THE JOBS ACT IN ACTION PART II: OVERSEEING EFFECTIVE IMPLEMENTATION THAT CAN GROW AMERICAN JOBS

HEARING

BEFORE THE

SUBCOMMITTEE ON TARP, FINANCIAL SERVICES AND BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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THE JOBS ACT IN ACTION PART II: OVERSEEING EFFECTIVE IMPLEMENTATION THAT CAN GROW AMERICAN JOBS

Wednesday, June 28, 2012

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON TARP, FINANCIAL SERVICES, AND
BAILOUTS OF PUBLIC AND PRIVATE PROGRAMS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:35 a.m., in Room 2247, Rayburn House Office Building, Hon. Patrick T. McHenry [chairman of the subcommittee] presiding.

Present: Representatives McHenry, and Quigley.

Staff Present: Ali Ahmad, Majority Deputy Press Secretary; Will L. Boyington, Majority Staff Assistant; Drew Colliatie, Majority Staff Assistant; Brian Danes, Majority Professional Staff Member; Peter Haller, Majority Senior Counsel; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Jeff Wease, Majority Deputy CIO; Jaron Bourke, Minority Director of Administration; Kevin Corbin, Minority Deputy Clerk; Jason Powell, Minority Senior Counsel; Brian Quinn, Minority Counsel; and Davida Walsh, Minority Counsel.

Mr. MCHENRY. The Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs will come to order.

In today's hearing, we are going to hear from the Chairman of the Securities and Exchange Commission, and, as we know from all the headlines in the newspapers today, this is the largest news in the world. But in all seriousness, we are very grateful for Chairman Schapiro's presence here today. She has always been forthcoming and forthright.

As is the tradition of the Oversight and Government Reform Committee, we are going to read the mission statement of this Committee so we can keep that in mind for today's proceedings.

The Oversight Committee mission statement: We exist to secure two fundamental principles: first, Americans have the right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to de-

liver the facts to the American people and bring genuine reform to the Federal bureaucracy.

I will now recognize myself for five minutes for the purposes of an opening statement.

Approximately three years into an economic recovery, America's labor and capital markets continue to face unprecedented challenges. The U.S. unemployment rate has now been above 8 percent for 40 consecutive months and nearly 24 million Americans are either unemployed or underemployed.

Since the beginning of the 112th Congress, the Oversight Committee has remained committed to identifying and modernizing outdated securities regulations that limit job growth and access to capital, which, as we know, is a lifeblood of our economy.

Today's hearing advances our efforts as we welcome the Securities and Exchange Commission Chairman Mary Schapiro to address these major Commission reforms urged by this Commission, such as the SEC's new policy on cost-benefit analysis, which we welcome, and implementation of the JOBS Act, which we want to remain vigorously committed to exercising oversight so we know what is happening with Commission proceedings. As I said at the opening, I certainly appreciate Chairman Schapiro's willingness to engage in this oversight, as well as being forthright on her views on all of this. We know it is a Commission with five members, but the Chairman obviously has significant sway.

During the Subcommittee hearing in April of this year, Chairman Schapiro committed to the policies and principles of a staff guidance document and the use of cost-benefit analysis in the Commission's rulemaking. As I said, we welcome that. I think that is a significant step and we certainly appreciate that.

Chairman Schapiro's dedication to vigorous cost-benefit analysis, particularly after former SEC Inspector General David Kotz issued a critical report on cost-benefit analysis procedures at the Commission, as well as a number of other lawsuits. We appreciate the fact that the Commission acted swiftly and that Chairman Schapiro went even further and published this document and made it public to market participants and those that care about what the SEC does.

We want to talk about that today and we want to give you an opportunity to explain where things stand with the cost-benefit analysis memo and how that is moving forward. But also we want to make sure that the American people know what is happening with the SEC's actions when it comes to the JOBS Act, portions of which were built around the efforts of this Subcommittee and a letter from Chairman Issa to Chairman Schapiro in March of last year. That was a very positive exchange and the type of reforms the American people can be proud of.

In particular, Title III of the JOBS Act I have a personal interest in, as well as millions of small businesses around the Country, and it is based off of legislation I sponsored here in the House which is, in essence, crowdfunding, and it creates a new federal securities exemption to permit equity-based crowdfunding. After I introduced the crowdfunding bill in the House, we went through the Financial Services Committee.

My colleague on this Subcommittee, Carolyn Maloney, who also serves on the Financial Services Committee, raised a number of concerns in our first hearing. We tried to work together to craft an addition to deal with this fraud question and to put in place what we thought was finely crafted legislative language that would protect against fraudsters and, at the same time, give the SEC the power to make those rules and do it in a cost-effective way. It was a bipartisan bill. I was very proud to work with Carolyn Maloney on that legislation, and I think, based on that collaboration, that is a big reason why we were able to get over 400 votes for this bill coming out of the House. I think that is also why the President endorsed this idea not just in his jobs speech, but in the legislation we crafted in the House.

Well, unfortunately, I think a few Senators, with some final changes that they made to the JOBS Act, were misinformed and misunderstood the opportunity the crowdfunding allows for and the nature of crowdfunding and, as such, there was an eleventh hour change to the JOBS Act, in Title III of the JOBS Act that deals with crowdfunding, that causes some concerns. We had a hearing earlier this week, and I am sure, Chairman Schapiro, you and your staff saw some of what came out of that hearing, and there were concerns about the legislative language, but there was broad consensus that the SEC can create rules and do so in a cost-effective way to allow crowdfunding to take place so that small issuances don't have the heavy regulatory burden that the large issuances in our markets bear.

Now, the large issuances certainly have a greater capacity to bear those costs than the smaller issuances. That is just economic reality. So I will have a number of questions about this crowdfunding piece of the JOBS Act. I am very concerned about that implementation and making sure that it is done in a cost-effective way so that small issuances can actually occur and do so in a way that is economically feasible.

I certainly appreciate your willingness to be here. I thank you for your public service very sincerely. You have had a very long career in public service and have done so in a very honorable way, and I certainly appreciate that.

With that, I recognize Mr. Quigley, the Ranking Member.

Mr. QUIGLEY. Thank you, Mr. Chairman. Despite its importance, good morning, I do predict we will have a ratings dip in about 15 minutes.

I also want to thank Chairman Schapiro, who has been a regular witness at this Committee and has been exceptionally generous with her time. It is a great benefit to the Committee to hear your testimony and we especially appreciate it during this very busy time at the SEC.

As you know, Congress passed two major reforms of security laws and regulations over the last two years: in 2010, Congress passed, and the President signed into law, the Dodd-Frank Wall Street Reform and Consumer Protection Act and, of course, earlier this year Congress passed, and the President signed, the JOBS Act, and, again, I appreciate the Chairman of this Committee's role in that legislation, the Subcommittee.

But the Acts are two sides of the same coin and will both be important to job creation and our economic recovery. The SEC has significant responsibilities under each Act to promulgate new rules. This process is necessarily careful and deliberate. Congress has made it clear that rules should be evaluated according to their cost and their benefits. With regard to the JOBS Act in particular, I hope the SEC carefully considers how best to protect investors while achieving our goals in passing that law.

Going forward, I am confident in Chairman Schapiro and the SEC, even as they deal with short time lines. However, I think it is important that Congress keep in mind the SEC's substantial responsibilities when considering its budget and resources.

So I want to thank the Chairman and thank our witness for her testimony.

Mr. MCHENRY. It is the policy of the Oversight and Government Reform Committee to swear in all witnesses, so the Chairman has risen.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

Mr. MCHENRY. Let the record reflect that Chairman Schapiro answered in the affirmative.

We will now recognize the Chairman of the Securities and Exchange Commission, Mary Schapiro.

STATEMENT OF THE HONORABLE MARY SCHAPIRO, CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION

Ms. SCHAPIRO. Thank you, Chairman McHenry, Ranking Member Quigley. I appreciate the opportunity to testify regarding our implementation of the JOBS Act, as well as economic analysis in SEC rulemaking.

In the two months since my last testimony on these issues, we have continued to work hard to implement the new statutory provisions and to ensure that our rulemaking fully incorporates appropriate and rigorous economic analysis.

As you know, the JOBS Act makes significant changes to the federal securities laws. It changes the IPO process for emerging growth companies; requires the Commission to modify the ban on general solicitation in advertising; directs the Commission to implement exemptions for crowdfunding offerings and unregistered public offerings of up to $50 million; and increases the number of holders of record that trigger public reporting. The JOBS Act also requires that the Commission conduct several studies and prepare reports for Congress.

The Commission's commitment to the successful implementation of the JOBS Act is evident from our actions to date. Where provisions of the law were effective upon enactment, we have already provided information and guidance to the public to assure those provisions are put in place in an orderly and effective manner. For example, on the day of enactment we posted on the Commission's website procedures for submitting draft registration statements for confidential review, and that very day we received the first con-

fidential registration statement from an emerging growth company using those procedures.

We set up email boxes on the SEC website through which the public can submit comments on JOBS Act provisions before we even issue any proposed rules. Already we have received substantial constructive feedback from a wide range of interested parties.

And soon after enactment the staff prepared and posted on the Commission's website several sets of frequently asked questions about matters ranging from the law's IPO on-ramp to its new registration and de-registration requirements. The extensive information the staff has made available is easily and clearly accessible on the SEC's website and feedback from companies and their advisors has been extremely positive.

Where provisions of the law required rulemaking, we formed intra-agency rule writing teams which are meeting with interested parties, considering public comments, and preparing recommendations for the Commission.

