

could potentially create a situation where an unlimited number of investors could be involved in a company and that company would still be able to remain private and not have to provide periodic reports under the Exchange Act.

Last year, for example, Goldman Sachs planned to create a special-purpose vehicle, basically a fund that could pool money from its clients, that would count as only one holder of record in Facebook. You can see how this could clearly circumvent the notion of how necessary it is to provide the reporting requirements for large companies, companies with a large shareholder basis. Our bill eliminates this loophole by clarifying that recordholders must be beneficial owners, while at the same time raising the shareholder cap from 500 to 750, to make it more contemporaneous. But we exempt employees from this recordholder trigger for public registration, and that will allow private companies that want to remain private, but want to reward their employees with shares to stock, the ability to do so without triggering the public reporting requirements.

Finally, the House bill sets up a new mechanism for crowdfunding. This is a very interesting concept. My colleagues Senator MERKLEY, Senator BENNET, and Senator BROWN of Massachusetts have worked very hard in developing a crowdfunding bill much superior to what is included in the House version. In fact, the House version has been described by a noted securities expert as “the boiler room legalization act” for its very lax approach to crowdfunding.

Our amendment requires crowdfunding to be conducted through regulated intermediaries, and provides for basic disclosure requirements, aggregate caps, and other protections to ensure market integrity, and prevent abuse.

The House bill also removes important prohibitions against general solicitation and advertising in regard to private placements that have been on the books for decades. Recognizing that in a world of Internet and Twitter, even private communications with accredited investors about private offerings can be inadvertently broadly disseminated, our bill takes a much more targeted approach to this issue. In our amendment, we allow for limited public solicitation and advertising through ways and means approved by the SEC, so they have a chance to update mechanisms for communicating with investors in this age of Twitter, Internet, and other new media. We believe this amendment gives the SEC the tools it needs to formulate limited exemptions to the general solicitation and advertising rules, allowing private offerings to still remain private.

There is another section of the House bill that deals with the reg A exemption. Reg A has been on the books of the Securities Exchange Commission, again, for decades. It currently allows

an exemption for certain registration requirements for mini-offerings of \$5 million or less. The House bill proposes to raise the ceiling for this exemption to \$50 million, but they do so in a way that could open it up to abuse, allowing companies to avoid rules and reporting requirements for public companies. We limit companies to raising no more than this \$50 million amount every 3 years, truly aiming our provisions at the small companies that are trying to raise capital without triggering all of the requirements of a publicly held company. We also require that a basic set of audited financial statements be filed with the offering statement and require periodic disclosures of material information to investors.

Let me stress what the House bill is proposing. They are proposing to legalize the solicitation of \$50 million a year from retail investors—in fact, it could be \$50 million every year—without requiring audited financial statements be provided to potential investors. If you go to a bank to get a loan for your business, they are going to require audited financials. I think, at a minimum, you need to provide audited financial statements if you are soliciting \$50 million a year from the public and, in fact, that \$50 million could be for successive years.

Finally, this whole discussion about the House bill has been cast in terms of jobs. There is not a lot in the House bill that talks about jobs, particularly jobs in America. There is no requirement that any of these relaxations of the securities laws be correlated with job increases. There is no requirement in the House bill that these jobs be in the United States.

We have just come through a series of enforcement actions in which the SEC had to crack down on reverse mergers by Chinese companies that were taking over American shell companies, putting their money in, and then going ahead and using the benefits of access to our stock markets. Most of those companies' jobs were not here, nor was the intention to create those jobs here. Those are the types of risks we run in the House bill.

Our bill includes reauthorization of the Export-Import Bank, which is something that has already demonstrated its ability to support American jobs. We have also included provisions that Senator SNOWE and Senator LANDRIEU have included from the Small Business Committee that will increase the SBA's ability to assist American companies—small American businesses. They have done this successfully. With these provisions, they can do more. Our bill actually does help with jobs—jobs here in the United States.

