Consumer Federation of America

February 1, 2012

Vote No on the Tester and Thune Amendments
Do Not Hijack the Pro-Investor STOCK Act to Weaken Important Investor Protections

Dear Senator:

As the Senate considers bipartisan legislation (S. 2308, The STOCK Act) to clarify that insider trading laws apply to members of Congress, we urge you to reject hasty and ill-conceived amendments that would weaken vital investor protections. The Thune amendment would eliminate restrictions on general solicitations in private offerings, while the Tester amendment would make it easier for small companies to raise capital without providing the full transparency of reporting companies. While both address issues that deserve attention from policymakers, neither does so in a way that adequately preserves protections for investors. We urge you to vote no on both amendments.

The Thune amendment uses a sledgehammer where a scalpel is needed. While changes in the marketplace may warrant some loosening of restrictions on general solicitation for private offering sold to sophisticated investors, the Thune amendment's reach is much broader. As the North American Securities Administrators Association has pointed out, in its current form the amendment would "permit general solicitation in all private placements, including those not restricted to 'accredited investors,' or covered by the investor protections associated with Regulation D, Rule 506 'safe harbor.'" Moreover, we understand that the Securities and Exchange Commission is currently preparing a concept release to research appropriate approaches to this issue. Surely a Congress that purports to value economic analysis should wait for that analysis to be complete before dictating a radical and risky approach.

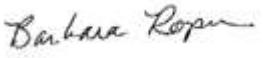
The Tester amendment makes a good faith effort at incorporating at least some additional investor protections as it raises the ceiling on offerings under Regulation A. In particular, we appreciate its inclusion of at least limited up-front disclosures, periodic reporting, audited financial statements, SEC oversight, and a negligence-based litigation remedy. We are concerned, however, that the amendment imposes no cumulative limit on use of the Regulation A exemption in multiple years and gives the SEC unlimited authority to increase the ceiling for such offerings. Thus, what is already a very substantial increase in the ceiling for offerings under the Regulation A exemption – from $5 million to $50 million – could be expanded many times over with no additional congressional action. And companies could game the system, resorting to repeated use of the exemption in successive years to evade appropriate reporting requirements that promote market transparency and integrity. With work, these short-comings in

the legislation could be eliminated, but, if the goal is to strike an appropriate balance between investor protection and capital formation, the current version is still in need of significant revisions.

Legislation that makes it easier for companies to raise money from the public without meeting appropriate investor protection standards will not promote sustainable job growth – as the tech stock boom and bust of the late 1990s should have taught us. Instead, it simply diverts limited capital from companies that could use that capital to create jobs. Moreover, by increasing the risk of investing in small companies, such bills can be expected to also increase the cost of capital for such companies. That is simple free market economics.

Amendments to weaken investor protections have no place in the STOCK Act. We urge you to vote no on the Thune and Tester amendments.

Respectfully submitted,



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