

2008 - 17

08 - 02

가

(Ⅱ)

안수현



한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

가

(Ⅱ)

- -
The Comparative Legal Analysis on the Corporate
Regulatory Reform()
-U.S.A-

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2008. 6. 30.



한국법제연구원
KOREA LEGISLATION RESEARCH INSTITUTE

2000 ()
達 州 가 가 資金調
證券法制가

制強化 規制緩和가

投資

가

가

, 가 ()

.
, .

가

, Gun Jumping

Rule 144A

Rule

144A

QIB

가

가

, WKSI

accelerated filer

SEC

가

가

SBA가

가

SBIC

가

(:)

IPO M&A

secondaries, BDC IPO

※ : 2005 , 가

Abstract

This paper reviews the current legislative changes occurred regarding corporate finance in the United State. It is somewhat interesting that legislative reforms does not mean deregulation automatically in the United States.

This paper consist of four parts as follows. First, it describes the regulatory policy and techniques adopted regarding corporate finance and capital formation in the United States. Second, it covers the 2005 securities offering reforms in detail. Third, it address the capital formation and supporting mechanism of small business. Fourth, it review venture capital industry and it's function and effect to form capital to the venture company.

In 2005, Securities and Exchange adopted rules that modifies and advances significantly the registration, communication, and offering processes under the Securities Act of 1933. The largest issuers tend to have a more regular dialogue with investors and market participants through the press and other media. SEC make a new category of issuers - a well-known seasoned issuer- that is permitted to benefit to the greatest degree from the modifications to rules changed regarding communications and the registration process. In addition to the communications exception, SEC adopted rules to establish a significantly more flexible version of shelf registration for offerings by well known seasoned issuers. Also SEC adopted revisions to the prospectus delivery requirements. It adopt "access equals delivery model", investors are presumed to have access to the Internet, and issuers and intermediaries

can satisfy their delivery requirements if the filings or documents are posted on a web site. Amended rules are intended to facilitate effective access to information, while taking into account advancements in technology and the practicalities of the offering process. In the other hand, additional exchange act disclosure provisions are added. These included risk factor disclosure, compensation disclosure etc. In the review above, it is notable that these revisions is based on the strong belief of continuing disclosure system. The Exchange Act specifically provides for current disclosure to maintain the timeliness and adequacy of information disclosed by issuers, and it has significantly expanded current disclosure requirements consistent with the provision in the Sarbanes-Oxley Act of 2002. These changes to the Exchange Act reporting framework provide greater vigor to the process that issuers must follow in preparing their financial statements and Exchange Act reports. Issuers, with the involvement of senior management must implement and evaluate disclosure controls and procedures and internal controls over financial reporting.

Small Business, both start-ups and those dealing with growing needs require easy access to capital in order to continue on as the catalyst for the U.S. economy. Small business is referred to as the back bone of the economy. Small Business Act provides for the creating of the Small Business Administration(SBA) and establishes Small Business Innovation Research Program. The SBA assist the entrepreneur not only in the preparation of business plans and but also financing which the new start-up venture might need to raise funds. In the past days, supporting program of SBA 7(a) loan guarantee has helped a lot the small business with higher limits. But recent days, the size of those loans are shrinking.

Instead, the government turns their eyes on the usefulness of securitization techniques to support small business.

In addition, there are also a lot of legislative achievements to lessen the regulatory burden on small firms. Among them, Regulatory Flexibility Act and Small Business Regulatory Fairness Act of 1996 are very important. Federal agencies are required to prepare and make publicly available an initial regulatory flexibility analysis, before new rule making as well as an estimate of the number of small entities likely to be affected by the proposed rule. Since Small Business Regulatory Fairness Act, there has been a marked change in agency attitudes toward regulatory flexibility requirements.

In 1958 the U.S. Government passed legislation creating the Small Business Investment Corporations(SBICs) to encourage investment in small businesses. The SBIC program made two important contributions to the development of the industry: The first contribution was its loan guarantees, which permitted participants to leverage their private funds. This soon left the SBIC program and established important independent venture capital firms. There was other Federal legislation, which had a significant impact on venture capital. The most important was a series of changes in employee pension fund laws during the 1970s. and 1980s. Lowering capital gains tax rates, through increasing encouraged venture investing. In addition Investment Company act of 1940 was amended to exempt Small Business Investment Companies with more than 100 shareholders from the provisions of the 1940 Act.

※ Key words : 2005 securities offering reform, well-known seasoned issuers, automatic shelf registration, access equals delivery, Small Business Administration, Regulatory Flexibility Act, Small Business Regulatory Fairness Act of 1996, Small Business Investment Corporations, venture capital

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(1)	111
(2)	112
(3)	115
(4)	117
(5)	·	117
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(1)	118
(2)	118
(3)	118
3.	125
(1)	125
(2)	127
4.	128
VI.	-	131
1.	131
2.	가 ()	132
3.	133
4.	135
	137

I.

I.

州) , (, 2000 가
 가 資金調達 .
 州 證券法制가
 , ,

州 州

(MBCA)

가

I.

,

· ,

,

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· , , ,

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.

II. :

II. :

州 規制強化 規制緩和가 1),
가 ,

(, 가.
)가

2).
가 가 가
,3)

1) 가

2) 가(EO 12291, 46 Fed Reg 13194,
1981) 1995 Unfund Mandates Act
(Pub L. No 104-4, 109 Stat 48 (1995), 2
USCA §§ 1501 et seq, 1997). , OMB, Draft Report to Congress
on the Costs and Benefits of Federal Regulations, 62 Fed Reg 39352, 39355-57 (1997)

3) , 2006 US Chamber of Commerce가

II.

가 가

1.

