANCE ASSOCIATION.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended by striking subparagraph (F).

SEC. 404. TECHNICAL CORRECTION.

Section 2(b)(2)(B)(ii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)(B)(ii)) is amended by striking subclauses (I), (IV), and (VII) and by redesignating subclauses (II), (III), (V), (VI), (VIII), and (IX) as subclauses (I), (II), (III), (IV), (V), and (VI), respectively.

SEC. 405. SUB-SAHARAN AFRICA ADVISORY COMMITTEE.

Section 2(b)(9)(B)(iii) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(9)(B)(iii)) is amended by striking ‘‘2011’’ and inserting ‘‘2015’’.

SEC. 406. AGGREGATE LOAN, GUARANTEE, AND INSURANCE AUTHORITY.

Section 6(a)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635e(a)(2)) is amended—

(1) by striking ‘‘and’’ at the end of subparagraph (D);

(2) by striking ‘‘2011,’’ at the end of subparagraph (E) and inserting ‘‘2011, $100,000,000,000;’’; and

(3) by adding at the end the following:

‘‘(F) during fiscal year 2012, $110,000,000,000;

‘‘(G) during fiscal year 2013, $120,000,000,000;

‘‘(H) during fiscal year 2014, $130,000,000,000; and

"(I) during fiscal year 2015, $140,000,000,000.".

SEC. 407. DUAL USE EXPORTS.

Section 4 of Public Law 109–438 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking "2011" and inserting "2015".

SEC. 408. MODIFICATIONS TO PROVISIONS RELATING TO TEXTILES.

(a) REPRESENTATION OF THE TEXTILE INDUSTRY ON ADVISORY COMMITTEE.—Section 3(d)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(d)(1)(B)) is amended by striking "and State government" and inserting "State government, and the textile industry".

(b) ANNUAL REPORT REGARDING TEXTILE AND APPAREL GOODS.—Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end the following new subsection:

"(g) TEXTILE AND APPAREL SUPPLY CHAIN FINANCING.—The Bank shall include in its annual report to the Congress—

"(1) a description of the efforts of the Bank to provide financing to the United States textile and apparel industry for exports of textile and apparel goods manufactured in the United States that are used as components in global textile and apparel supply chains; and

"(2) the amount of support the Bank provided for the export of textiles and apparel goods for each of the 3 years preceding the report.".

SEC. 409. REVIEW AND REPORT ON DOMESTIC CONTENT POLICY.

(a) IN GENERAL.—The Export-Import Bank of the United States shall conduct a review of its domestic content policy for medium- and long-term transactions. The review shall examine and evaluate the effectiveness of the Bank's policy—

(1) in maintaining and creating jobs in the United States; and

(2) in contributing to a stronger national economy through the export of goods and services.

(b) FACTORS TO CONSIDER.—In conducting the review under subsection (a), the Bank shall consider the following:

(1) Whether the domestic content policy accurately captures the costs of United States production of goods and services, including the direct and indirect costs of manufacturing costs, parts, components, materials and supplies, research, planning, engineering, design, development, production, return

on investment, marketing and other business costs and the effect of such policy on the maintenance and creation of jobs in the United States.

(2) The ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies and the impact that such financing has in enabling companies with operations in the United States to contribute to a stronger United States economy by increasing employment through the export of goods and services.

(3) The effects of the domestic content policy on the manufacturing and service workforce of the United States.

(4) Any recommendations the members of the Bank's Advisory Committee have regarding the Bank's domestic content policy.

(5) The effect that changes to the Bank's domestic content requirements would have in providing companies an incentive to create and maintain operations in the United States and to increase jobs in the United States.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Bank shall submit a report on the results of the review conducted under this section to the Committee on Banking, Housing, and Urban

Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

SEC. 410. STRATEGIC PLAN.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by section 408, is further amended by adding at the end the following new subsection:

"(h) STRATEGIC PLAN FOR THE BANK.—

"(1) IN GENERAL.—The Bank shall include in its annual report to the Congress under subsection (a) of this section, not less than every 4 years, beginning in 2012, a 5-year strategic plan that provides—

"(A) a comprehensive mission statement covering the major functions and operations of the Bank;

"(B) general goals and objectives, including outcome-oriented goals, for the major functions of the Bank;

"(C) a description of the Bank's highest-priority goals and how they can be achieved within the 5-year plan period, according to clearly defined milestones; and

''(D) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations;

''(2) PROGRESS.—The progress the Bank is making in meeting the milestones established by the strategic plan shall be updated in each annual report the Bank submits to the Congress.

