



Setting the global standard for investment professionals

14 March 2012

Senator Charles Schumer  
322 Hart Senate Office Building  
Washington DC 20510

**Re: Jumpstart Our Business Startups (JOBS) Act**

Dear Senator Schumer :

CFA Institute<sup>1</sup> is writing to express our concern about some of the provisions included in the Jumpstart Our Business Startups Act (the “Act”) that purports to enable investors to provide capital to new and innovative small and medium-sized enterprises (SMEs). We are particularly concerned that certain provisions of the Act sacrifice important current safeguards for investors in these companies.

We recognize the goal of the Act, as numerous studies have shown that small, innovative companies have been the primary drivers for job creation over the past 30 years. Our members and our organization are interested in ensuring that quality companies receive the capital they need to prosper, grow and create employment.

At the same time, as an organization of professional analysts and investors, our members are keenly aware of the potential negative effects that may result from some of the changes proposed by the Act. In particular, we are concerned that the proposal to permit brokerage firm analysts write and distribute research on companies whose IPO shares their firms are underwriting will lead to the kind of conflicted research that decimated investor confidence in the late 1990s and early 2000s. Consequently, we do not wish to see a return of this type of research.

In a survey conducted this week, our U.S.-based CFA Institute members expressed such concerns with more than 60 percent saying the Act’s provisions would create additional gaps in investor protection and transparency. At the same time, 56

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<sup>1</sup> CFA Institute is a global, not-for-profit professional association of nearly 106,100 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom nearly 95,200 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.



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percent said the Act would make it more difficult for investors to make informed investment decisions, versus 26 percent who said it would have no effect.

We also are concerned that many investors in these companies are small, retail investors who may not be able to distinguish between companies that adhere to normal governance and financial reporting standards and those who are exempt. This concern is relevant because academic research that we commissioned and is due to be published shortly indicates that companies listed on The Pink Sheets have much higher incidences of reporting problems, fraud, and other governance issues compared with companies on exchanges with higher governance standards.

Many critics of Sarbanes-Oxley pointed to the significant increase in initial public offerings in the Alternative Investment Market, or AIM, in London. AIM touts itself as the world's most successful growth market based on the listing of some 3,000 companies from around the world since 1995. However, that claim does not apply to the success of investors who have seen the AIM All-Shares Index fall 10.6 percent since the beginning of 2002, compared with a 64.5 percent increase in the Nasdaq Composite Index over the same period.

CFA Institute believes additional safeguards are needed to balance the capital needs of small companies and the transparency and investor protections needs of investors. These include:

- Annual audits of companies included in an annual report to shareowners.
- At least semi-annual updates on performance and financial condition.
- Public disclosure of all important company news through normal channels.
- Company principals liable for fraudulent representations.
- Separate exchanges for companies benefiting from the Act's exemptions.
- Shares sold through crowdfunding to remain unregistered.

At the same time, we recognize that very few changes can or will be made to the version of H.R. 3606 passed by the House of Representatives last week. Nevertheless, we urgently request that two specific changes be made to reduce the potential for investor harm.

First, provisions that permit the publishing and distribution of sell-side research concurrently with the companies going through IPOs should be removed. We



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believe this change will mitigate the conflicted interests of bankers involved in such transactions and prevent a repeat of the loss of investor confidence of a decade ago.

Second, we urge inclusion of a provision that requires the Securities and Exchange Commission to prominently post warnings on the cover and in the body of offering statements and interim financial statements of companies benefiting from the exemptions of the Act. These warnings should describe to investors what investor protections are exempted for these securities and the risks the exemption creates.

In general, CFA Institute supports efforts to increase the opportunity for small companies to access the capital markets for equity and debt funding. At the same time, we believe this goal should be balanced with the transparency needs of investors. To this end, we believe removal of the sell-side research provision, together with inclusion of the warnings described above will mitigate problems and the potential further loss of investor confidence in the future.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at [kurt.schacht@cfainstitute.org](mailto:kurt.schacht@cfainstitute.org) or 212.756.7728; or James C. Allen, CFA at [james.allen@cfainstitute.org](mailto:james.allen@cfainstitute.org) or 434.951.5558.

Sincerely,

*/s/ Kurt N. Schacht*

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*/s/ James C. Allen*

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