2000 가

競爭力

’, ‘ (deregulation)’, ‘ (corporate-friendly regulation)’, ‘ (principles-based regulation)’, ‘ (better regulation)’ ‘responsive regulation’

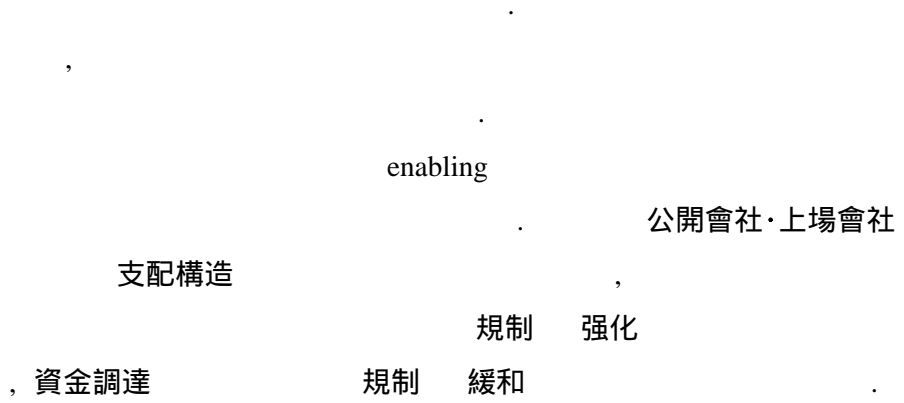
21 (Commission on the Regulation of US Capital Markets in the 21st Century)(www.capitalmarketscommission.com)
 Michael R. Bloomberg Charles E. Schumer가
 Bloomberg-Schumer Report(http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20_FINAL.pdf)

II.

:

2.

가



가

3. :

90%가

가

3. :

(1) enabling corporation v. mandatory regulation

州

州 ‘enabling structure of corporate law’ .

, 가

가 enabling corporation

, 公開會社 上場會社

enabling , (mandatory)

强制公示制度가

個人投資者가

enabling

II. :

가 가
(command and control)

(2)

가
 laws of capitalism)
 가
 部化)
 (enforced self-regulation)

①市場 (, the
 ②
 ③ (內
 ④

가

가 가
가 가

가

가

enforced self-regulation

가. 市場機能 規律

M&A

가

가

가

가

. 規制 内部化

理事會監督機能

, process-oriented approach

. 外部監督機關

法院

가

enabling

州

II.

, SEC 2002 Enron
가 SOX 6)

self-regulation

regulation

self

.7)

self-regulation

가

(self regulatory agency)

6)

7) Black, Julia, Constitutionalising Self-Regulation, 59 Modern Law Review 24-55 (1996)

SEC (FINRA, Financial Industry Regulatory Authority⁸⁾)

가 .
enforced self-regulation .⁹⁾

가 .¹⁰⁾

(3)

가 .

8) (NASD)가 . 2007 7 30 NYSE Regulation (NASD)

9) Brithwaite, John, Enforced Self Regulation: A New Strategy for Corporate Crime, 80 Michigan Law Rev. 1466 (1982); Ayes, Ian & Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford, Oxford University Press (1992)

10) Latin. Howard, Ideal versus Real Regulatory Efficiency: Implementation of Uniform Standards and "Fine-Tuning" Regulatory Reform, 37 Stanford Law Review, 1267 (1985)

II. :

가. (responsive regulation)¹¹⁾

, ,
.
.

,

(Compliance Pyramid)

가 가 .
.
가 가
가 .

(1 : Self Regulation)

(Enforced Self Regulation)

가 .

11) ,Ayes, Ian & Braithwaite, John, Responsive Regulation: Transcending the Deregulation Debate, Oxford, Oxford University Press (1992) ;

. Sagit Leviner, A New Era of Tax Enforcement :From 'Big Stick' to Responsive Regulation, U of Michigan Law &Economics, Olin Working Paper No. 06-007, Proceedings of the 2006 IRS Research Conference, U of Michigan Public Law Working Paper No. 68

, 가 (Command Regulation, Discretionary),
(Full Force of the Law: Prosecution & Incapacitation
)

. 原則 規制(principles-based regulation)

“ (principles-based
regulation)”

“ (rule-based)”

‘原則’

Henry M. Paulson Jr.: 12)

Michael R. Bloomberg Charles E. Schumer
가 Bloomberg-Schumer
Report¹³⁾

The Financial Services Roundtable : Blue Ribbon Commission on
Enhancing Competitiveness 가 14)

12)Henry M. Paulson Jr, "Competitiveness of the US Capital Markets", Economic Club
of New York, Nov. 20, 2006.

13)

"Sustaining New York's and US's
Global Financial Services Leadership"

14)

1.

II. :

principles-based regulation

가 ,

가 .15)

(less regulation)가 (better regulation)

良質 規制

Clark

.16)

가

-
- 2.
 - 3.
 - 4.
 - 5.
 - 6.
- 15)

16) , 17 7 , (2008. 2. 16), 3 .

가 , 1 , 2 가 , 3 가 (, ,)

가 ,

3. :

1%

가

가

(accountability),

가

‘ , ’

4

가

4

4

1 , 2 , 3

Ⅲ.

가

가

가

2005

1. 2005

(“2005 Securities Offering Reform”)

2002 Sarbanes-Oxley

.17)

SEC(Securities and Exchange Commission)

가

가

,

17)

Sarbanes-Oxley Act
(2003.12)

, 「 」 4 2 ,

III.

1933 1934
1933 1

1934

1980 SEC 一括申告書

가

(1) 現代化:

가.

SEC 2005 6 29

70

2005 12

.18)

1998

Aircraft

Carrier改善案¹⁹⁾

18) SEC Release Nos. 33-8591; 34-52056; IC-26993 (July 19, 2005) (the "Adopting Release"),

19) SEC Release Nos. 33-7606; 34-40632; IC-23519 (Nov. 3, 1998) 1993

가

Form A, B, C

, KEITH M. MOSKOWITZ, The SEC's 'aircraft carrier' proposes sweeping reforms, ABA Section of Business Law

2002 Sarbanes-Oxley 가 가

가 가 가

SEC 2002 Sarbanes Oxley 가 가 1998

2005 가

1934 SOX SEC SEC

가

本形成節次 資 公示 2005 公募

III.