One of the premises behind this House legislation is if we deregulate, the jobs will come right back. Where have we heard that before? All through the 2000s: Just deregulate. Those investment banks such as Lehman don't

need regulations. Just give them a lot of leverage and let them run. And they ran—right off the cliff. We don't want to repeat that again. We don't want to repeat the mistakes of the 1990s and 2000s, where we allowed analysts of securities to recommend securities sold by their own investment banking firm. Those provisions are included in the House bill. That is going to undermine the markets.

We should learn from the facts. I urge all of my colleagues to support the Reed-Landrieu-Levin amendment as a base text. We can make improvements on that. We can send a bill—we hope very quickly in collaboration with the House—to the President that not only stimulates capital formation but also protects investors. We can send a bill that learns from the lessons of the last 20 years where, in the guise of deregulation, in the hope for job creation, we saw the greatest financial crisis since the Great Depression. We don't want to see this happen again.

Mr. President, I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Would the President let me know when 10 minutes has passed?

The PRESIDING OFFICER. The Republican time has expired.

Mr. GRAHAM. I ask unanimous consent to be recognized for 10 minutes.

Mr. PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Reserving the right to object, was there a consent entered into on speaking order earlier?

Mr. GRAHAM. They told me to come at 11:10 is all I know.

Mr. HARKIN. I was told to come at 11:00. I think it is fair to go back and forth. I ask unanimous consent that the Senator from Iowa be recognized to speak after the Senator from South Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina is recognized for 5 minutes.

EXPORT-IMPORT BANK

Mr. GRAHAM. Mr. President, this is a defining moment for the Senate in a couple of ways. The Democratic Senators have an alternative to the House-passed JOBS bill that will get a vote on their alternative. That is good. I believe the House-passed JOBS bill had overwhelming bipartisan support. It is a good document. I will support that version over my Senate Democratic colleagues. But let me tell you what our Senate Democratic colleagues have done that I think is very constructive.

Ex-Im Bank is trying to be made part of the JOBS bill in the Senate. This Export-Import Bank, what does this mean? This is a financing ability by American companies that are selling overseas in volatile or emerging markets. It is a financing system that has

been available since 1934. If you are going to try to sell a product made in America to a place in the world where traditional banking is hard to obtain, you can go to the Ex-Im Bank and they will give a letter of credit, they will sometimes give a direct loan to people who want to buy American products. The bank itself made \$3.5 billion for the taxpayer I think since 2005 and 2006.

Here is the reality: Every country we compete with has their version of Ex-Im Bank. We financed \$32 billion worth of American-made products sold overseas through our Ex-Im system last year. Canada, one-tenth our size, financed \$100 billion. France has three Ex-Im Banks. China has more Ex-Im activity than the United States, France, and Germany combined. Every country American manufacturing competes with that produces products has their version of Ex-Im Bank.

At the end of May, our Ex-Im Bank's authorization runs out. Our loan limits run out a few weeks earlier. This would be devastating. Small companies throughout this country depend on the Ex-Im Bank in order to sell American-made products overseas.

Let me give you one good example that has been the topic of conversation. Boeing Aircraft makes airplanes in America, the 787 Dreamliner. It was voted the best new airplane in a long time here recently, something that Boeing is proud of. They make it in Washington and now in South Carolina. The first airplane to be made in South Carolina will roll out in about a month from now. The facility is under budget and ahead of schedule, and we are proud of that airplane.

Eight out of the 10 airplanes being made in South Carolina in the first year were Ex-Im financed. There was a deal between Boeing and Air India where a letter of credit was issued by Ex-Im Bank to allow traditional financing to occur, and Boeing was able to sell a big order of American-made jets to Air India. That is just one example.

GE makes gas turbines to generate power for emerging areas such as Afghanistan, Iraq, the Middle East, Africa. All these distressed areas are going to grow and they are going to need power. One-third of the sales coming out of Greenville, SC, for the gas turbines made in America and creating American jobs goes through Ex-Im financing.

Here is the issue. If America allows our Ex-Im financing system to go away in May, if that is the will of the Congress, then you have destroyed the ability of many companies in this country to grow their business. As the economy has been weak and stagnant here at home, here is the good news: In terms of exports, we have increased our export sales 20 percent.

