Testimony of

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H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011"

Before the

Subcommittee on Capital Markets and Government Sponsored Enterprises

of the

Committee on Financial Services

United States House of Representatives

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Mr. Chairman, Ranking Member Waters, and Members of the Subcommittee:

Good morning. I am Steven R. LeBlanc, Senior Managing Director of Private Markets at the Teacher Retirement System of Texas or "TRS". I am also a member of the Securities and Exchange Commission's (SEC) Advisory Committee on Small and Emerging Companies. I am here speaking to you today on my own behalf.

I am pleased to appear before you today to share with you my views on H.R. 3606, the "Reopening American Capital Markets to Emerging Growth Companies Act of 2011" (HR 3606). My testimony begins with a brief overview of TRS followed by a discussion of my views on some of the key provisions of the proposed legislation.

TRS[1]

Formed in 1937, TRS is the largest public retirement system in Texas in both membership and assets. The agency serves more than 1.3 million participants – approximately 1 million are public and higher education members, and approximately 300,000 are retirees. Our system's net assets total approximately $107 billion.

[1] For more information about the Teacher Retirement System of Texas (TRS), see TRS's website at http://trs.state.tx.us/info.jsp?submenu=about&page_id=/about/about_trs.

At TRS, we maintain a diversified portfolio of investments, including allocations to the global equity markets, to real return, and to a stable value portfolio.

As Senior Managing Director of Private Markets, I am responsible for overseeing the real assets, private equity, and principal investments portfolios at TRS. Pertinent to the subject matter of this hearing, that portfolio includes several billion dollars of private equity and principal investments in small and emerging growth companies.

I believe that the success of small and emerging growth companies is vital to our nation's economic well-being. I also believe that it is timely and appropriate to reevaluate our existing laws and regulations relating to capital formation and determine whether any of those rules are unnecessarily impeding the ability of small and emerging growth companies to access capital. In my view, smart, workable, and cost-effective rules and regulatory oversight are a necessary component of strong capital formation and a robust capital market system that benefits investors, workers, retirees, small and emerging growth companies, and the U.S. economy.

In that regard, I applaud the SEC for establishing the Advisory Committee on Small and Emerging Companies to consider issues relating to capital formation. I look forward to continuing to work with my fellow Committee members to identify, develop, and provide recommendations to the SEC on this important topic. I also applaud Representatives Fincher and Carney for introducing HR

3606, and to you Mr. Chairman for holding today's hearing to discuss their proposed legislation.

HR 3606

In my view, HR 3606's scaling of regulations for newly public companies presents a workable approach to facilitating small and emerging growth companies' access to capital and should be given careful consideration by this Subcommittee, the SEC, and other interested parties.

I am particularly supportive of the provisions of HR 3606 that (1) ease the disclosure and corporate governance related obligations of emerging growth companies, and (2) improve the availability and flow of information to investors before and after an initial public offering (IPO). I, however, also have some reservations about the qualifications of an "emerging growth company" as defined under the proposed legislation. Let me briefly discuss each of those issues in more detail.

Disclosure Obligations

Mandatory disclosures and other existing corporate governance related obligations for public companies can be critical to investors in evaluating their investment opportunities and to the efficient allocation of capital. However, not all requirements are equal, and certain mandatory requirements in the name of transparency and good corporate governance may not always provide the benefits needed to justify the costs.

I, therefore, generally support the provisions of HR 3606 that permit an issuer that satisfies the definition of an emerging growth company to elect to participate in a system that has scaled disclosure and corporate governance requirements. More specifically, I support the following provisions of HR 3606:

First, I support exempting emerging growth companies from the say-on-pay, say-on-frequency and say-on-parachute votes under Section 951 of the Dodd-Frank Act. I would note that the SEC has acknowledged that advisory votes on say-on-pay and say-on-frequency impose burdens on smaller companies, and as a result, exempted companies with less than $75 million in public float from the say-on-pay and frequency votes until 2013.[2]

Second, I support allowing emerging growth companies to defer compliance with the internal control requirements of Section 404(b) of the Sarbanes-Oxley Act until the conclusion of the HR 3606 "on-ramp" period. I would note that under current law, all companies with less than $75 million in public float already are permanently exempt from the requirements of Section 404(b). Moreover, all newly public companies (regardless of size) currently benefit from a transition period of up to two years before they must comply with the Section 404(b) requirements.

[2] Release No. 33-9178 (Apr. 4, 2011) (concluding that "it is appropriate to provide additional time before Smaller Reporting Companies are required to conduct the shareholder advisory votes on executive compensation and the frequency of say-on-pay votes" based upon "the potential burdens on Smaller Reporting Companies"), http://www.sec.gov/rules/final/2011/33-9178fr.pdf.