私募, Rule 144A²⁰⁾
 . Rule
 144A (QIB, Qualified
 institutional buyers)²¹⁾
 ,
 가

가 가 , i)公募
 가 가 簡素化 一括申告
 書制度 改善 , ii) 가
 가
 . iii)

가
 , ‘多年間 公示 周知 (well known seasoned
 issuer, WKSIs)’ (free writing pro-
 spectus)가

20) Rule 144A , William K. Sjostrom, Jr., The Birth of Rule
 144A Equity Offerings, (Draft of March 10, 2008), UCLA Law Review, Forthcoming
 Available at SSRN: [http:// papers.ssrn.com/sol3/papers.cfm?abstract_id=1104706](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104706) (29k)

21)

4가 ,

發行公示制度

가 .

22)

①

(well known seasoned issuers,

WKSIs)²³⁾

가 ‘WKSI’

.²⁴⁾

i) Form S-3

F-3

가

, ii)

가

3

\$ 1billion

가

가

\$700 million

\$ 1billion

가

가

가

가

WKSI

i)

ii)

22) Securities Act Release No. 8591 (July 19, 2005)

23) 가

2005

, “

T/F

”, (2008. 5. 20)

24) see. Rule 405

III.

WKSI (ineligible issuers) Form S-3 General Instructions I.A.3(b) blank check companies, shell companies, penny stock issuers, limited partnership, involuntary bankruptcy, 3 가 15 (b)(4)(B) (,), 3 가 , 3 , 1940 가 . WKSI SEC 2004 30% , 95%, 96% .25)

② (seasoned issuers)

, seasoned issuers Form S-3 F-3 가가 \$75 million(Form S-3 가) . Form S-3 seasoned issuers , WKSI

③ (unseasoned issuers)

, unseasoned issuers 13 15 d Form S-3 F-3

25) Securities Act Release No. 8591 (July 19, 2005) at 29

1. 2005

가 \$75 million

④ (non-reporting issuers)

, non-reporting issuers

13

15 d

1934

[] 가

Well-known seasoned issuer	<ul style="list-style-type: none"> • Form S-3 F-3 • 3 • \$ 1billion • 가 • \$700 million • (ineligible issuers) • WKSI • WKSI • WKSI가
Seasoned issuer	<ul style="list-style-type: none"> • Form S-3 F-3
Unseasoned issuer	<ul style="list-style-type: none"> • 가 Form S-3 • F-3
Non-reporting issuer	<ul style="list-style-type: none"> • 가 •

Ⅲ.

(2)

가. (Automatic Shelf Registration)

2005 가 自動一
括申告書制度 ‘
(well-seasoned issuer)’

①

(well known
seasoned issuer, WKSIs)
가 .

· S-3 F-3

· (i) 가 \$700 million 가 (ii)
3 \$1 billion

· (ii) ,

seasoned issuer가 \$75million
가 .

1. 2005

seasoned issuer가
seasoned issuer

기업
가 seasoned issuer
SEC
(well known seasoned issuer)
가
가 SEC가

Enron

② 自動一括申告書

WKSIs
가
Form S-3 F-3
SEC
가
가
가
i) 가 , ii)

III.

(,), iii)

.

가 가 가 .

,

.

(pay as you

go)

seasoned issuer

가

3

(offering

materials)

가

.

,

,

,

,

2

가

3

가

,

가

가

(market offering restriction)

,

Rule 145

가

(public float)

가

10%

,

가

.26)

가 10%

가

\$75million

가

①

5

·1

(quiet period)

가

가

.27)

26)

가

gatekeeper

27) SEC Release No. 33-5180(Aug. 16, 1971): Section 2(a)(3) of the Securities Act (

Ⅲ.

· 2

2 가 .

. 가 .

· 3

가 .

가 .

‘Gun jumping’ .

가 ,

(11 , 12(a)(2), 17 (a)(2)

Rule 10b-5).

, SEC

가 . ,

가 .

5

가 ,

)

, 5 가

②

가

gun jumping
(communication)

5

(free writing prospectus)

가

free writing prospectus

(penny

stock)

Rule 134

가

, seasoned issuer

가 가

가

III.

13 15 d

가

30

가

30

, SEC

가

IPO

Rule 134

가

가

. Form S-8

가

가

(free writing prospectus)

①

well known seasoned issuer

(

)

free-writing prospectus

“

”

(10

)

② 가

가

i) well known seasoned issuer

well known seasoned issuer

ii) well known seasoned issuer

WKSI 가

가

, 가 10

③

가

(free writing prospectus)

SEC

, , term sheets,

.28)

(free-writing prospectus)

가 SEC

(free-writing

28) Google pre IPO

Ⅲ.

prospectus)

IPO SEC

[]

(WKSI

)

WKSI	WKSI
<p>가 30</p>	<ul style="list-style-type: none"> · 가 - free writing prospectus · , - 가 30 - 가 30 · Free writing prospectus 가
<p>가 30</p>	<ul style="list-style-type: none"> · 가 - free writing prospectus - Free writing prospectus 가
<p>가</p>	<ul style="list-style-type: none"> · - free writing prospectus - Free writing prospectus 가

[])

(Seasoned Issuer

Seasoned Issuer	
가 30	<ul style="list-style-type: none"> • • • - - - <p style="text-align: right;">가 30</p>
가 30	<ul style="list-style-type: none"> • • • <p style="text-align: right;">가</p>
가	<ul style="list-style-type: none"> • - - <p style="text-align: right;">free writing prospectus Free writing prospectus 가 가</p>

III.