As I have mentioned previously, some of the rulemakings have unrealistically short deadlines. For example, the 90-day deadline for revising Rule 506 and Rule 144(a) to allow for general solicitation with the statutory requirement for reasonable steps to verify accredited investor status for Rule 506 offerings simply does not provide time for drafting a new rule with a rigorous economic analysis, considering public input, and reviewing a proposed final rule at the Commission level. We have, however, made significant progress on a recommendation and economic analysis, and hope that the Commission will be in a position to act in the near future.

With respect to the crowdfunding provisions, the staff is already crafting the many rules required by the Act, has published frequently asked questions, and is evaluating the more than 80 public comments already received. We are doing our best to meet the ambitious JOBS Act deadline of 270 days to complete the required rulemaking.

As I mentioned in earlier testimony, economic analysis is an integral part of all rulemakings, including JOBS Act rulemaking. The staff guidance for March is being followed for both rule recommendations already in process and those at the earliest stages of development. Since the guidance was implemented, the Commission has approved three final rules. Each of these rules included economic analyses consistent with the guidance.

In addition to implementing the guidance, we are strengthening our rule writing teams by hiring additional economists. In the near future, 16 Ph.D. economists will be joining the Commission to assist in rule writing, and we have requested an additional 20 economist positions as part of our 2013 budget request. And, of course, this supplements the already 23 economists we have who are devoted exclusively to rule writing. Our ability, of course, to fill future positions will depend on the resources provided by Congress.

In conclusion, we are making significant progress in implementing the JOBS Act and are providing significant guidance to the public to ensure its provisions are workable and comprehensible. Further, the economic analysis guidance is informing our rulemaking and will continue to do so going forward.

And I would, of course, be pleased to answer any questions you have.

[Prepared statement of Ms. Schapiro follows:]

Testimony Concerning the "JOBS Act in Action Part II: Overseeing Effective Implementation of the JOBS Act at the SEC"
before the
Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs
Oversight and Government Reform Committee
U.S. House of Representatives

by
Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
June 28, 2012

Chairman McHenry, Ranking Member Quigley, and Members of the Subcommittee:

I appreciate the opportunity to testify regarding the implementation of the Jumpstart Our Business Startups Act (JOBS Act), as well as the implementation of our staff's guidance on economic analysis in rulemaking.[1] In the two months since my testimony on these issues, we have continued to work hard to implement the new statutory provisions and to ensure that our rulemaking fully incorporates appropriate and rigorous economic analysis.

JOBS Act Implementation

The JOBS Act, enacted on April 5, 2012, makes significant changes to the federal securities laws, including:

- changing the initial public offering process for a new category of issuer, called an "emerging growth company," including, among other things, permitting these companies to submit draft registration statements for review on a confidential basis, providing exemptions for such companies from various disclosure and other requirements for up to five years following their initial public offerings, and relaxing certain restrictions on communications by issuers and their underwriters;

[1] The views expressed in this testimony are those of the Chairman of the Securities and Exchange Commission and do not necessarily represent the views of the Commission.

- requiring the Commission to modify the prohibition against general solicitation and general advertising in Rule 506 of Regulation D and Rule 144A under the Securities Act of 1933 (Securities Act);
- requiring the Commission to implement exemptions under the Securities Act for "crowdfunding" offerings and unregistered public offerings of up to $50 million; and
- increasing the number of holders of record that trigger public reporting under the Securities Exchange Act of 1934 (Exchange Act), and increasing the number of holders that permits deregistration and suspension of reporting under the Exchange Act for banks and bank holding companies.

The JOBS Act also requires that the Commission conduct several studies and prepare reports to Congress. In addition, the JOBS Act mandates that the Commission provide online information and conduct outreach to small and medium-sized businesses and businesses owned by women, veterans and minorities, about the changes made by the new statute.

As you know, certain of the JOBS Act's provisions became effective immediately upon enactment, while others require extensive Commission rulemaking, in some cases within very short timeframes. These rulemakings are in addition to Commission rulemaking activity to address important market structure issues and weaknesses identified in the aftermath of the events of May 6, 2010, as well as to implement the many statutory mandates with regard to financial reform.

The Commission staff has moved aggressively to implement the provisions of the JOBS Act. Prior to enactment, Commission staff began analyzing the draft legislation in order to be in a position to provide essential information to companies and their advisers about those provisions of the law that became effective immediately. For example, on the day of enactment, staff in the Division of Corporation Finance posted procedures on the Commission's website

explaining how emerging growth companies could submit draft registration statements for confidential non-public review as permitted by the JOBS Act. The staff also provided a telephone number that companies and their advisers could use to contact staff with JOBS Act related questions. In fact, on the same day the President signed the JOBS Act into law, the staff received a confidentially submitted registration statement from an emerging growth company that used the new procedures the staff had posted earlier.

Soon after enactment, the staff prepared and posted on the Commission's website frequently asked questions that provide guidance to issuers and their advisers about matters related to the law's IPO "on-ramp," as well as changes to the requirements for Section 12(g) registration and deregistration and the crowdfunding provisions of the JOBS Act. The feedback provided to the staff from companies and their advisers on the JOBS Act guidance has been uniformly positive.

With respect to the rules required under the JOBS Act, the staff has formed several rule writing teams consisting of staff from across the agency, including economists from the Division of Risk, Strategy, and Financial Innovation (RSFI). As discussed below, these teams are working on rulemaking recommendations, including the associated economic analyses, for the Commission to implement those provisions of the JOBS Act that require rulemaking.

To aid the rulemaking process and increase the opportunity for public comment, we have made available a series of e-mail boxes on the SEC website through which interested parties can proactively submit comments on the various portions of the JOBS Act prior to the issuance of

any proposed rules. Since the e-mail boxes were established in April, a wide range of interested parties has been providing helpful feedback and insights on each title of the JOBS Act. For example, the request for comment on the crowdfunding provisions has generated over 80 submissions. In addition, Commission staff has been meeting with a broad cross-section of interested members of the public about implementation of the JOBS Act. In order for the process to be as transparent as possible, we post on our website the names of individuals participating in these meetings, along with any agendas and written materials distributed by them at such meetings.

Below is a more detailed description of the efforts taken to date to implement the various sections of the JOBS Act.

Title I

Title I creates a new category of issuer called an "emerging growth company," which is defined as a company with total annual gross revenues of less than $1 billion during its most recently completed fiscal year. Only companies whose first registered sale of common equity securities occurred after December 8, 2011 may be considered emerging growth companies. A company retains its status as an emerging growth company until the earliest of the following:

- the last day of its fiscal year during which its total annual gross revenues are $1 billion or more;
- the date it is deemed to be a large accelerated filer under the Commission's rules;
- the date on which it has issued more than $1 billion in non-convertible debt in the previous three years; or
- the last day of the fiscal year following the fifth anniversary of the first registered sale of common equity securities of the issuer.

As referenced above, emerging growth companies may confidentially submit draft registration statements to the Commission prior to the company's initial public offering date. All such submissions and amendments must be filed publicly no later than 21 days before the date the issuer conducts a road show, as that term is defined in Rule 433.

Under the JOBS Act, emerging growth companies can take advantage of scaled disclosure and other requirements, including with respect to the Commission's financial statement and selected financial data requirements and certain executive compensation disclosures. Emerging growth companies are exempted from the audit of internal controls required under Section 404(b) of the Sarbanes-Oxley Act of 2002, and from specific potential future auditing standards. In addition, under the JOBS Act, emerging growth companies cannot be required to comply with any new or revised financial accounting standard until the date that a private company would be required to comply.

Title I also makes important changes with respect to communications around securities offerings, the provision of research, and securities analyst communications. The law provides a Securities Act exemption for emerging growth companies and persons authorized to act on their behalf to communicate with potential investors that are qualified institutional buyers or institutional accredited investors prior to or following the filing of a registration statement to "test the waters" for an offering. Title I also provides an exemption under the Securities Act for the issuance of research reports before, during, and following initial public offerings and other

offerings for emerging growth companies by underwriters engaged in such offerings. It also prohibits the Commission and national securities associations from:

- restricting which associated persons of a broker-dealer may arrange for communications between a securities analyst and a potential investor;
- restricting a securities analyst from participating in communications with an emerging growth company's management team that is also attended by any other associated person of a broker-dealer whose functional role is not that of a securities analyst; and
- restricting broker-dealers from publishing or distributing research reports or making public appearances with respect to the securities of an emerging growth company within a specified time period after the emerging growth company's initial public offering or prior to the expiration of a lock-up agreement.

Title I's provisions are effective without Commission rulemaking. As noted above, immediately following enactment of the JOBS Act, the staff developed and published procedures for emerging growth companies to submit draft registration statements for confidential non-public review. The staff continued to work to simplify that process, and in early May 2012 announced the implementation of a secure e-mail system that provides for the electronic transmission and receipt of confidential submissions. The staff also has sought to provide guidance on the implementation and application of Title I in light of the Commission's existing rules, regulations and procedures through the issuance of frequently asked questions. The staff is continuing to work with companies and practitioners concerning the application of Title I, and plans to issue additional guidance in the near future.

Title I also requires the Commission to submit two reports to Congress. Section 106(b) requires that the Commission, within 90 days of enactment of the JOBS Act, conduct a study and report to Congress on the transition to trading and quoting securities in one penny increments –

also known as decimalization – and the impact decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. If the Commission determines 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 enactment, designate a minimum increment for emerging growth companies that is greater than $0.01 but less than $0.10. Staff from RSFI and the Division of Trading and Markets are leading a cross-agency team in structuring and conducting the required study.[2] We expect to release the study shortly.

Section 108 of the JOBS Act requires the Commission to conduct a review of Regulation S-K to comprehensively analyze the registration requirements of such regulation and determine how they may be updated to modernize and simplify the registration process and reduce the costs and other burdens for emerging growth companies. Within 180 days of enactment of the JOBS Act, the Commission must transmit a report to Congress on this review, including specific recommendations. The Commission's staff currently is in the process of reviewing Regulation S-K's requirements and preparing its recommendations.

