

March 20, 2012

URGENT: Strengthen JOBS Act Investor Protections

**Vote YES on Cloture for Reed-Landrieu-Levin Substitute Amendment
If that Fails, Vote NO on Cloture for the House Bill**

To Members of the U.S. Senate:

The JOBS Act was rushed through the House without any attention to its potentially devastating impact on investors, market transparency, and the integrity of our capital markets. In recent weeks, a growing number of experts have voiced grave concerns about the bill, including: current and former federal and state securities regulators; groups representing seniors, workers, investors, consumers, economists, and Main Street businesses; and a number of leading securities law scholars and IPO experts. The issues they have raised are far too important to the health of our economy for you to allow them to continue to be ignored. This legislation will leave seniors and families retirement savings at greater risk of fraud and speculative losses, and will strip accountability and transparency requirements that make markets work better for investors and businesses alike. We are writing to urge you to seize this last opportunity to address the flaws that create these problems.

To do that, senators who care about investor protection should:

- **Vote YES for cloture on the Reed-Landrieu-Levin substitute amendment**, which takes a comprehensive approach to strengthening the bill's investor protections.
- If the Reed-Landrieu-Levin amendment fails to gain the 60 votes needed to invoke cloture, we urge you to **vote NO on cloture on the House bill** in order to provide an opportunity for problems in the bill to be addressed through the normal amendment process.

Vote YES for Cloture on Reed-Landrieu-Levin's Substitute Amendment

The simplest, most straightforward way to improve the JOBS Act is by voting for cloture on the Reed-Landrieu-Levin amendment. While it does not address every concern we have raised with the legislation, it does offer a vast improvement over the House bill. Among its most important improvements:

- It narrows the scope of the bill's IPO On-Ramp, which as drafted would give all but a handful of the very largest companies going public up to five years to come into compliance with regulations designed to prevent accounting fraud and errors, ensure financial statements of reporting companies are comparable, prevent the

securities analyst excesses that led to the tech stock bubble and bust, and give shareholders a say in executive compensation practices at the companies they own. The amendment achieves this both by narrowing the definition of emerging company and by limiting the bill's exemptions for such companies.

- It takes steps to ensure that crowd-funding does not become a new Internet-fueled mechanism for classic small stock pump-and-dump schemes, by requiring offerings to be made through appropriately regulated Internet portals, requiring financial and other information about companies to be provided to potential investors, and ensuring that investors receive adequate warnings about risks.
- It balances the bill's dramatic hike in the ceiling for offerings sold to the general public under the Regulation A exemption with new requirements for audited financial statements, pre- and post-offering disclosures, and a negligence-based legal remedy. Importantly, it limits companies to using the Regulation A exemption only once every three years, thus limiting the potential for this exemption to be abused by companies seeking to evade the full registration and reporting requirements appropriate to public companies.
- It takes the more cautious approach recommended by experts to raising the shareholder threshold that triggers important registration and periodic reporting requirements, by raising the threshold slightly, eliminating employees from the count, and requiring beneficial owners to be included in the count. That should dramatically reduce the potential for a severe reduction in market transparency posed by the House bill.
- In removing the ban on general solicitation in private offerings, the substitute amendment requires issuers and offerors to take reasonable steps to ensure that the offerings are only sold to accredited investors. While we continue to believe removing the general solicitation ban is dangerous and unwarranted, this approach should at least help to prevent the worst of the abuses that would be unleashed by the House bill.

If Reed-Landrieu-Levin Fails, Vote NO for Cloture on the House Bill

If the Reed-Landrieu-Levin substitute fails to gain the 60 votes needed for cloture, senators who care about investor protection must not simply turn around and approve a bill they know to be deeply and dangerously flawed. By voting against cloture on the House bill, senators can take the opportunity to restore essential investor and market protections individually, through the normal amendment process. Leading experts in this area – including the state and federal regulators directly responsible for enforcing these laws – have said the bill will harm investors, will undermine market transparency, will make it more difficult to enforce the securities laws, and will hurt precisely those small companies it is intended to benefit. When the White House and Senate leaders have said they welcome the opportunity to improve the bill in the Senate, there is simply no

justification for making a vote on cloture for the substitute amendment the only opportunity to do so.

This bill was rushed through the House before its impact could be carefully assessed. But that has changed, and senators have been put on notice: A vote for cloture on the House bill is a vote to permit devastating harm to be unleashed on the investing public and our fragile economy. As *The New York Times* stated in its recent editorial, there is no excuse.

Respectfully submitted,

Consumer Federation of America