''(3) AVAILABILITY OF ANNUAL REPORT.—The Bank shall make its annual report available on its public website.''.

SEC. 411. REVIEW AND REPORT ON BANK'S INFORMATION TECHNOLOGY INFRASTRUCTURE.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall conduct a review of the Bank's information technology infrastructure and report to Congress on—

(1) how the Bank will modernize and continue to maintain the technology infrastructure, taking into consideration commercially available technologies or other cost-savings measures; and

(2) how modernization, maintenance, and other cost-saving measures will result—

(A) in improved service delivery to customers of the Bank;

(B) in generally improving the Bank's performance; and

(C) in mitigating taxpayer exposure to losses.

SEC. 412. STUDY BY THE COMPTROLLER GENERAL ON RISK MANAGEMENT.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report—

(1) on the financial position of the Bank and the risks it poses for American taxpayers; and

(2) that contains recommendations to the Bank on how to properly account for risk and ensure the solvency of the Bank.

(b) REPORT.—The report submitted under subsection (a) shall evaluate—

(1) the effectiveness of the Bank's risk management;

(2) the adequacy of the Bank's loan loss reserves;

(3) the exposure and potential for exposure to losses from each of the products offered by the Bank;

(4) the overall risk of the Bank's portfolio, taking into account—

(A) market risk;

(B) credit risk;

(C) political risk;

(D) industry-concentration risk;

(E) geographic-concentration risk;

(F) obligor-concentration risk; and

(G) foreign-currency risk;

(5) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (4);

(6) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (4), and how the fees are affected by United States participation in international agreements; and

(7) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (4).

(c) RECOMMENDATIONS AND REPORT BY THE BANK.—If the Bank does not adopt the recommendations provided under subsection (a) by the Comptroller General, the Bank shall submit to Congress, not later than 60 days after the Bank receives the report, a report on why the Bank has not adopted the recommendations.

SEC. 413. RENEWABLE ENERGY AND ENERGY EFFICIENCY TECHNOLOGIES.

(a) IN GENERAL.—The Export-Import Bank of the United States should work to increase the export of renewable energy technologies and end-use energy efficiency technologies with a goal of significantly expanding, year-after-year, the Bank's annual aggregate loan, guarantee, and insurance authorizations supporting those technologies.

(b) INCREASED REPORTING REQUIREMENTS.—The Export-Import Bank of the United States shall include in its annual report to the Congress an analysis of any barriers to realizing the Bank's congressional directive to increase the Bank's financing for renewable energy technology and end-use energy efficiency technology and any tools the Bank needs to assist the Bank in overcoming those barriers. The analysis shall include barriers such as—

(1) inadequate staffing;

(2) inadequate financial products;

(3) lack of capital authority; and

(4) limitations imposed by domestic markets.

SEC. 414. TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by inserting after paragraph (3) the following new paragraph:

"(3A) TRANSPARENCY AND ACCOUNTABILITY OF BANK FINANCING.—

"(A) PREAPPROVAL NOTICE.—Not later than 14 days before any meeting of the Board of Directors for final approval of a transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under paragraph (3) with respect to the transaction, the Bank shall post a notice on the Bank's website that includes—

"(i) a description of the transaction proposed to be financed;

''(ii) the identities of the obligor, principal supplier, and guarantor involved in the transaction; and

''(iii) a description of any item with respect to which Bank financing is being sought.

''(B) MANNER OF DISCLOSURE.—Any information required to be disclosed under subparagraph (A) shall be disclosed in a manner that does not disclose any information that is confidential or proprietary business information, that would violate section 1905 of title 18, United States Code (commonly referred to as the 'Trade Secrets Act'), or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.

''(C) POST CONSIDERATION.—Not later than 30 days after the final approval of a transaction the value of which exceeds $100,000,000, the Bank shall post a notice on the Bank's website that includes the information required under subparagraph (A) in a manner that complies with subparagraph (B).''.