Title II

Title II requires the Commission to revise the Rule 506 safe harbor from registration to allow general solicitation and general advertising for offers and sales made under Rule 506, provided that all securities purchasers are accredited investors. The rules the Commission adopts are to require issuers to take "reasonable steps to verify that purchasers of the securities are

[2] On June 8, 2012, the SEC Advisory Committee on Small and Emerging Companies held a discussion of market structure issues and their impact on initial public offerings which provided additional useful information that informed the study.

accredited investors, using such methods as determined by the Commission." The JOBS Act also states that Rule 506 will continue to be treated as a regulation issued under Section 4(2) of the Securities Act, and that offers and sales under Rule 506 as revised will not be deemed public offers under the Federal securities laws as a result of general solicitation or advertising. The Commission also is required to revise Rule 144A to provide that securities sold under the revised rule may be offered to persons other than qualified institutional buyers, including by means of general solicitation or advertising, provided that the securities are sold only to persons reasonably believed to be qualified institutional buyers.

The rulemakings to revise Rule 506 and Rule 144A are both required to be completed within 90 days of enactment of the JOBS Act. As I stated to Congress prior to the passage of the Act, time limits imposed by the JOBS Act are not achievable. Here, the 90 day deadline does not provide a realistic timeframe for the drafting of the new rule, the preparation of an accompanying economic analysis, the proper review by the Commission, and an opportunity for public input. Although we will not meet this deadline, the staff has made significant progress on a recommendation and economic analysis, and it is my belief that the Commission will be in a position to act on a staff proposal in the very near future.

In addition, Title II amends Section 4 of the Securities Act to provide a narrow exemption from the requirement to register with the SEC as a broker-dealer in connection with certain limited activities related to Regulation D offerings.

Title III

Title III provides a new exemption from Section 5 of the Securities Act for crowdfunding offerings. Crowdfunding offerings are securities offerings that meet certain specific conditions, including with regard to the maximum amount that may be raised by an issuer and the maximum amount that an individual investor may invest, including any amounts sold in reliance on the crowdfunding exemption during the prior 12 months. These conditions also include a requirement that a crowdfunding offering be conducted through a crowdfunding intermediary that is either a registered broker or a registered "funding portal," and that both the intermediary and the issuer comply with certain requirements, including with regard to disclosure to investors.

The JOBS Act also includes other restrictions that issuers and crowdfunding intermediaries must comply with, including with regard to advertisement of the offering and compensation of persons who promote the offering through communications on an intermediary's website. The Commission also is required to establish disqualification provisions for certain bad actors, and exempt crowdfunding securities from counting toward the thresholds in Section 12(g) of the Exchange Act.

In May, the staff published responses to frequently asked questions related to the crowdfunding exemption to provide guidance on the implementation of the Title III provisions. In April, we issued a notice reminding market participants that this title was not yet effective. The JOBS Act requires the Commission to adopt rules within 270 days of enactment to implement the new crowdfunding exemption. Staff in the Divisions of Corporation Finance and

Trading and Markets are working closely together, along with the economists in RSFI, to develop recommendations for the Commission.

Title IV

Title IV requires Commission rulemaking to create a new exemption from Securities Act registration, similar to existing Regulation A, which would allow certain "small issue" offerings of up to $50 million in a 12-month period. The JOBS Act specifies that the exemption include certain terms and conditions, including, among others, that the securities may be offered and sold publicly, the securities sold under the exemption will not be restricted securities, and issuers of the securities will be required to file audited financial statements annually with the Commission. The Commission may add other terms, conditions, and requirements it determines necessary in the public interest and for the protection of investors, which may include electronic filing of the offering documents, periodic disclosures by the issuer, or disqualification provisions.
The staff is working on proposed rules to recommend to the Commission. The JOBS Act also requires the Commission to review the offering limit under the new exemption not later than two years after enactment of the JOBS Act, and every two years thereafter.

Titles V and VI

Titles V and VI of the JOBS Act both amend Section 12(g) of the Exchange Act, which sets forth certain registration requirements for classes of securities. Prior to enactment of the JOBS Act, Section 12(g) required a company to register its securities with the Commission within 120 days after the last day of its fiscal year, if, at the end of the fiscal year, the securities

were held of record by 500 or more persons and the company had total assets exceeding $10 million.

Title V amends Section 12(g) to raise the threshold for registration from 500 holders of record to either 2,000 holders of record or 500 holders of record who are not accredited investors. Title V also excludes from the number of holders of record shares held by persons who received them pursuant to employee compensation plans, and requires Commission rulemaking to provide a safe harbor for the determination of whether such a holder is to be excluded.

Title VI applies only to banks and bank holding companies. It amends Section 12(g) to raise the registration threshold from 500 holders of record to 2,000 holders of record and also changes the threshold for exiting the reporting system from 300 holders of record to 1,200 holders of record. Title VI requires the Commission to write rules to implement this provision within one year of enactment of the JOBS Act.

Titles V and VI were effective immediately upon the enactment of the JOBS Act. In the days following enactment, the staff prepared and posted practical guidance addressing anticipated questions related to the JOBS Act changes to the requirements for Section 12(g) registration and deregistration. To date, approximately 50 bank holding companies have deregistered. Staff is in the process of preparing rule proposals for the Commission's consideration addressing the new requirements of Titles V and VI.

Title V also requires the Commission to examine its authority to enforce the anti-evasion provisions of Rule 12g5-1 and submit recommendations to Congress within 120 days following enactment of the JOBS Act. Staff from the Division of Corporation Finance is working with staff from RSFI and the Divisions of Enforcement and Trading and Markets to review the anti-evasion provision in Rule 12g5-1(b)(3) and the Commission's related enforcement authority and tools, as required by Section 504 of the JOBS Act.

Title VII

Effective upon enactment, Title VII requires the Commission to provide online information and conduct outreach to inform small and medium sized businesses, as well as businesses owned by women, veterans and minorities, of the changes made by the JOBS Act. Led by the Commission's Office of Minority and Women Inclusion (OMWI), the staff is developing and implementing an outreach plan tailored to these business communities. This will include:

- expanding the content of OMWI's existing outreach efforts, such as our Vendor Outreach Days and one-on-one business matchmaking sessions, to provide information about the JOBS Act and how it benefits the business communities listed in Section 701; and
- implementing an agency-wide effort to provide user-friendly, tailored information about the JOBS Act on the sec.gov website, in various print media outlets, and in hard copy materials distributed at conferences and outreach events.

OMWI also will collaborate with other divisions and offices within the Commission to create a long-term strategy for disseminating JOBS Act information and guidance to the business communities listed in Section 701. Components of this long-term strategy may include partnering with the Small Business Administration and Department of Veterans Affairs,

providing featured JOBS Act presentations and panel discussions at conferences and community events, and hosting JOBS Act roundtables at our headquarters and regional office locations.

As described above, the Commission has made significant progress on implementation of the JOBS Act. By prioritizing the provisions of the Act that became effective upon enactment and providing user-friendly guidance, the staff has enabled interested parties to begin using many provisions of the Act to achieve their business objectives. At the same time, the rule writing teams are working to provide the Commission with recommendations and economic analysis for the remaining provisions as soon as practicable.

Economic Analysis

When I appeared before this Subcommittee in April, I was pleased to report on several improvements in the Commission's capabilities and processes for conducting economic analysis in rulemaking, most notably new staff guidance (Guidance) regarding economic analysis. As I previously noted, high-quality economic analysis is an essential part of SEC rulemaking, as it helps ensure that decisions to propose and adopt rules are informed by the best available information about a rule's likely economic consequences. The Guidance is available on the Commission's website for public review.[3] Although the Guidance is in effect and being followed by the rule writing teams as they develop rule recommendations, including those to implement the JOBS Act, we continue to work to improve the Guidance and have solicited input from all Commissioners with a goal of developing a version of the Guidance that can be approved by the full Commission.

[3] A link to the Guidance can be found at http://www.sec.gov/divisions/riskfin.shtml.

In my prior testimony, I discussed and provided a detailed overview of the economic analysis Guidance developed by RSFI and Office of the General Counsel (OGC). The Guidance was distributed to the leadership of the Commission's rule writing Divisions and Offices in mid-March, and I have explicitly directed the rule writing Divisions and Offices that they are to follow this Guidance. Under the Guidance, staff from RSFI and OGC are extensively involved in the rule writing process: they are involved from the earliest stages of any rulemaking, provide input on drafts and/or assist in drafting before the drafts are circulated to the Commission, and are in frequent communication with the rule writing Divisions. Additionally, as the Guidance indicates, RSFI's concurrence in the economic analysis of both a proposing and an adopting release should be obtained before a draft is formally circulated to the Commission. Such concurrence must come from the Director of RSFI/Chief Economist and be communicated to senior staff in the Division or Office responsible for the rule. This concurrence will ensure that the Guidance has been reflected in the rule release.

The feedback I have received from our Chief Economist and OGC is that the Guidance is in fact being followed for both the rule recommendations already in process as well as those at the earliest stages of development. Moreover, I am told that the Guidance is improving both the rule writing process and the substance of the economic analysis. RSFI economists are more deeply involved in the development of rule recommendations and in conveying and explaining the economic consequences of particular choices. I expect that the Commission's forthcoming rules will reflect this increased collaboration and attention to economic analysis.

Since the Guidance was implemented, the Commission has published two final rules.[4] Although work was underway for the two rules prior to the implementation of the Guidance, the economic analyses in connection with those rules were reviewed prior to adoption and determined to be consistent with the Guidance. In addition, I expect another rule will be published in the very near future that follows the Guidance.

