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United States: The CATO Institute Assesses The Effectiveness Of The JOBS Act

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On May 3, 2016, the CATO Institute published a policy paper titled, "A Walk Through the JOBS Act of 2012: Deregulation in the Wake of Financial Crisis," which assesses the JOBS Act and offers certain policy recommendations. In connection with Title I, or the IPO on-ramp provisions, the paper recommends that the SEC require, for all public issuers, only those disclosures that provide valuable information to investors. The CATO Institute suggests that the SEC review the current disclosure regime at least once, but ideally on a regular basis, and commit to repeal any requirements that are not shown to be effective.

With respect to the relaxation of the ban on general solicitation pursuant to Title II, the paper indicates that it remains unclear how effective Title II will be for private placements. To improve the effectiveness of Title II, the paper argues that the current definition of "accredited investor" is too limited and there should no longer be an accredited/non-accredited investor distinction. Alternatively, the paper suggests that the standard should be revised to ensure that it reflects an investor's actual ability to evaluate an investment, based on industry knowledge.

With respect to the Title III crowdfunding exemption, the paper argues that the \$1 million cap could discourage the use of the exemption. While a higher cap would attract more companies to rely on the exemption, raising the cap may make the exemption too similar to Regulation D and Regulation A and, therefore, unnecessary.

With respect to the changes to Regulation A pursuant to Title IV, the paper suggests that the SEC extend federal preemption to all Regulation A offerings, rather than just Tier 2 offerings, and provide explicit federal preemption of blue sky laws for registered broker-dealers trading in securities originally issued under Regulation A. Removing state law restrictions on broker-dealers would increase liquidity in the secondary market for securities issued under Regulation A.

Finally, the paper argues that the registration threshold changes under Titles V and VI of the JOBS Act will allow companies to remain privately held longer or potentially to remain private indefinitely. As a result, the paper recommends the repeal of the Section 12(g) Exchange Act threshold so that companies can decide for themselves whether to become reporting entities.

A copy of the paper is available at: <http://www.cato.org/publications/policy-analysis/walk-through-jobs-act-2012-deregulation-wake-financial-crisis>