[])

(Unseasoned Issuer

Unseasoned Issuer	
가 30	<ul style="list-style-type: none"> • • • - - - 가 30
가 30	<ul style="list-style-type: none"> • • • 가
가	<ul style="list-style-type: none"> • - free writing prospectus - Free writing prospectus - 가 가 - 가 가 Free writing pro- spectus

[] issuer) (Non-reporting

Non-reporting Issuer	
가 30	<ul style="list-style-type: none"> • • - 가 - 가 30
가 30	<ul style="list-style-type: none"> • • 가
가	<ul style="list-style-type: none"> • - free writing prospectus - Free writing prospectus - 가 가 - 가 가 Free writing prospectus

III.

Rule 159

(after the time of a sale)

12 (a)(2),

17 (a)(2)가

가

. SEC

, SEC

Rule 159

가

.

due

diligence,

가

,

comfort letter

12 a 2 , 17 a 2

가

12 a 2

11

가

,

11

가

.

, 가()

①

10 a

가 SEC 가

()

(Access Equals Delivery)

가 ‘ ’

가

가

.29)

SEC

가

5

12 a

1

가

가

가

②

29) Rule 173

III.

i) , iii)
 , iii)Rule 165(f)(1) iv) Form
S-8 30)

가 ,
Form S-1, F-1 .
Form S-2, F-2 .
Form S-1 F-1
가 . Form S-3 Form F-3
가 .

Rule 137, 138, 139 ,
5 .
 ,
Rule 137 가 가
 . SEC Rule 137

Rule 137 .
30) SEC .

Rule 138

가

Form S-3

F-3

Rule 139 seasoned issuer(Form S-3, F-3)
가

reasonable regularity

Rule 139 1

, Form S-3, F-3

Rule 139

Rule 138, Rule 139

Rule 144A

, Regulation S

[]

WKSI	
	<ul style="list-style-type: none"> • • •
	<ul style="list-style-type: none"> • 가 •

III.

Seasoned issuer	
	<ul style="list-style-type: none"> • - - 가 - 가 -
	<ul style="list-style-type: none"> • 가 •
Unseasoned issuer	
	<ul style="list-style-type: none"> • 가 •
	<ul style="list-style-type: none"> • 가 •
Non-reporting issuer	
	<ul style="list-style-type: none"> •
	<ul style="list-style-type: none"> • 가 • •

1934

① (Risk Factor Disclose)

factor) Form 10-K (risk

②

③ SEC

WKSI

SEC

accelerated filer WKSI Form 10-K, 20-F

180 SEC

,31)

31) accelerated filer

Rule 12b-2

12 가

1

가

\$75million

13(a) 15 (d)

, Forms 10-KSB, 10QSB

III.

[]

	<ul style="list-style-type: none"> Form 10-K Form 10 Q
SEC	<ul style="list-style-type: none"> 180 SEC : WKSIs, accelerated filers
	Form 10-K 20-F

WKSI 가

SEC Advisory Committee on Smaller Public Companies

(3)

가.

가

. 10-K 10Q

accelerated filer

가 .

가

가

Gun Jumping

가

가

가

가

Rule 144A

Rule 144A

WKSIs

Due Diligence

III.

WKSIs 가

11 , 12 (a)(2) Rule
144A Aircraft Carrier
11 , 12(a)(2)
guidance
due diligence

,
12 (a)(2)
,
, WKSIs accelerated filer SEC

,
電磁的

Rule 15c2-8 IPO

, 가
가 ,
Sarbanes-Oxley
seasoned issuer가
WKSIs SOX

2.

2.

(1) 2006. 6.26 SEC

32)

, SEC

가

3

가

가.

(CD&A)

(CD&A, Compensation Discussion and Analysis)’

Sarbanes-Oxley

CEO

. CD&A

, 가

, 가

32) SEC Release Nos. 33-8655; 34-53185; IC-27218; SEC Press Release, 2006-123(July 26, 2006)

III.

(named executive officers)

CEO, CFO,

3

Form 8-K

가

가

, , ,
.

, , 3 5

, ,

가

\$120,000

2.

가

5

가

5

\$10,000 , \$25,000

10%

가

3 Form

8-K

(,)

Regulation S-K Item 407 Item 407 .33),

가

33) Release No. 33-8732; 34-54302; IC-27444; File No. S7-03-06.

III.

(2) 2006. 12. 22.

2006 12 22 FAS 123R

가

FAS 123R

가

가

가

3.

(1) 2005. 12.15

(E-Proxy Rule)

34),

가

SEC 2005. 12.15

35)

34) See Release No. 33-7233 (Oct. 6, 1995)[60 FR 53458]

35) SEC Release Nos. 34-52926; IC-27182 (December 15, 2005)

3.

30

가

toll-free telephone

(Rule 14a-16(a)(1)).

40

가

Rule 14a-6, 14c-5, 14c-3

3

가

3

63

III.

가

가

가

(2) Universal E-Proxy rule ³⁶⁾

가. E-Proxy Rule

2008 1 1 accelerated filers
e-proxy

37)

36) 17 CFR Part 240 SEC Release Nos. 34-56135; IC-27911; File No. S7-03-07
(<http://sec.gov/rules/final/2007/34-56135.pdf>)

37) Schedule 14A, Schedule
14C, Rule 14a-3

가

3.

	1	2008	1	1	
		accelerated filers	2008	1	1
가	2009	1	1		

1934 Rules 14a-3, 14a-7,
 14a-16, 14a-101, 14b-1, 14b-2, 14c-3

가 (Notice and Access Model)

가

III.

①

(Notice only option)

40

가

(Rule 14a-16(d).

가

가

가

가 toll free

3.

· 가 control/identification

· :
· 가 .
·

(Rule 14a-16(g). control/identification

(Rule 14a-16

(e)(iii), SEC

(Rule 14a-6(b)).

② (Full set

delivery option)

가 , 가

(Rule 14a-16

(n)(3)(ii). 가
(Rule 14a-16(n)(4)(ii)).