The Guidance has provided clear benefits to our economic analyses. For example, in late April, the Commission unanimously adopted a rule that defined certain terms applicable to the over-the-counter swaps market. Data analysis performed by RSFI economists was instrumental in assisting the Commission in its decisions. The final release illustrates the significant effect transparent and robust economic analysis can have on the Commission's policy choices.

In addition to the work implementing the Guidance, we are strengthening our rule writing teams, in particular by continuing to hire economists in RSFI to work on rulemakings. In the near future, 16 new economists will be joining RSFI to assist in rule writing, and we have requested an additional 20 economist positions as part of the fiscal year 2013 budget request. The potential need for additional economists beyond this will be analyzed on a going forward basis, and our ability to hire economists to fill these positions in the future will depend on the resources provided by Congress. This ongoing commitment to hiring and ensuring that RSFI is

[4] *See* Release No. 34-66868, *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant."* (April 27, 2012), http://www.sec.gov/rules/final/2012/34-66868.pdf; Release No. 33-9330, *Listing Standards for Compensation Committees* (June 20, 2012), http://www.sec.gov/rules/final/2012/33-9330.pdf. This number does not include several technical or ministerial rules that the Commission has adopted during this period.

adequately resourced will enable the Division to fulfill its mandates, including developing high quality economic analyses of Commission rules.

The implementation of the Guidance and the strengthening of our rule writing teams are having a significant, positive impact on our rule writing process and on our economic analysis. In addition, because it is the Commission itself that is responsible for reviewing and ultimately deciding whether to approve each rule proposal prepared by the rule writing staff, each Commissioner has the opportunity to make his or her own assessment of whether the staff has complied with the Guidance and to raise with the staff any concerns about its application.

Conclusion

In conclusion, our implementation of the JOBS Act is ongoing. SEC staff has provided direction and guidance to the public to ensure that the provisions of the Act that were effective on enactment are workable and comprehensible. SEC staff also is moving forward on the various rulemakings required by the Act. The economic analysis Guidance is being followed and is informing rulemaking activity under the JOBS Act in the same manner as our other rulemaking activity.

I would be pleased to answer any questions you may have.

Mr. MCHENRY. Thank you, Chairman Schapiro. Thank you for your testimony.

Members may have seven days to submit opening statements for the record.

I will now recognize myself for five minutes.

In your written statement, Chairman Schapiro, you said something very encouraging: On the same day the President signed the JOBS Act into law, the staff received a confidentially submitted registration statement from an emerging growth company that used the new procedures the staff had posted earlier. That was fast action, right? That is positive.

And by its nature you have entrepreneurs who are waiting; they want to act; they want to use this. You outline in your opening statement that one of the things you have done on crowdfunding is to inform market participants that it is not yet available; the rules have not yet been crafted. Clearly, entrepreneurs want to participate, want to be active.

So, to that end, there is another provision within the JOBS Act, which is the lifting of the general solicitation ban. As you outline in your statement, you believe that the July 4th deadline will not be met. Is that correct?

Ms. SCHAPIRO. That is correct, Mr. Chairman.

Mr. MCHENRY. When do you foresee this happening?

Ms. SCHAPIRO. I expect that in the next two days we will actually publically publish the timeline for the Commission consideration of lifting the general solicitation ban, and I expect that it will be done this summer.

I think it is important to note that if it were as simple as just eliminating the general solicitation ban, and I read the transcript from the prior hearing, so I understand that there was some discussion about this, that would be a relatively straightforward thing to do. But, of course, the statute actually requires that we require issuers to take steps, reasonable steps to verify that purchasers of the securities are in fact accredited investors, using whatever means the Commission determines appropriate.

Taking steps to verify means there are probably lots of alternatives for doing that. Under our cost-benefit analysis guidance, we have to actually look at the different alternatives and weigh the costs and benefits of different alternatives for verification of accredited investor status. So we want to create something that is workable and usable. That is absolutely our goal. But it is a bit more challenging a rulemaking than it might seem on the surface because of that extra statutory requirement.

With that said, the staff is significantly along in both the economic analysis and the rule drafting, and will come before the Commission this summer.

Mr. MCHENRY. Okay. Well, in context of this, entrepreneurs are waiting, and we would urge you to move forward with that.

Now, there is also a deadline of December 31st for the Section III of the JOBS Act, which is the crowdfunding portion. Do you foresee meeting this deadline?

Ms. SCHAPIRO. I don't foresee not meeting the deadline. The staff is working very hard on it. There are lots of rules, as you know. I know that you weren't happy about all of the rules that were

added, the requirements, but we are working already on the issuer disclosure requirements, which are fairly straightforward, but also the intermediary and funding portal requirements of the statutory provisions. So I think it is challenging, but I don't have a reason to tell you at this point that we won't make that deadline.

Mr. MCHENRY. When will you issue a timeline for this rulemaking?

Ms. SCHAPIRO. We haven't formally issued a timeline. We don't normally formally issue specific timelines. We did, under Dodd-Frank, give general ranges of three-month periods during which we hoped to get certain rules across the finish line or proposed. Because this one has a pretty short time frame, we need to get proposals to the Commission in the next several months so we can have a comment period and then take it to final.

I will say we have benefitted enormously in this one in particular from the advanced comment period that we had. I believe we have gotten close to 80, if I am remembering the correct rule, comment letters about how we ought to implement these rules. We have had multiple meetings with funding portals, with associations that represent the crowdfunding industry, and with individuals. So that is really helping to short-circuit some of the process in the sense that we are building up a base of knowledge very quickly at the SEC for handling this.

Mr. MCHENRY. So due to the potential costs associated with the layers of lawyers and accountants and financial intermediaries, and on and on and on, on crowdfunding, we had testimony earlier this week that one expert believes that, because of that layering on of the Senate provisions inserted on crowdfunding, that if the rules are not implemented correctly at the SEC, the crowdfunding could be "stillborn." That is a pretty strong statement.

But after conducting a rigorous cost-benefit analysis on crowdfunding rules under the JOBS Act, if you believe that these costs would render impracticable some or all of the uses of crowdfunding, basically price out small issuances, will you commit to telling this Committee immediately that that is the case?

Ms. SCHAPIRO. I absolutely would. But our goal is to create a workable exemption. This exemption exists under statute. Our approach is going to be to follow the language of the statute, but to create exemptions that actually can make crowdfunding work. And my personal belief is that the requirement to using intermediary can be enormously helpful here because it can routinize a lot of the things that people might be concerned that they need to have lawyers to do for them or accountants to do for them.

So I think it will be both an investor confidence issue to use an intermediary, will give people some confidence that there is a regulated entity in this process somewhere; but I think it will also make it much easier for entrepreneurs to navigate the exemption and its requirements.

So we will be very sensitive to these issues about cost and I will, of course, come back to Congress if we think there are things that are statutorily required that make it unworkable, but I am optimistic that we can write the rules that satisfy both the needs of small businesses to be able to use this effectively and efficiently, but also have basic investor protections in place.

Mr. MCHENRY. Even small issuances?
Ms. SCHAPIRO. Yes, even small issuances.
Mr. MCHENRY. Okay. Thank you.
I will now recognize Mr. Quigley.
Mr. QUIGLEY. Thank you, Mr. Chairman.

To the other side of that coin, Ms. Schapiro, I supported the JOBS Act and the crowdfunding provisions in it, but all the questions I asked are still what we are concerned about today, because many of the investors in crowdfunding are going to be comparatively unsophisticated, and there is information asymmetry or disparity there. How do you take that into consideration on the SEC side, because they are perhaps particularly vulnerable for the lack of sophistication or expertise of practice and investing in this sort of project?

Ms. SCHAPIRO. Congressman, I think it is a very fair question and I want to say that the version of the bill as passed did build in a number of investor protections, including disclosure requirements for issuers, the use of intermediaries who are subject to oversight of the SEC or a self-regulatory organization.

But also there are requirements for intermediaries to take measures to reduce the risks of fraud in these transactions, so those requirements will obviously be built out in the rules, but they include background checks, for example, on people who are associated with the issuer. And then I can tell you that we will monitor very closely how the exemptions are used, and if problems arise we will address those very quickly.

It is our goal, obviously, to protect investors and I think everybody clearly shares the goal of having this be a useful exemption, and if it is fraught with fraud, it won't be useful for anybody. So we understand that balance. We will work very hard to get it right, but I do think the statutory provisions build in some basic investor protections that will be very helpful.

Mr. QUIGLEY. Thank you. You are have often asked about cost-benefit analysis. It is hard to quantify everything, put everything we might need into the issue of investor confidence, but earlier this week we had a hearing on this matter and Professor John Coffee of Columbia University Law School testified, he said the greatest enemy of job creation today is not over-regulation, but the loss of investor confidence. In particular, "American investors have lost confidence in the initial public offerings process and the integrity of the mechanisms for capital raising." I want to get his quote right.

As this process went on, I think it was March 13th, you wrote a letter to Senate Banking Committee Chairman Tim Johnson, and the Ranking Member, Senator Shelby. You said something similar: We must balance our responsibility to facilitate capital formation with our obligation to protect investors and our markets. I am concerned that we lack a clear understanding of the impact that the legislation's exemptions would have on investor protection.

If your concerns and the point that Professor Coffee made are as accurate as they seem, how does the SEC take into consideration in this cost-benefit analysis, how do you put a dollar figure on lost investor confidence?

Ms. SCHAPIRO. It is notoriously hard to quantify the benefits of any regulation. How do you quantify the benefits of preventing a fraud? How do you quantify the benefits of somebody who is burned——

Mr. QUIGLEY. Because it is not just the dollars they lost, which some people——

Ms. SCHAPIRO. No. It is their unwillingness to ever engage with the markets again——

Mr. QUIGLEY. And people that are out there are just not putting their dollars in.