SEC. 415. ANNUAL COMPETITIVENESS REPORT.

Section 8A(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635g–1(a)) is amended by adding at the end the following:

"(11) Case processing.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's processing of transactions, timeliness in reviewing transactions and processing applications, adherence to financial standards, clarity and ease of use of applications, and general customer service during the application and approval process for each of the Bank's major programs.

"(12) Operations.—A separate section detailing the Bank's annual survey of exporters, financial institutions, and brokers regarding the Bank's documentation requirements, certifications, and processing of applications for medium- and long-term program transactions compared to the processing of applications by other export credit agencies.

"(13) Process improvement.—A description of the recommendations made by the Bank's Advisory Committee and the advisory committee on Sub-Saharan Africa established under section 2(b)(9)(B) regarding improving the Bank's processing of transactions and customer service. The Bank shall make every reasonable effort to act on the recommendations of the advisory committees and shall include a separate section detailing the actions taken by the Bank to comply with the recommendations.''.

SEC. 416. PROHIBITIONS ON FINANCING FOR CERTAIN PERSONS INVOLVED IN SANCTIONABLE ACTIVITIES WITH RESPECT TO IRAN.

(a) PROHIBITION ON FINANCING FOR PERSONS THAT ENGAGE IN CERTAIN SANCTIONABLE ACTIVITIES.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the Bank in any extension of credit, to a person in connection with the exportation of any good or service unless the person makes the certification described in paragraph (2).

(2) CERTIFICATION DESCRIBED.—The certification described in this paragraph is a certification by a person—

(A) that neither the person nor any other person owned or controlled by the person—

(i) engages in any activity described in section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note) for which the person may be subject to sanctions under that Act;

(ii) exports sensitive technology, as defined in section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515), to Iran; or

(iii) engages in any activity prohibited by part 560 of title 31, Code of Federal Regulations (commonly known as the ''Iranian Transactions Regulations''), unless the activity is disclosed to the Office of Foreign Assets Control of the Department of the Treasury when the activity is discovered; or

(B) if the person or any other person owned or controlled by the person has engaged in an activity described in subparagraph (A), that—

(i) in the case of an activity described in subparagraph (A)(i)—

(I) the President has waived the imposition of sanctions with respect to the person that engaged in that activity pursuant to section 4(c), 6(b)(5), or 9(c) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(II)(aa) the President has invoked the special rule described in section 4(e)(3) of that Act with respect to the person that engaged in that activity; or

(bb)(AA) the person that engaged in that activity determines, based on its best knowledge and belief, that the person meets the criteria described in subparagraph (A) of such section 4(e)(3) and has provided to the President the assurances described in subparagraph (B) of that section; and

(BB) the Secretary of State has issued an advisory opinion to that person that the person meets such criteria and has provided to the President those assurances; or

(III) the President has determined that the criteria have been met for the exception provided for under section 5(a)(3)(C) of the Iran Sanctions Act of 1996 to apply with respect to the person that engaged in that activity; or

(ii) in the case of an activity described in subparagraph (A)(ii), the President has waived, pursuant to section 401(b)(1) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(b)(1)), the application of the prohibition under section 106(a) of that Act (22 U.S.C. 8515(a)) with respect to that person.

(b) PROHIBITION ON FINANCINGS.—Beginning on the date that is 180 days after the date of the enactment of this Act, the Board of Directors of the Export-Import Bank of the United States may not approve any transaction that is subject to approval by the Board with respect to the provision by the Bank of any guarantee, insurance, or extension of credit, or the participation by the

Bank in any extension of credit, in connection with a financing in which a person that is a borrower or controlling sponsor, or a person that is owned or controlled by such borrower or controlling sponsor, is subject to sanctions under section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(c) ADVISORY OPINIONS.—

(1) AUTHORITY.—The Secretary of State is authorized to issue advisory opinions described in subsection (a)(2)(B)(i)(II).

(2) NOTICE TO CONGRESS.—If the Secretary issues an advisory opinion pursuant to paragraph (1), the Secretary shall notify the appropriate congressional committees of the opinion not later than 30 days after issuing the opinion.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES; PERSON.—The terms ''appropriate congressional committees'' and ''person'' have the meanings given those terms in section 14 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note).