40

40

38).

38) Rule 14a-16(n)(3)(i)

III.

③

①

②

가 . ②

②

Rule 14a-3(b)

(Rule 14a-16(n)(1).

가 (Rule 14a-16(n)(2)(ii))

가

가 .

가

40

가 (Rule 14a-16(n)(3)(i)).

가

Rule

, ①

(Ruel 14a-16(f)(1)).

3.

①

40

40

②

5
(Rule 14b-1(b)(2)).

가

가

가

가

가

가

4.

③ (23 a 2)

3 f

가

SEC

Office of Small Business Policy

1982

Small Business Investment Incentive Act

SEC

(Government-Business

Forum on Small Business Capital Formation)

40).

5. -

가

RFA

40) Alan L. Beller, Before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, United States House of Representatives, Testimony Concerning Small Business Capital Formation, September 23, 2004 (SmallBusiness@sec.gov)

Ⅲ.

enabling

mandatory

“principles-based regulation”

가

가

2002 Sarbanes-Oxley

SEC(Securities and Exchange Commission)

가

가

IV.

,
stration)

(SBA, Small Business Admini-

保證

證券化

流動化制度

가

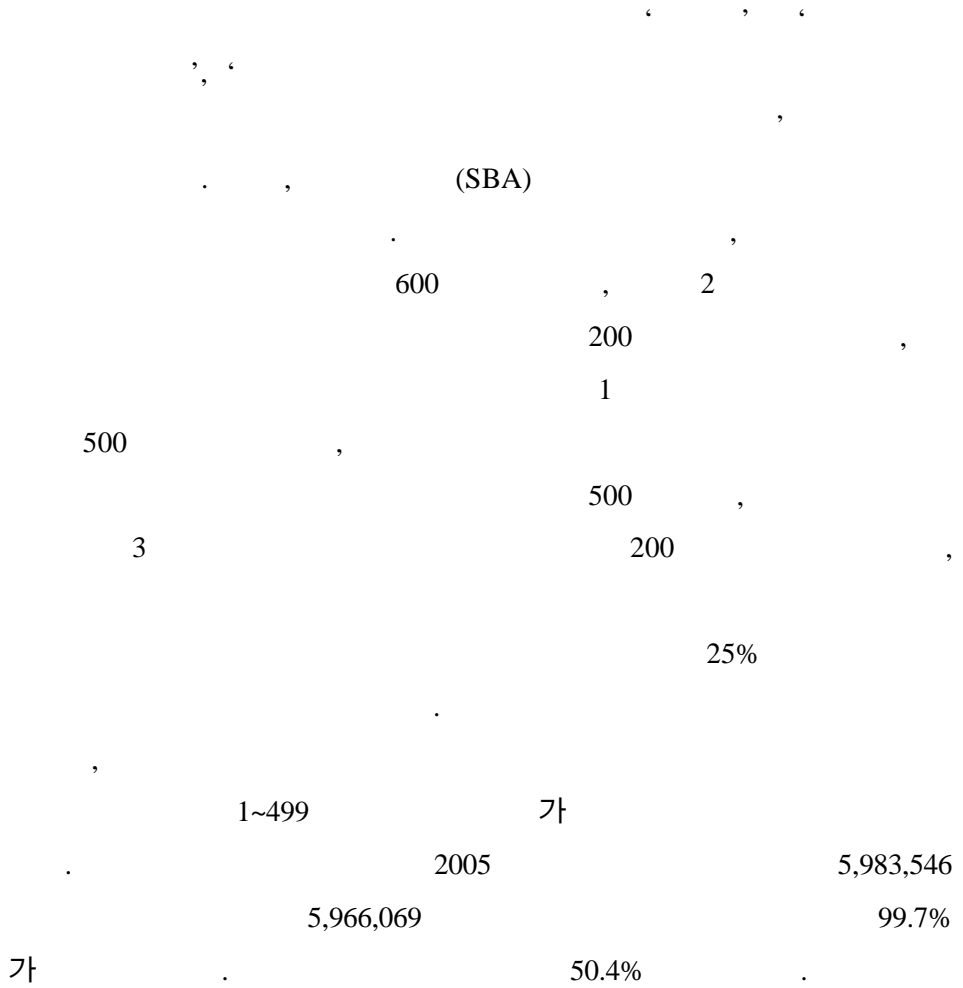
가

2.

(1)

1953 「中小企業法」
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IV.



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	By detailed employment size	By year	By state	By industry
U.S. - All industries - by Employment Size of Enterprise				
<small>introductory text includes scope and methodology. Table includes only establishments with payroll. Nonemployers are shown separately. For descriptions of column headings and rows (industries), click on the appropriate underlined element in the table.</small>				
Employment size of enterprise	Firms	Estab. with payroll	Paid employees	Annual payroll (\$1,000)
All firms	5,983,546	7,499,762	116,317,003	4,482,722,481
Firms with 0 to 4 employees (as of March 12)	3,677,879	3,684,047	5,936,859	220,009,104
Firms with 5 to 9 employees	1,050,062	1,062,907	6,998,483	206,178,084
Firms with 10 to 19 employees	629,946	662,197	8,483,854	269,416,918
Firms with 20 to 99 employees	520,897	679,382	20,444,349	700,453,403
Firms with 100 to 499 employees	87,285	331,999	16,911,040	616,524,232
Firms with 500 employees or more	17,477	1,079,170	57,672,418	2,470,140,740
Firms with 500 to 749 employees	5,823	67,664	3,539,488	136,660,216
Firms with 750 to 999 employees	2,878	43,464	2,478,859	95,138,017
Firms with 1,000 to 1,499 employees	2,845	56,614	3,456,833	139,104,670
Firms with 1,500 to 2,499 employees	2,314	75,406	4,435,321	195,189,876
Firms with 2,500 employees or more	3,617	836,022	43,761,917	1,915,047,955
Firms with 2,500 to 4,999 employees	1,787	111,752	6,199,781	276,630,183
Firms with 5,000 to 9,999 employees	918	123,808	6,438,639	297,093,815
Firms with 10,000 employees or more	912	600,462	31,123,497	1,340,823,957