Ms. SCHAPIRO. Exactly. It is a concern about the integrity of the marketplace, whether they are placed at a competitive disadvantage vis-a-vis institutions; whether they are getting accurate and honest information from issuers; whether the market structure itself is tilted against the individual investor and in favor of the institutional investor. And those are all things we worry about all the time because, at the end of the day, investor confidence is the oxygen that the markets survive on, and if we lose it, it is extraordinarily hard to regain it.

And if you look at one very specific example I like to use, after the flash crash of May 6, when the markets plummeted very quickly and companies traded $40 a share to $0.02 a share, we saw net outflows from equity mutual funds every single week for about eight or nine months because people just said this is not a marketplace for me; I don't have confidence in its integrity. That was a market structure issue, not an information disclosure issue, but, nonetheless, we know market confidence matters enormously, and investor confidence.

It is hard to quantify and the GAO, in a recent study, recognized how difficult it is to quantify the benefits of investor confidence. Where we can't quantify it, we will talk about it qualitatively and we will talk about why it matters, and we will talk about the larger economic crisis and what that has done to investor confidence and use that as part of our analysis.

Mr. QUIGLEY. Thank you.

I yield back.

Mr. MCHENRY. I recognize myself for a second round of questions.

My colleague referenced your letter of March 13th to Chairman Tim Johnson and the Ranking Member of the Senate Banking, Housing and Urban Affairs Committee, Richard Shelby. You outlined a number of concerns you have with the legislation, the JOBS Act that we passed, and in particular you have a number of concerns with the legislation that I wrote that was inserted into the JOBS Act on crowdfunding. Was this letter in response to a letter sent to you?

Ms. SCHAPIRO. No, Mr. Chairman, it was not.

Mr. MCHENRY. So it was unsolicited?

Ms. SCHAPIRO. It was unsolicited. These were my views that I thought were important for me personally to express to the Senate Banking Committee.

Mr. MCHENRY. Do you have my address? And I only say this in a joking fashion because I have seen you a number of times. You have been before this Committee a number of times. I appreciate

you being forthright with me. And as the Chairman of the Securities and Exchange Commission, or if you were just a citizen, I would respond to your letter. I would read your letter. In fact, I read your letter at the time, and had you raised these objections to me or—I don't want to speak for my colleague from New York, Carolyn Maloney, but we would have addressed these provisions in the bill that we passed out of the House with over 400 votes. I think the President would have liked to have heard that before he issued a statement of administrative policy on my crowdfunding bill. And, finally, this is right before the Senate takes this issue up and you outline these concerns.

Chairman Schapiro, I would welcome your input to my legislation in an effort for me to fix it, and I would welcome your engagement in this process, but when I see this, I view that as being sideswiped by a regulatory body at the eleventh hour. This caused me great concern, and I don't think that was the most responsible action for you to take. The more responsible thing I would encourage you to do is to communicate so we can fix it coming out of the House and address these concerns.

I amended half of my bill, over half of my bill because of a concern that a colleague of mine across the aisle had. If the Chairman of the Securities and Exchange Commission came to me with concerns about legislation I was writing that the Securities and Exchange Commission was going to write rules based upon, I would absolutely, absolutely take that into account.

So I just want to express to you my deep regret that you didn't address this earlier or to me. And to send an unsolicited letter to the Senate at the eleventh hour is, I don't think, the best way to go. If you were responding to some letter, I think that would maybe be more valid, but in the future I would like you to address that, especially if I have anything to do with the legislation. I would certainly welcome it.

Ms. SCHAPIRO. Mr. Chairman, I appreciate that and I will absolutely make sure that, with future bills, that I talk to you or to the sponsors of those bills in advance. I did testify about some concerns we had with respect to a number of provisions. I don't know whether they were directly incorporated in legislation at the time, but with respect to the capital raising process and the small business capital raising process in particular, but I hear your point.

Mr. MCHENRY. Thank you.

Now, earlier this week, Mr. Cartwright testified before the Subcommittee and he said, "After all, the SEC had sufficient authority to do almost everything the JOBS Act did without any legislation at all. Unfortunately, the JOBS Act was necessary precisely because the SEC did not believe in the need for what the JOBS Act seeks to accomplish."

The reason why I say this in context with your letter earlier is you have testified since the JOBS Act became law that you would abide by the law. But your letter to Tim Johnson and Richard Shelby exhibits that you didn't like the law as it was written. So do you believe that the SEC had the authority to make these changes that are within the JOBS Act?

Ms. SCHAPIRO. Mr. Chairman, my letter raised some specific issues and concerns I had that I thought should be addressed in

final legislation that I believe were important for investor protection and, frankly, important for successful capital raising so that we could avoid the potential for fraud or misconduct. But I have also, as you rightly point out, said many times that it is the law of the land; we will implement it faithfully; and I think every action we have taken to date demonstrates exactly that.

The positive feedback we are getting from the small business community, from our small business advisory committee, and even some of the witnesses last week, Mr. Cartwright in particular, who made the point of saying the SEC seems to be doing this with fervor and with—those weren't his words, but with real commitment. So I think everything we are doing demonstrates our fidelity to the statute and to accomplishing the goals of the statute.

I would have to go through. I think there are some things the SEC could have done on its own, certainly could have even done when Mr. Cartwright was general counsel of the SEC, but I couldn't tell you, off the top of my head, whether every single thing that is in the JOBS Act could have been done without a legislative change. We would be happy to do that analysis and provide it for the record.

Mr. MCHENRY. I am more interested in you doing the rulemaking that is currently obligated.

Ms. SCHAPIRO. I am too. I would like to make this work.

Mr. MCHENRY. So, again, to this crowdfunding piece. Now, the structure of crowdfunding is different in many respects. We have great experience with charitable crowdfunding, gift-based crowdfunding. The nature of somebody investing $20 in the local coffee shop that they go to every day, they want to own a piece of it, is structurally and motivationally different than somebody investing $10,000 in the Facebook IPO. Do you agree with that?

Ms. SCHAPIRO. Absolutely.

Mr. MCHENRY. So sort of the lower dollar issuances structurally are very different; the motivation is different by investors. Is that something that you would foresee the SEC incorporating, that structural difference?

Ms. SCHAPIRO. Well, I think certainly there will be many structural differences between offerings done through a crowdfunding exemption and a full-blown public offering that is done like Facebook or another large company, so we will see that play out in disclosure requirements, with respect to sales practices. In all sorts of ways there will be many structural differences.

Mr. MCHENRY. The regulation of portals, as opposed to broker-dealers, you will take that into account as well?

Ms. SCHAPIRO. Yes. The statute accounts for funding portals to be—a funding portal could be a broker-dealer, and we know of broker-dealers who are interested in doing this. But we also know of entities that are doing funding for charitable and other endeavors, as you point out, that are also interested in expanding into being crowdfunding portals under the JOBS Act, and we would expect them to be regulated differently. There are some limitations on their business, but the statute is quite clear that they should be regulated differently.

Mr. MCHENRY. Okay, so the SEC will take that into account.

Ms. SCHAPIRO. We absolutely will, and we will obviously also put all of this out for comment. And the portals have been in to see us, a number of them, already, to talk about the things that they think are actually important to include, because I think they believe that they can perform a real service here and support entrepreneurs who want to utilize the crowdfunding exemption to do it successfully; and they want repeat business, so they want it to be successful, and we hear that from them over and over again, that they want this to work.

Mr. MCHENRY. And to that end we heard from one portal who was represented by a gentleman, David Hillel-Tuch, who testified that "every securities market and/or offering has a potential for fraud, but crowdfunding structures help minimize that risk. Crowdfunding is highly transparent and there is substantial feedback from other community participants, the crowd. The crowd helps police players and keeps them honest. Portals provide a clear and central location for communication by potential investors to analyze and share their views on offerings. The web-based structure also allows portals and regulators to provide risk disclosure and investor education. In addition, we expect portal operators to undertake a gatekeeping role in authenticating issuer identity and requiring minimum standards for issuers."

And this is before rules have even been written he outlines this. So do you agree that inherently the structure of crowdfunding, because of the structure of crowdfunding, there are significant protections against fraud?

Ms. SCHAPIRO. I think, in a sense, it depends. I think those are important protections. Many of those are actually captured in the statute and I think they are very important. But I think we can also have a situation where a portal isn't policing the issuer, and isn't ensuring that proceeds aren't transmitted before they should be, and isn't ensuring that there is disclosure.

And that is why the rules actually matter, that we capture those very ideas that are also in the statute in the rulemaking regime so that all portals are subject to it because, frankly, as you know, one that decides that the rules don't apply to them and anything goes and allows fraud to happen will hurt every single honest one that is out there, and that is why the regulatory regime matters; and we can't just assume that because people have approached crowdfunding responsibly in the charitable context, that when this business is opened up, and there is the opportunity to solicit many millions of investors, that everyone will still continue to play by those high ethical standards, and that is what the regulatory regime is there to do.

Mr. MCHENRY. I would say with billions of dollars already operating in this environment, with minimal fraud, that it shows that light touch regulation, transparency, basic rules of the road, would be sufficient, can be sufficient to that end of mitigating fraud.

To a different provision, the Minority recommended a witness, John Coffee of Columbia University Law School, and I had a few questions. Incidentally, he offered this and I thought it was very interesting. Innocent and material exemption. That is Rule 508 in Reg D. So it is done for accredited investors currently, if I am to understand correctly. So this innocent and material exemption

could be applied to crowdfunding issuances. Do you foresee that and would you support that?

Ms. SCHAPIRO. I can't predict what the Commission will do, but we——

Mr. MCHENRY. Would you support it?