(2) CONTROLLING SPONSOR.—The term ''controlling sponsor'' means a person providing controlling direct private equity investment (excluding in-

vestments made through publicly held investment funds, publicly held securities, public offerings, or similar public market vehicles) in connection with a financing.

TITLE V—SMALL BUSINESS INVESTMENT COMPANIES AND LOAN REFINANCING EXTENSION

SEC. 501. MAXIMUM LEVERAGE UNDER TITLE III OF THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) AUTHORIZATION.—For fiscal year 2013, the Administrator of the Small Business Administration may make $4,000,000,000 in guarantees of debentures for programs under title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.).

(b) FAMILY OF FUNDS.—Section 303(b)(2)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 683(b)(2)(B)) is amended by striking "$225,000,000" and inserting "$350,000,000"

SEC. 502. LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.

Section 1122(b) of the Small Business Jobs Act of 2010 (15 U.S.C. 696 note) is amended by striking "2 years" and inserting "3 years".

TITLE VI—PRIVATE COMPANY FLEXIBILITY AND GROWTH

SEC. 601. SHORT TITLE.

This title may be cited as the ‘‘Private Company Flexibility and Growth Act’’.

SEC. 602. THRESHOLD FOR REGISTRATION.

Section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(1)) is amended by striking ‘‘shall—’’ and all that follows through ‘‘register such’’ and inserting ‘‘shall, not later than 120 days after the last day of any fiscal year of the issuer on which the issuer has total assets exceeding $10,000,000 and a class of equity securities (other than an exempted security) held of record by 750 persons, register such’’.

SEC. 603. TREATMENT OF EMPLOYEE SECURITIES.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: ‘‘For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of the term ‘held of record’ shall not include, subject to such limitations as the Commission shall determine, securities that are held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from or otherwise not subject to the registration requirements of section 5 of the Securities Act of 1933.''.

SEC. 604. COMMISSION RULEMAKING.

The Securities and Exchange Commission shall, not later than one year after the date of enactment of this Act—

(1) revise its rules at section 240.12g5-1 of title 17, Code of Federal Regulations to implement the amendments made by sections 602 and 603;

(2) adopt safe harbor provisions that issuers can follow when determining whether holders of their securities received the securities pursuant to an employee compensation plan in a transaction that was exempt from the registration requirements of section 5 of the Securities Act of 1933; and

(3) revise the definition of the term ''held of record'' pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to include beneficial owners of such class of securities.

SEC. 605. COMMISSION STUDY OF ENFORCEMENT AUTHORITY UNDER RULE 12G5–1.

The Securities and Exchange Commission shall examine its authority to enforce its rules in section 240.12g5-1 of title 17, Code of Federal Regulations, to determine if new enforcement tools are needed to enforce the anti-evasion provision contained in subsection (b)(3) of that rule, and shall, not later than 270 days after the date of enactment of this Act, transmit any recommendations to Congress.

TITLE VII—ACCESS TO CAPITAL FOR JOB CREATORS

SEC. 701. SHORT TITLE.

This title may be cited as the ‘‘Access to Capital for Job Creators Act’’.

SEC. 702. MODIFICATION OF EXEMPTION.

(a) MODIFICATION OF RULES.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule or regulation, revise its rules—

(1) to permit the general solicitation of accredited investors, either by adopting a new exemption under the Securities Act of 1933 or by revising its rules issued in section 230.506 of title 17, Code of Federal Regulations, to provide that the prohibition against general solicitation or general advertising contained in section 230.502(c) of that title 17 shall not apply to offers and sales of securities made pursuant to that section 230.506, provided that all purchasers of the securities are accredited investors;

(2) to require the offeror and issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as are determined by the Commission; and

(3) to include the terms and conditions relating to the forms of permissible solicitation and advertising.

(b) OTHER REQUIRED REVISIONS.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise subsection (d)(1) of section 230.144A of title 17, Code of Federal Regulations, to provide that—

(1) securities sold under such revised exemption may not be offered to persons other than qualified institutional buyers; and

(2) that securities are only sold to persons that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers.

(c) RULE OF CONSTRUCTION.—Offers and sales of securities under section 230.506 of title 17, Code of Federal Regulations, as revised by the rules and regulations required by this Act, shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.