Imagine an America that could not continue to increase export sales. Imagine a Boeing manufacturer that could never sell an American-made air-

plane in a volatile or emerging market because China is now making airplanes and Airbus has access to three or four Ex-Im Banks. It would be an ill-conceived idea. This program has been around a long time. It has helped create thousands of jobs in the United States. Everybody we compete with has a more aggressive form of Ex-Im financing than we do.

To my colleagues who want to eliminate this, I don't understand how American business could ever successfully compete in these emerging markets if we unilaterally disarm.

To my Democratic colleagues, thank you for bringing up Ex-Im Bank. To our majority leader, Senator REID, this is a good idea. What is a bad idea is to not let anybody on the Republican side offer one amendment to this bill. Some of the ideas to reform Ex-Im Bank I would agree to. I think any organization, any entity, can be made better. I want to be able to get back to being in a body called the United States Senate, where people with different ideas on important topics can actually vote.

To my colleagues on this side, I may vigorously oppose some of you who decide the Export-Import Bank should go away because I think that would be the worst thing you could do for the American economy, particularly export jobs being created in this country, and it would be unilaterally surrendering in the world marketplace. Whether you like it or not, other countries are Export-Import Bank on steroids. If we just get out of this business, companies like Boeing will be unable to sell their airplanes, and you will shut down facilities such as those in South Carolina—not a very good idea.

At the end of the day, you do have a right to have your say, and we will have the debate and I am looking forward to the debate about what we should or should not do. But under the process we have now, not one amendment can be offered on our side. We have to do better. We had a transportation bill pass with 74 votes. We have had a good exchange here lately with judges. I am very proud of what our minority and majority leader worked out on judges.

I want to get the Senate back to being the Senate. I think Ex-Im reauthorization should be an integral part of any jobs bill. I want to put it in the Senate bill. I will gladly vote for it. There are a bunch of Republicans over here who will support extension of Ex-Im financing with reforms, but none of us want to be put in a situation where our colleagues cannot have a say where they disagree with us or that we cannot reform the bill. That is not the way to go.

I hope that between now and 4 o'clock, the minority leader and the majority leader can find a way to bring up the JOBS bill, allowing it to be amended in an appropriate way and taking votes some of us don't like, but it is part of democracy—have a robust debate on a jobs package that could

not come at a better time, and include in that debate Ex-Im reauthorization at a time when America needs more jobs here at home.

The economy here at home is weak. The one good thing about what is happening here at home is that our export sales have gone up. The way to create export jobs in America is to allow American businesses to compete on a level playing field throughout the world. I wish the world were different. I wish we had completely free markets. Every American business could do fine in that world, but that is not the way it is.

The Ex-Im Bank doesn't cost the taxpayers one dime. It makes money for the Treasury, and it allows American companies to make money. It allows American businesses to be competitive.

I am urging the two leaders of the Senate to allow a jobs bill to come forward, let us have our say, have our differences, let's vote, let's amend, and let's create jobs in America.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

JUMPSTART OUR BUSINESS STARTUPS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3606, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (HR. 3606) to increase American job creation and economic growth by improving access to public capital markets for emerging growth companies.

Pending:

Reid (for Reed) amendment No. 1833, in the nature of a substitute.

Reid amendment No. 1834 (to amendment No. 1833), to change the enactment date.

Reid amendment No. 1835 (to amendment No. 1834), of a perfecting nature.

Reid (for Cantwell) amendment No. 1836 (to the language proposed to be stricken by amendment No. 1833), to reauthorize the Export-Import Bank of the United States.

Reid amendment No. 1837 (to amendment No. 1836), to change the enactment date.

Reid motion to recommit the bill to the Committee on Banking, Housing, and Urban Affairs, with instructions, Reid amendment No. 1838, to change the enactment date.

Reid amendment No. 1839 (to (the instructions) amendment No. 1838), of a perfecting nature.

Reid amendment No. 1840 (to amendment No. 1839), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I come to the floor to express my strong disappointment with the so-called small business legislation passed by the House of Representatives which is now coming before the Senate this afternoon for a cloture vote and to express my support for the substitute amendment offered by Senators REED of