Ms. SCHAPIRO. The staff and I have talked about it. We think it makes a lot of sense. I obviously want to explore it a little bit further, but as an initial reaction I think something like that does make sense. We are not looking to catch people with footfalls, so insignificant deviations from the requirements of the exemption shouldn't blow the exemption, from my view, and it has worked in other contexts. So we would absolutely be looking at that.

Mr. MCHENRY. Great. That is a great answer.

Now, in terms of the structure of the bill, we have small issuances and we have a graduated scale up to $1 million, the idea being that smaller issuances under $100,000 are a little different than issuances of $900,000. Do you foresee and would you support the rulemaking that, in essence, categorizes issuances based on their size?

Ms. SCHAPIRO. I think it is a very good question and it is something that we have not made any decisions about. At a minimum, it is something we could ask questions about in a proposing release, about whether we should create some kind of scale for different size issuances. As you know, we have a lot of comfort with scale disclosure at the SEC in other contexts. Title I, the IPO on-ramp, has a number of scale disclosure provisions in it that we think are very manageable from our perspective, so it is something we would definitely be looking at.

Mr. MCHENRY. With that, I will now recognize Mr. Quigley for 14 and a half minutes.

Mr. QUIGLEY. Actually, I just have one area of interest, Madam Chairman. The other day we talked about leapfrogging and the pressures the SEC faces to deal with these two major bills, Dodd-Frank and the JOBS Act, and that there was a concern that there was pressure on you to leap ahead and get to the rules completed that aren't due yet, when there are rules dealing with Dodd-Frank that haven't been completed and past deadlines. Do you feel this pressure? And how do you address the political realities out there of getting all these done on a timely basis?

Ms. SCHAPIRO. Well, we absolutely feel the pressure and I wish we could be moving more quickly to get all of these rules completed at the agency, but we have tried to prioritize based on deadlines for Dodd-Frank. We have either proposed or adopted three-quarters of the more than 90 rules that we are required to do; we have done 14 of the 20 or so studies. And this summer I expect we will complete several more of the rules. The biggest piece that is left are the over-the-counter derivatives rules, which we would hope to——

Mr. QUIGLEY. That is on Dodd-Frank.

Ms. SCHAPIRO. That is Dodd-Frank.

Mr. QUIGLEY. And the biggest part left on JOBS Act?

Ms. SCHAPIRO. JOBS Act? I would say probably the General Solicitation Rule, Reg. A, and the crowdfunding exemption. So there are pieces of all of those. We will endeavor to meet the end-of-the-year deadline for crowdfunding. General Solicitation had a 90-day

deadline and Regulation A doesn't actually have a deadline, but it is a very significant rulemaking. So we do the best we can with our staff, and balancing many of the JOBS Act requirements fall to the Corporation Finance Division.

They also have responsibility for the asset-backed securities rulemaking that is going on under Dodd-Frank, as well as conflict minerals in the Congo, extractive industries disclosure rules, and all the compensation disclosure rules, including pay ratio. So there is a huge burden in that one division and they are doing a phenomenal job and they are pushing things through, but we just keep our noses to the grindstone and try to turn things out as best we can, roughly prioritizing based on the statutory deadlines.

Mr. QUIGLEY. Well, good luck with all that, as they say, and I thank you for your service.

Mr. MCHENRY. I thank my colleague.

I have a few questions on cost-benefit analysis, and I am going to start by saying that I appreciate your prompt action on cost-benefit analysis, and the draft guidance that you have put forward and you have made public, that you testified that the Commission staff is abiding by currently is a welcome sign, and I think that is a good government initiative and showed strong leadership on your part to make that happen, and I do appreciate it. And like I said at the very beginning, you have had a distinguished career in public service that is a rarity in this day, to have a career in public service and maintain your reputation at the same time.

So with this cost-benefit analysis I just have some questions on that. And we do appreciate, when we have document requests, that you and your staff comply to the best of your capacity to do that, and that is helpful. That doesn't make headlines, but we certainly appreciate it. You do have a very fine staff and we are very grateful, and my interaction with the Commission staff, and the commissioners, for that matter, that we have integrity in this body, and that is very important not just for our oversight role, but for the public, I mean, to have confidence in the markets. And that is obviously a challenge with some of the things that we have seen in the past with market failures and fraud that occurs in our public markets, just like fraud occurs, and lawbreaking happens in society.

In our letter to you on May 23rd, we asked whether job creation specifically will be considered in economic analysis, and in your response from June 11th you said, in performing the foregoing analyses with respect to particular rulemaking, the Commission may need to consider the impact of the rule on job creation, economic growth, and competitiveness of the U.S. exchanges and issuances.

So I want to understand the word may. Now, I am not a lawyer, so the difference between may and shall is very significant. I want to understand why it is may consider job creation.

Ms. SCHAPIRO. Sure. I think we don't really look at our economic analysis as going specifically to that one factor, but we must consider burdens on competition of our rules and we must consider whether our rules will promote efficiency, competition, and capital formation. And if you equate capital formation potentially to job creation, it will certainly be covered in that.

So I think we don't separately pull out a line and say this will create X number of jobs or this will hurt X number of jobs, but we

would talk about if our rule might cause people to reorganize their businesses in such a way that they avoid our rule and, therefore, move overseas. That would obviously have an impact on jobs in the United States. So it is a broader inquiry that we must do, but we don't single out job creation necessarily as a specific factor. So I think that is the reason for the use of the word may.

Mr. MCHENRY. Is there a distinction between must and shall? And I am not trying to do this as trivia, just in——

Ms. SCHAPIRO. Not to me.

Mr. MCHENRY. Okay.

Ms. SCHAPIRO. I think generally things are written as shall in rules and legislation, and I take it as a directive.

Mr. MCHENRY. Okay. So when we are talking about economic growth, most people think about economic growth in terms of job creation, and that, to me, is a question. You outline, as well, the Commission is hiring 16 economists and asked for funding to hire an additional 20 more in 2013. It is also interesting, because we asked this as well, in contrast, in fiscal year 2012 the Commission hired 67 new attorneys. Fourteen more have specific start dates within the next few months, an additional 24 candidates have been offered positions or are pending background checks, and another 65 positions are under active recruitment. So that is a total hiring of 170 folks. This is a more than 10 to 1 ratio of attorneys, lawyers versus economists.

So given that recognition that economic analysis must be done, there is still this great prioritization of hiring attorneys.

Ms. SCHAPIRO. I am happy to address that. And I should add we have, in addition to the 16 Ph.Ds who are joining us this summer, we already have 23 economists working on economic analysis just in our Division of Risk Strategy and Financial Innovation. We have other economists who do risk modeling and quantitative analysis.

But you are right, we hire more lawyers than we do economists, although this is, I think, the largest ramp up in economists in the agency's history, because we are, everyone needs to remember, a law enforcement agency as well, and we bring in the neighborhood of more than 700 enforcement cases every year to try to remedy violations of the federal securities laws.

And the other thing that is important is that we have a lot of accountants who also both support the enforcement initiatives, but also oversee FASB and the accounting standards setting.

The lawyers we are hiring come to us with very specific experiences really critical to the agency's ability to carry out its mission, so we have been hiring people from hedge funds and private equity funds with expertise in broker-dealer risk and operations, structured finance expertise, trading backgrounds, expertise in exchange traded funds and derivatives. So we have lawyers who are responsible for much of the market structure, the investment company regulation, and the corporate finance disclosure review regulation, and we need them to do our jobs and we need them, obviously, very much to do the enforcement work.

Mr. MCHENRY. I certainly understand that and, as I mentioned, the current guidance on economic analysis is on your website, and you making that public is appreciated and commendable, as well. In our panel that we had, we had four panelists earlier this week,

they all lauded this, and it is rare that you can get four individuals testifying before this Subcommittee and agree on anything, so that is a very positive thing. And this is binding on staff now?

Ms. SCHAPIRO. Yes, it is.

Mr. MCHENRY. Okay. And is this the final rule?

Ms. SCHAPIRO. It is the operative document right now. The staff is following this guidance as it is published on the website. We have asked the commissioners if they have comments and additions or changes that they would like to see, and we are working through that process to see if there are views that the Commission would like to have expressed, in which case it could become a Commission document, the Commission could actually vote on it. But right now this is the operative way forward for the staff in the rule writing divisions.

Mr. MCHENRY. Will you make those comments public?

Ms. SCHAPIRO. Any changes we make to the document we would certainly make public.

Mr. MCHENRY. And would you explain why those changes were made? Would you commit to doing that as well?

Ms. SCHAPIRO. If it is permissible to do that, if there is not some rule that prohibits it.

Mr. MCHENRY. Okay. Some law or rule?

Ms. SCHAPIRO. Yes, you know, deliberative process or something.

Mr. MCHENRY. I am very interested because if it is applicable now to the staff and binding on the staff now, then any changes could endanger the analysis that is already out there and impact, so we would have pre-memo and then have this sort of interregnum here that we are currently in, apparently. So the concern there is that with any changes——

Ms. SCHAPIRO. We explain why.

Mr. MCHENRY. Yes.

Ms. SCHAPIRO. That seems fair to me. So, as I said, I have no objection, not having been told yet by the general counsel's office that there is a reason we can't do that.

But I just want to add I think this guidance——

Mr. MCHENRY. Well, they are proximate, so I am sure I can just look at faces and determine.

Ms. SCHAPIRO.—this guidance, I am enormously proud of it and I am enormously proud of the staff work that went into it because, frankly, I think it informs good policymaking, and that is what we need to be about; and it really forces us to go through the kind of process you would hope that policymakers would engage in before they pass rules that can have a very profound effect on many people.