: Statistics of U.S. Business (2005)(<http://census.gov.epcd/subs/2005/us/US--HTM>)

[] ()

		U.S. - All industries - by Sector								
		<small>introductory text includes scope and methodology. Table includes only establishments with payroll. Nonemployers are shown separately. For descriptions of column headings and rows (industries), click on the appropriate underlined element in the table.</small>								
More data	NAICS code	Industry title (with link to definition)	Firms by employment size of subsector				Paid employees by employment size of subsector			
			Total	20+	100+	500+	Total	20+	100+	500+
		All industries	5,983,546	10.5%	1.8%	0.3%	116,317,003	81.7%	64.1%	49.6%
	11	Agriculture, Forestry, Fishing and Hunting	23,447	0.4%	1.3%	0.4%	168,744	0.1%	0	15.5%
	21	Mining	19,498	0.3%	4.2%	1.6%	437,272	0.4%	0.3%	55.8%
	22	Utilities	6,660	0.1%	7.4%	3.0%	833,106	0.7%	0.6%	82.8%
	23	Construction	777,664	1.3%	1.0%	0.1%	6,781,327	5.8%	3.6%	13.9%
	31-33	Manufacturing	288,568	0.5%	6.3%	1.4%	13,667,337	11.8%	74.2%	55.8%
	42	Wholesale trade	336,736	0.6%	3.2%	0.9%	5,968,929	5.1%	3.2%	39.1%
	44-45	Retail Trade	736,940	1.2%	1.5%	0.3%	16,338,672	14.1%	87.3%	58.9%
	48-49	Transportation and Warehousing	169,086	0.3%	3.4%	1.3%	4,188,016	3.6%	73.7%	61.9%
	51	Information	76,261	0.1%	4.0%	1.5%	3,402,599	2.9%	83.3%	73.0%
	52	Finance & Insurance	268,883	0.4%	2.2%	0.6%	6,431,837	5.5%	78.1%	68.9%
	53	Real estate and rental & leasing	306,525	0.5%	1.2%	0.4%	2,144,077	1.8%	40.2%	31.8%
	54	Professional, scientific, & technical services	757,174	1.3%	1.3%	0.4%	7,689,366	6.6%	52.3%	38.3%
	55	Management of companies & enterprises	26,513	0.0%	57.2%	26.3%	2,856,418	2.5%	97.1%	88.2%
	56	Administrative & support & waste management & remediation services	320,252	0.5%	3.7%	1.1%	9,280,282	8.0%	77.3%	61.0%
	61	Educational services	72,410	0.1%	5.7%	1.5%	2,879,374	2.5%	73.1%	55.0%
	62	Health care & social assistance	689,392	1.2%	3.2%	0.6%	16,025,147	13.8%	70.3%	61.6%
	71	Arts, entertainment, & recreation	114,145	0.2%	2.8%	0.6%	1,936,484	1.7%	55.8%	33.9%
	72	Accommodation & food services	482,983	0.8%	2.3%	0.4%	11,025,909	9.5%	54.2%	40.0%
	81	Other services (except public administration)	676,400	1.1%	8.8%	0.2%	6,390,954	5.5%	25.9%	14.4%
	99	Unclassified	23,986	0.0%	0.0	0.0	31,153	0.0%	0	0.0

: Statistics of U.S. Business (2005)(<http://census.gov.epcd/subs/2005/us/US--HTM>)

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2003 500
 39.4% 2006 1 42% 41)
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 1 0.5%, 0.1%
 42).

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2 “ 가 ,
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41) , Quarterly Financial Report (2003, Q4), (2006, Q1)

(http://www.census.gov/prod/www/abs/qfr_mm.html)

42) National Federation of Independent Business

3.

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SBA가

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SBA

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金融業務, ②

情報提供業務 ③

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保證

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「(The Community Reinvestment Act, CRA)」

CRA

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가. 聯邦政府

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SBA

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SBA

credit elsewhere

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州 州

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1 25,000 ~ 35,000

.43)

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가. 聯邦政府 (, SBA)

SBA

434

(2003

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9,524

SBA가

4.6%

7 (a)

125 (2004)

가

.44)

43)

가

44)

1994-2001: FRB, Report to the Congress on the Availability of Credit to Small Businesses, 2002

2002-2004 : SBA, FY 2005, Congressional Performance Budget Request

IV.

. 州 政府

州政府

가 . ,
 2003 1 1.1 (5,900)
 , PIDA(Pennsylvania Industrial
 Development Authority) 6,800 가 .

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가. 聯邦政府 : (SBA)

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1932 (Reconstruction Finance Corporation,
 RFC) 가 1934
 SBA 가 . 1929
 ~ 1932 가 가
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 SBA ,
 20 가 , 1970

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1953 「 」 ,
 2004 D.C , 10
 , 70 , 3,967 .

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(2004)
 125 , 74,825 (2004) .
 16 7 , 434 (2003)가 .
 가 9,524 (: 4,574
 , , 4,950) 4.6% .
 7 a ,
 75% (15
 85%). 3.0%
 . 가 .
 가

④

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 , .45) SBA
 ,
 一般保證 (7(a)) 가 .

45) <http://www.sba.gov/aboutsba/international/overview/html>

IV.