The exemption and deferral resulted, at least in part, from an acknowledgment by the SEC that the Section 404 requirements warranted a significant transition period to alleviate "costs and burdens imposed on companies"; give companies "additional time to develop best practices, long-term processes and efficiencies"; and increase time to find "outside professionals that some companies may wish to retain" to facilitate their compliance efforts.[3]

Finally, with respect to disclosure related obligations, I also support the provision of HR 3606 that would require emerging growth companies to provide with their registration statement *only two years of audited financials*, consistent with the existing requirement for smaller reporting companies, rather than three years, as is currently required for larger companies.

Availability of Information

In addition to easing the disclosure and corporate governance related obligations of emerging growth companies, I also believe that it is important to improve the availability and flow of information to investors before an IPO. I believe that investment research coverage has declined dramatically in recent years as a result of economic and regulatory pressures that have reduced research budgets, and that the lack of research coverage has adversely impacted trading volumes, company market capitalizations and the total mix of information available to market participants.

[3] Release No. 33-8238 (June 5, 2003) at text accompanying n. 174, http://www.sec.gov/rules/final/33-8238.htm.

I also believe that some of the existing restrictions on communications surrounding the offering process were designed in an era of paper-based communications between issuers and investors, and those restrictions should be reevaluated and updated to reflect advances in technology and market expectations.

I, therefore, support the provision of HR 3606 that would allow the publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering, even if the broker or dealer is participating or will participate in the offering. I believe that such a provision would appropriately allow potential investors of emerging growth companies access to information similar to information that investors have long been able to obtain for larger company IPOs.

I also support the provisions of HR 3606 that would reduce some of the existing restrictions on communications surrounding the offering process. More specifically, I support the provisions of HR 3606 that would allow emerging growth companies to “test the waters” prior to filing a registration statement by expanding the range of permissible pre-filing communications to sophisticated institutional investors. Doing so would allow those companies to remove a significant amount of uncertainty regarding the feasibility of a successful IPO.

Moreover, expanding permissible IPO related communications is generally consistent with recognition by the SEC that some additional accommodations are necessary to allow "well-known seasoned issuers," acting through underwriters, to "assess the level of investor interest in their securities before filing a registration statement."[4]

Qualification as an Emerging Growth Company

Finally, as indicated, my main concern with HR 3606 is the provision of the proposed legislation that defines the qualifications for an emerging growth company. As you are aware, under those provisions a company would qualify for special status for up to five years, so long as it has less than $1 billion in annual revenues and not more than $700 million in public float following its IPO.

I believe that the annual revenues and public float threshold elements of the definition may be too high in establishing an appropriate balance between facilitating capital formation and protecting investors. I would note that a recent study by the SEC indicated that public companies with less than $700 million in public float include more than 80% of all public issuers.[5] While the percentage of public issuers that would qualify as emerging growth companies would be lowered by the annual revenue and five-year criteria of HR 3606, I believe that a

[4] Release No. 33-9098 (Dec. 18, 2009) (proposing to amend Securities Act Rule 163 to allow underwriters, acting on behalf of "well-known seasoned issuers," to offer securities before filing a registration statement to gauge investor interest without requiring public disclosure of an intent to conduct an offering), http://www.sec.gov/rules/proposed/2009/33-9098fr.pdf.

[5] Study and Recommendations on Section 404(b) of the Sarbanes-Oxley Act of 2002 For Issuers With Public Float Between $75 and $250 Million, U.S. Securities and Exchange Commission 30 (2011), http://www.sec.gov/news/studies/2011/404bfloat-study.pdf.

more appropriate threshold for the scaling of regulations might be $500 million in public float and $250 million in annual revenue.

My recommendation is based on my experience as the Chief Operating Officer and later Chief Executive Officer of Summit Properties, a small public company that, during my tenure, from 1998 to 2004, increased its equity market cap from $500 million to over $1 billion. It is my belief that companies cannot afford the resources necessary to comply with existing U.S. securities regulations until they reach a public float greater than $700 million. I, therefore, would respectfully request that this relatively modest modification to the definition of emerging growth company under HR 3606 be considered.

Thank you again, Mr. Chairman and Ranking Member Waters for inviting me to participate at this important and timely hearing. I welcome the opportunity to work with this Subcommittee, the SEC, and other interested parties in ensuring that HR 3606 and other related legislation and regulations support our shared goal of increasing American job creation and economic growth by improving access to the public capital markets for small and emerging growth companies.

I look forward to the opportunity to respond to your questions.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Steve LeBlanc	White Stone Associates LLC

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.