Mr. MCHENRY. You released a memo to us with one of our document requests, and it is a memo dated—if we can put it up on the slide. This is a draft of October 31st of last year, and you released this. It looks like a completed draft. And, go to the next page, this deals with President Obama's Executive Order that outlines that independent agencies are supposed to develop a plan for a retrospective of existing regulations, and this was a directive, well, more of a presidential request of sorts to independent agencies saying you should be doing this and looking back at rules.

I don't mean this as a gotcha, we can certainly provide you with the memo, but what was interesting is that it outlines in a timely fashion from the President's instruction to independent agencies from July of last year, this draft was from October 31st and it outlines the elements of the plan.

And if we go to the next page here. So we are publishing a plan on the Commission's website. Has that been done?

Ms. SCHAPIRO. Excuse me. No, Mr. Chairman. That requires the Commission to approve the plan, and the Commission has not yet voted to approve the plan.

Mr. MCHENRY. Has it been brought up at a Commission meeting or is it still——

Ms. SCHAPIRO. It has not been brought up at a meeting; it was provided to the commissioners, I believe, October 31st of 2011 for their comment, their input, their changes, their views, and that process has gone very slowly and we don't have all of their views incorporated into it.

But I should hasten to add that that does not mean we are not doing many things that are already in the plan, because the plan incorporated a number of current processes that had been ongoing at the Commission for years, like the 10-year regulatory flexibility act analysis and responses to requests for relief and guidance, or rulemaking petitions that ask us to revisit rules. Our Advisory Committee has raised rules with us that give them concerns. We have roundtables where rules are raised for us to review.

We obviously have lots and lots of meetings with industry, and they are not shy about telling us about rules that they think we need to look at. So a lot of these processes are going on, but you are right, we have not published the retrospective rule review because the Commission has not yet voted to do so. I am perfectly comfortable with it as it is and would vote to go forward.

Mr. MCHENRY. Will this be on the agenda for incoming months?

Ms. SCHAPIRO. I think if we can't break it loose, we will need to put it on a public meeting agenda at some point, yes.

Mr. MCHENRY. Well, it was interesting because—and I do appreciate this, and I mean this sincerely, that you have released this. We requested documents dealing with this and you freely submitted it to us, and I think it is a reasonable draft and it was done in a timely fashion to when the President requested it, and, to me, part of it says we will put this on the website, we will make this public.

And I want to put this on the slide, because the fact you support it—this is an important slide. One more after this. We will take several steps to enhance public understanding of our retrospective review processes and to engage in more active public outreach seeking input for our identification of rules for review and our conduct of such reviews, including—and you go through a number of things, public outreach and on and on and on.

So it is a good memo, and I think the fact that the staff came forward, that you support it, is a very positive thing, and I think it would be helpful to the market to see this process that you have outlined and done it in accordance with the President's Executive Order.

Ms. SCHAPIRO. Well, I agree with that, Mr. Chairman. In fact, I would point out that in developing this document we went out to the public twice, in March of 2011, where we asked for public input on reviewing existing rules, especially rules that impacted smaller businesses, and then again in September we invited public comment specifically on how we should develop this plan. So it was done with some care and some thought, so I will endeavor to see if I can get it broken loose.

Mr. MCHENRY. Thank you. I appreciate that. As I said, I know you are one of five commissioners, but the chairman has significant sway.

Ms. SCHAPIRO. I hope that is true.

Mr. MCHENRY. So dealing with cost-benefit analysis, so the SEC is going forward.

We can take the slides down.

The SEC has put forward this memo; it is binding on the staff to actually look at the costs and the benefits of rulemaking. It is done in a way that I think economists would say is appropriate and rigorous. The procedures, going forward, for a review process are significantly different than the previous Commission's process for economic analysis, which has been viewed as more or less perfunctory, rather than essential and essential check-off in order for a rule to go forward. You can tell the memo I think is good, in my opinion.

But there are also self-regulatory agencies, and these SROs, FINRA, PCAOB, the Municipal Securities Rulemaking Board, these SRO rules are subject to Commission approval and, as such, I believe that they should be subject to the same economic analysis that the current guidance demands. Do you think that SROs should do cost-benefit analysis in their rules?

Ms. SCHAPIRO. It is a very good question. You know, there are 32 self-regulatory organizations, and they file something around 2,000 rules with us every year. So just the volume is quite extraordinary. And I think many of the rules, 77 percent of the rules, in fact, go effective immediately upon filing with the SEC. Of those that are left, a number have to do with new products, new lines of business, particularly for exchanges.

And in Dodd-Frank Congress very much streamlined the process for those remaining rules in a way that would actually bolster those businesses' ability to get to market faster, encourage innovation, and speed. So engaging in a full-blown cost-benefit analysis for each of those rules could defeat the purposes that were just put in place, of making us go very quickly to approve those rules in order to allow them to get to market quickly.

Mr. MCHENRY. Now, it is a small number that are non-ministerial and non-procedural in nature. Would you say that major and significant rulemaking?

Ms. SCHAPIRO. Well, I think there is probably a way to talk about it where it does make sense. I think there are probably some category of rules where more analysis ought to be done. The do an analysis of burdens on competition in SRO rules, and we at the SEC, in approving those rules, are in fact required to do what we call the ECCF analysis, efficiency, competition, and capital formation analysis, when we are looking at SRO rules. So there is that

which is already done. But there is probably a small subset of SRO rules where further analysis, we should be talking about that. I don't disagree with that.

I do think it would be a mistake to have a blanket requirement across all SRO rules because the analysis can take a very long time and, again, many of them are more routine and operational, and probably don't call for that kind of an effort.

I would just also add, as you know, under the JOBS Act, the PCAOB rules that would apply to emerging growth companies have to be determined by the SEC to be necessary in the public interest and promote efficiency, competition, and capital formation, so there is that addition.

Mr. MCHENRY. And to that point the question of public interest. Look, I am in your wheelhouse right now; I am talking about an SRO and I am talking about the SEC, and you have great expertise with your prior experience, your previous job with FINRA, of course. So you have great experience with this. So there is certainly rulemaking from the SROs that should take into account the draft guidance that you have put forward for the economic analysis.

Now, how can the SEC rule determine whether or not something is in the public interest? Let's just set aside the ministerial part. Let's set aside sort of paperwork provisions and some basic procedures that so many of these rules, by their nature, the SROs can react faster than a government regulatory body in adapting those wide variety of rules. So how can you determine if it is in the public interest if there hasn't been an economic analysis done on significant rules?

Ms. SCHAPIRO. Well, the SROs are required to discuss the reason for the rule, the justification of the rule, what benefits they believe the rule will bring to different constituencies. They are required to discuss the potential impact of the rule change on competition. When we put the rules out for—this is a very important part of the process, is when we put the rules out for comment and commenters give their views on the burdens on competition or the necessity for the rule, we then work with the SRO staffs to make sure they respond to those comments in any final rule approach.

I don't want to leave the impression there is nothing there for SRO rules; there is. I think the question is on whether on rules that have a more major, profound impact we should be seeking more economic analysis I think is a fair question for us to look at.

Mr. MCHENRY. So if we can go to the slide on the dissent from SRO rulemaking, it reads: Any rulemaking, whether by a self-regulatory organization such as the MSRB, which is the Municipal Securities Rulemaking Board, or by the Commission itself should be the product of a careful and balanced assessment of the potential consequences that could arise. The decisionmaking process that led to the Commission's approval of the MSRB's proposed rule changes fall short of meeting the benchmark. The Commission has a fundamental oversight role with respect to SROs, and an undue deference to an SRO in the SRO rulemaking process undercuts the basic structure of that regulatory relationship.

Now, I understand this is a dissent; the majority, three commissioners, you being one of them, were on the other side of this. If you could respond to that, I would appreciate it.

Ms. SCHAPIRO. Sure. I think what I would say is that the majority of the Commission believed the rule did adequately address the commenter's concerns and did an adequate analysis for us to conclude that the rule was appropriate. I will also say, though, that this rule was about to become effective by operation of the calendar, because at the outside we only have 240 days to approve or disapprove a rule, and then it goes into effect.

So that said, I think we will always be willing to try to improve the analysis of SRO rules and rule filings, and obviously we have all read the dissent. Don't agree with it, but we have all read it, and we will strive to do more.

Mr. MCHENRY. Okay. Thank you. I did want to give you the opportunity to comment on that.

So I just have a couple other provisions within the JOBS Act that I just want to get your feedback on.

Will you exempt Reg. A from the shareholder cap under 12G of the Exchange Act? Do you foresee that?

Ms. SCHAPIRO. So I understand from the expert that we will consider it, but there was not an explicit exemption provided in the statute. But it is something we will consider.

Mr. MCHENRY. Well, do you believe that the SEC has that authority to provide for that exemption?

Ms. SCHAPIRO. Yes.

Mr. MCHENRY. Okay.

Ms. SCHAPIRO. I am told.

Mr. MCHENRY. Okay. Okay. And, again, I am not trying to play gotcha, and if I go back to questions about SROs, you can play gotcha with us.

Ms. SCHAPIRO. I wouldn't do that. And, obviously, we can always supplement the record, I assume, on that point.

Mr. MCHENRY. Absolutely.

Ms. SCHAPIRO. But the Reg. A rulemaking, which is going to be a significant one, is one that does not have a time limit, so we have prioritized general solicitation and crowdfunding.

Mr. MCHENRY. Excellent. Very good. Okay, so to accredited investors. Accreditation is obviously unnecessary in the case of transactions among family members, so will the Commission create an exemption to the accreditation requirement, if it applies to the 1500 additional investors, in cases where the shares are transferred or sold to children or grandchildren or family members, in cases where shares are received as gifts or inheritance?

Ms. SCHAPIRO. I don't think we have made any decision about that. It is certainly something we will look at.