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504(CDC: Certified Development Company)	<p>(CDC)</p> <p>CDC</p> <p>SBA</p> <p>•CDC : 270</p> <p>•2002 : 5,480</p> <p>7,000</p>

Micro Loan, 7(m) Loan	<p>SBA가 () 170)</p> <ul style="list-style-type: none"> • : 3 5,000 • : 1 500 • : 6 • 2002 : 2,400 , 3,420
(Small Business Investment Companies: SBIC)	<p>SBA가 가 (SBICs)</p> <ul style="list-style-type: none"> • SBA SBIC가 • SBIC • SBIC : 446 • 2002 : 26 6,000
()	<p>()</p> <ul style="list-style-type: none"> • : : 20 , : 150 • 2002 : 2 1,829 , 13

IV.

SBA . 2003
8 . SBA

SBA가

90

⑥ (Small Business Investment Company,
SBIC) 46)

A.

SBIC 446 SBIC

.47)

1958

(SBIC)

가

. 가

(LP)

(LLC)

SBIC가

SBA가

가

SBIC

SBIC SBA

投融资資金(SBA)

46) 中小企業總合事業團 創造的 中小企業支援部, 벤チャ企業に関する 國內外の直接金融投資者)環境狀況調査 (海外調査編) 報告書, (2003)

47) SBIC SBA, Small Business Investment Company Program Fiscal Year 2002 Special Report, p.28(<http://www.sba.gov/INV/specialreport.html>)

3.

SBIC
SBIC가 (,) 가
SBIC

B.

SBIC 2가 , SBIC SSIC(Specialized Small Business
Investment Company)가
가 가
SBIC

C. SBIC 가

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SSBIC 150)
, SBIC 500

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가 . SBA SBIC 가

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SBIC . SBIC
SBA

IV.

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D. 投融資

SBA 가 SBIC SBA
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 SBA 3 “ ”
 SBIC 300% 가 , SSBIC
 400% .
 , , 가
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 SBIC 가 가 . SBIC
 SBA
 . 10
 SBIC
 가 . 1992 Small Business
 Investment Act “ 2 ” ‘Participating
 Security’ . Participating Security
 15 , SBIC 가
 SBA . SBA SBIC
 , SBIC 9 ~ 12%가 SBA .
 Participating Security 200% .

⑦

1965 가가 가

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1970

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SBIC가

1979

1977

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1878 , 1981

가

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49.5%

28%

, 1981

20%

)

, 1979 ERISA(

) “Prudent Man Rule”

가

safe harbor

가

IV.

200 38 . 1982

1978 1979 SBIC

가 . SEC

, NASDQ

1980

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. 1980

(Small Business Investment Incentive Act)

가

(Business Development Companies SEC

), 1981

SBIR

1987 11

1980 1990 가

1993

가 . NASDAQ IPO 1995 476

, 1996 655

가 . , SBIC

. 2001 IT

2004 IT

46 가 .

⑧

SBA
 SBDC
 SCORE가
 SBDC(Small Business Development) (SBA)

1976

가

48).

SCORE(Counselors to America's Small Business,)

1 500

48) SBDC homepage (<http://www.SBA.gov/SBDC/programreview2001/SBAReport.html>)

IV.

(5)

(), (: PIDA, Pennsylvania Industrial Development Authority; MELF, Machinery Equipment Lending Fund; SBF, Small Business First), (: EDA, New Jersey Economic Development Authority)

가 .
가 , .

(6)

1995 SBA
가
().
가
(SBA)

SBA
 , SBA 證券化
 secondary market program
 pooling
 SBA ,
 1985
 75% pooling
 가
 가
 SBA
 , 가 . SBA
 , 1990
 2001 35
 SBA
 50% (2001
).⁴⁹⁾

49) FRB, Report to the Congress on the Availability of Credit to Small Businesses, 2002

IV.

4.

(1)

가. (Small Business Act)

1930

50), 1940 2

(Smaller War Plants Company)

가 (Temporary National Economic

Committee: TNEC) 1938 1941

TNEC

51),

50) , WTO , 1997, 180

51) 李在奎, 美國 中小企業支援機關研究, 韓國中小企業會誌, 20 1 (1998), 199

1945
 < >
 , 1953 (Small Business Act)
 . 1953
 가 .
 15 (Title 15) • 14A)
 14B) (Chapter)
 14A
 14B
 ()
 .
 (Small Business Investment Act)⁵²⁾
 가 가 1958
 가
 1992 2001 . 1992
 SBIC
 SBIC SBA
 10
 SBIC
 가 1992 Small Business Investment
 Act “ 2 ” ‘Participating Security’
 . Participating Security

52) William John Martin, Jr. and Ralph J. Moore, Jr. The Small Business Investment Act of 1958, California Law Review, Vol. 47, No. 1 (Mar., 1959), pp. 144-170

IV.

15, SBIC 가 SBA
SBA SBIC
2001
53).
. 1980
1980 (Small Business Investment Incentive
Act) 가
Business Development Companies
SEC

53)

The Small Business Investment Company Amendments Act of 2001 (Public Law 107-100, 115 Stat. 966-972) amends the Small Business Investment Act of 1958 (SBIA) to: (1) increase the amount that the Small Business Administration (SBA) may charge as a subsidy fee for guaranteeing the payment of a debenture from 1.0 to 1.38 percent of the debenture amount; and (2) extend through fiscal year 2001 the debenture maturity period.

It amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to provide civil penalties for false statements or representations of securities for purposes of influencing SBA actions.

It authorizes the SBA Administrator to serve upon any management official a written notice of the SBA's intention to remove such official for violations of the SBIA or for breach of duty.

It revises specified removal requirements.

It reduces, for a two-year period beginning on 1 October 2002: (1) the guarantee fee for SBA-guaranteed loans to small businesses; (2) the annual fee charged for such loans; and (3) the fee charged for the guaranty of the payment of principal and interest on debentures issued by a qualified state or local development company.

It prohibits the SBA, with respect to the latter fee, from charging any up-front fee with respect to such loans during such two-year period. It provides for the budgetary treatment of loans and financings made to small businesses during such period. It makes this section effective only upon the availability of appropriated funds to offset the cost of such amendments. (Bill: S. 1196)

(Regulatory Flexibility Act)

가 . 1980 9
가
가

1996 3 (SBREFA, Small
Business Regulatory Enforcement Fairness Act)

SBA

SBA 2004

171

54).