Mr. MCHENRY. If you could comment on that for the record.

Ms. SCHAPIRO. Sure.

Mr. MCHENRY. Thank you.

And the increase to the registration threshold for banks from 500 to 2,000 shareholders, it failed to include S&L institutions, so will the Commission correct this apparent oversight?

Ms. SCHAPIRO. Well, this is an issue I have spoken with a number of members of Congress about and our staff has met with the

Community Bankers Association, and we are in the process right now of trying to understand the similarities and differences, frankly, between thrift and bank holding companies so that we can understand, for example, what types of reports thrifts file, as banks do, with their regulators, whether shareholders have access to them. We are also talking with the OCC about that. So it is an issue that is still open. I understand the deep interest in it.

I will say that we have done the research to say that we believe there are about 114 thrift and S&L holding companies that are registered right now under the Exchange Act, and of those about 86 have fewer than 1200 shareholders of record and could delist. So given that large a universe, I think we probably need to approach this through rulemaking, rather than through a one-off exemptive process or something. But it is very much on our radar right now.

Mr. MCHENRY. Okay. Okay. Thank you. I appreciate that and I appreciate your willingness to comment on that.

Then I would be remiss if I didn't ask about money market funds. And I know you have made enormous comments on this, but we are talking about a $2.5 trillion industry, so there is strong opposition from the industry, as well as some State and municipal treasurers, as well, and what that would do to liquidity, especially in this time where we are looking to what is happening in Europe and the implications that that obviously has on world markets and liquidity in the world market. So I would give you an opportunity to comment, please.

Ms. SCHAPIRO. I would be happy to. And as you have rightly pointed out, I can talk for a very long time on this very subject because I feel very strongly about it.

The American taxpayer was on the hook when the Reserve Fund broke the buck in the form of a guarantee of money market funds, which at that time were over a $3 trillion industry in the United States, and my view is the American taxpayer should never be put in that position again. One way to ensure that is to try to deal with the structural weaknesses that exist in money market funds in a way that allows their value to actually float to reflect the value of the underlying securities, just like any other mutual fund, so this event of breaking the buck is not a monumental event that causes people to run for the doors.

And that is the second weakness, is that as the value of a money market fund moves towards $0.99, away from the true $1.00 value, there is a huge incentive to get your money out at $1.00 and leave the losses concentrated in those slower moving small business and retail investors who are left in the money market fund, and the potential to create a panic is extraordinary.

In 2008, when Reserve broke the buck, within a matter of a couple days $300 billion was pulled out of money market funds, and it was really only stopped because the Treasury and the Fed stepped in with a guarantee program and a liquidity facility, and I think before we have another crisis, I hope we never do, but in the event we do, I think it would be wise for us to have taken the steps to bolster the resiliency of money market funds to withstand or to prevent runs. They are very valuable tools. They are used by retail investors, by businesses, by State and local governments, as you pointed out, and we think they can be made stronger and bet-

ter by either having a small capital buffer to absorb those small variations in price or to have their value actually float.

Mr. MCHENRY. So the Commission has a 337-page proposal, as we read, I believe it was yesterday in Bloomberg, I believe. So the staff proposal, did it go through the economic analysis?

Ms. SCHAPIRO. This is a proposal to the Commission, so nothing has been made public or published, but it contains an extensive economic analysis, yes.

Mr. MCHENRY. Okay, it does. And it is an either or, either float the nav or hold more capital and curb redemptions?

Ms. SCHAPIRO. Those would be choices that funds could choose between.

Mr. MCHENRY. Okay. Okay. And from what we have heard and read, there is not a unity of thought on the Commission quite yet.

Ms. SCHAPIRO. Not quite yet. And I am ever the optimist, and now that they have a document to look at and obviously it is going to take a little time to read it and absorb it and have conversations with the staff about it, we will see where we go from there. But I am optimistic that people will think that this is something that needs to be publicly aired and discussed and debated.

Mr. MCHENRY. Okay. Thank you.

Chairman Quigley, if you have any final comments or any final time you would like.

Mr. QUIGLEY. I thank you again for your service and appreciate your coming back again and again.

Mr. MCHENRY. And two final things of note. Would you be willing to come back in September and give us an update? We will be happy to work with your schedule. We know you obviously keep a very hectic and busy schedule, and we do appreciate your willingness to submit to congressional oversight.

Ms. SCHAPIRO. Of course, I am more than happy to come back.

Mr. MCHENRY. Thank you. I appreciate it. And again, I have said this a number of times, but I do appreciate your public service and I do appreciate your willingness to be open and transparent and engage in this conversation, this discussion. To that end, I would love to give you any opportunity to address anything that I have not raised or any comments or any corrections or additions you would like to make.

Mr. QUIGLEY. Although that would be hard to imagine.

[Laughter.]

Ms. SCHAPIRO. I can't think of anything. Thank you.

Mr. MCHENRY. Thank you. Look, I deeply care about this and the work that the SEC does. I want to make sure it is done correctly and the American people know what is happening in this process so there is some certainty in the marketplace about the process, the procedures of the SEC.

And the final comment I would make to the ability to raise capital in this Country is that entrepreneurs are waiting for these opportunities that will come out of the rulemaking that you are undertaking. Your work is important and it has an enormous impact on large and small businesses and economic growth, and entrepreneurs are waiting, and we are certainly interested in the work you are doing and certainly appreciate your willingness to work

with the public and work with interested parties, get their feedback and make sure that these rules are done well.

So thank you for your testimony. Thank you for being here today.

This hearing is now adjourned.

[Whereupon, at 10:53 a.m., the subcommittee was adjourned.]

Patrick McHenry Opening Statement
OGR Subcommittee on TARP: "The JOBS Act in Action Part II: Overseeing Effective Implementation of the JOBS Act at the SEC."
June 28, 2012

Approximately three years into an economic recovery, America's labor and capital markets continue to face unprecedented challenges. The U.S. unemployment rate has now been above 8 percent for 40 consecutive months and nearly 24 million Americans are either unemployed or underemployed.

Since the beginning of the 112th Congress, the oversight committee has remained committed to identifying and modernizing outdated securities regulations that limit job growth and access to capital which as we know is the lifeblood of our economy.

Today's hearing advances our efforts as we welcome the Securities and Exchange Commission chairman, Mary Schapiro, to address these major commission reforms urged by this committee such as the securities -- the SEC's new policy on cost benefit analysis which we welcome and implementation of the JOBS Act which we want to remain vigorously committed to exercising oversight so we know what is happening with commission proceedings.

And as I said at the opening I certainly appreciate Chairman Schapiro's willingness to engage in this oversight, and as well as being forthright on her views on all these. We know it's a commission, it's five members, but the chairman obviously has significant sway.

During the subcommittee hearing April of this year, Chairman Schapiro committed to the policies and principles of a staff guidance document and the use of cost-benefit analysis in the commission's rulemaking. As I said we welcome that. I think that's a significant step and we certainly appreciate that.

And Chairman Schapiro's dedication to vigorous cost- benefit analysis particularly after former SEC inspector general, David Kotz issued a critical report on cost-benefit analysis procedures at the commission's rules and a number of other lawsuits, we appreciate the fact that the commission acted swiftly and that Schapiro went even further and published this document and made it public to market participants and those that care about what SEC does.

And we want to talk about that today and we want to give you an opportunity to explain where things stand with the cost-benefit analysis memo and how that's moving forward.

But also we want to make sure that the American people know what is happening with the SEC's actions when it comes to the JOBS act, portions of which were built around the efforts of this subcommittee and a letter from Chairman Issa to Chairman Schapiro on March of last year. That was a very positive exchange and the type of reforms of which American people can be proud..

In particular, Title III of the JOBS Act I have a personal interest in as well as millions of small businesses around the country. And it is based off of legislation I sponsored here in the House which is in essence crowdfunding and it creates a new federal securities exemption to permit equity-based crowdfunding.

After I introduced the crowdfunding bill in the financials in the House we went through the Financial Services Committee. My colleague on this subcommittee, Congresswoman Carolyn Maloney, who also serves on the Financial Services Committee, raised a number of concerns in our first hearing. We tried to work together to craft an addition to deal with this fraud question and to put in place what we think -- what we thought was finely-crafted legislative language that would -- that would protect against fraudsters and at the same time give the SEC the power to make those rules and doing it in a cost-effective way.

It was a bipartisan bill. I was very proud to work with Congresswoman Carolyn Maloney on that legislation. And I think this collaboration is a big reason why we're able to get over 400 votes for this bill coming out of the

House. I think that's also why the President endorsed this idea not just in his jobs speech, but in the legislation we crafted in the House.

Unfortunately I think a few Senators with some final changes that they made to the JOBS Act were misinformed and misunderstood the opportunity the crowdfunding allows for and the nature of crowdfunding and as such there was an 11th hour change to the JOBS Act, in Title III of the JOBS Act that deals with crowdfunding that causes some concerns.

We had a hearing earlier this week and I'm sure Chairman Schapiro you and your staff saw some of what came out of that hearing. And there are concerns about the legislative language, but there is broad consensus so SEC can create rules and do so in a cost- effective way to allow crowdfunding to take place so that small issuances don't have the heavy regulatory burden that the large issuances in our markets bear.

Now, the large issuances certainly have a greater capacity to bear those costs compared to smaller issuances. That's just economic reality.

So I will have a number of questions about this crowdfunding piece of the JOBS Act. I'm very concerned about that implementation and making sure that it's done in a cost-effective way so that smaller issuances can actually occur and do so in a way that is economically feasible.

I certainly appreciate your willingness to be here. I thank you for your public service very sincerely. You had a very long career in public service and have done so in a very honorable way and I certainly appreciate that.

And with that I recognize Mr. Quigley, the ranking member.