가

54) SBA Office of Advocacy, Small Business Regulatory Flexibility Model Legislation Initiative, 2005. 9

IV.

(SBREFA, Small Business Regulatory Enforcement Fairness Act)

RFA

RFA

1996

RFA

EO 12866(1993) EO 13272(2002)

, 2007

(Small Business Regulatory Enforcement Fairness Act : SBREFA)

212 가

. SBREFA

212

103

가

(2)

가.

1979 ERISA(

) Prudent

Man Rule

가

safe harbor

가

4.

(CRA, Community Reinvestment Act)

FRB

(The Community Reinvestment

Act, CRA)

1977

, CRA

CRA

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SBIC

IV.

A. (sec. 582(c))

, (Note),

- ()

- sec. 591 (, ,

- 1958

- (, ,)

SBIC

B. SBIC (sec. 1242):

1957

(1958 9 3

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sec. 1242

(SBIC) ()
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 , 가 가 (SBIC가
) (Reg. 1. 1242-1(a)). SBIC
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 () SBIC가 SBA가
 SBIC 가 (Reg. 1.1242-1(a)(1)).
 가 (Reg. 1. 1242-1(c)).

- SBIC ,
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- 가(가)
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- 가 가 가 가

SBIC 1958 SBIA

IV.

SBA SBIC 가
SBIC 가

SBIC 가가

(Rev. Rul. 62-58).

C. SBIC

(sec. 1243)

sec. 1243

304

1958

1969 7 2

sec. 582(c)

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103 (5))

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(Reg. 1. 1242-1(a)).

- 304

- sec. 1243

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- 가 가 가 가

D. (sec. 1044)

(C) (, , S) ,
 ())
 60
 (SSBIC) () ,
 ,
 가 .
 1993

(Specialized Small Business Investment Company:

- SSBIC' 1993 3 13 1958
- 301 (d) SBA 가
 (sec. 1044((c)(3)) .
 - 301 (c) .
 - 1)
 - 2) (A) 90 .
 - (B) .
 - 3) .

IV.

(A) 가 302 (a) (c) (①
500 가
, 1,000 , ②
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, ,
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(B) 가
가 ,
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4)

(A) , 300
,

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3)(A) 가

- 1997 가

- 가 가 ,

- 302 (b)

302 (d) SBIC가 ,
(, , ,
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SSBIC SBIC 가 .

4.

() 가
(sec. 1044(a)),
(sec. 1044(b)).

1)

- 50,000 (25,00)
- 500,000 (250,000)

2)

- 250,000
- 1,000,000

50% (sec.52(a))
, (sec. 52(a))) 1

SBA 가 (SSBIC 1993 5 13 1958)
(1958 SBIA) sec. 301(d)
(sec. 1044(c)(3))

5. -

IV.

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SBA가
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MTDC (Massachusetts Technology Development Corp) 州

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(MIT , 가) ,

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1970 2003 340billion
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9%

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1946 ARD(American Research and Development)

1946 ADR(American Research Development)

1958 SBIC

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1969

V.

가 . 1969 Arthur
Rock

3 IT

2000

가 IPO 가

[] IPO v. IPO

Year	# of All IPOs	# of Venture-Backed IPOs
1999	477	270
2000	352	264
2001	83	41
2002	77	22
2003	68	29
2004	194	93
2005	168	56
2006	168	57
2007	155	86

: 2008 NVCA Yearbook(www.nvca.org)

1.

1990

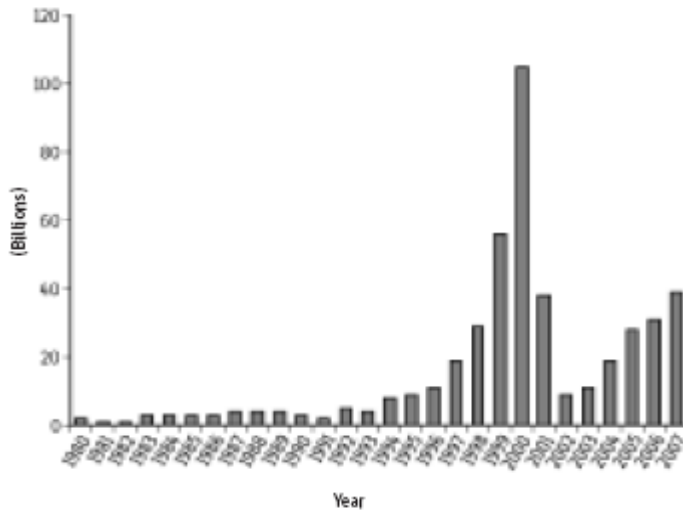
2007

가

2000

가

[] U. S VC Fund Commitments, 1980 - 2007 (\$ billion)



: 2008 NVCA Yearbook(www.nvca.org)

(3)

2003

42%,

25%,

21%

가

V.

GP(General Partner) 가 (GP(General Partner)
 2~3%)가 1% 7
 15~20%
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	()		·	·가		
1995	99.3	4.63	20.24	16.72	19.94	38.37
1996	124.2	19.89	11.92	6.84	3.06	58.37
1997	176.0	25.23	16.59	12.44	6.25	39.43
1998	296.8	11.86	6.30	11.32	10.34	60.14
1999	627.7	14.19	17.21	9.61	15.50	43.49
2000	1,058.0	3.70	21.10	11.80	23.30	40.10
2001	379.4	2.61	21.80	9.41	24.49	41.70
2002	76.7	2.36	20.86	9.13	25.42	42.24

: SBA, The Small Business Economy, 2002-2003

1.

(4)

LLP

S Corporation

LLP

LLC

가

(5)

가

NASDAQ

(Pink Sheet, OTCBB)

V.

2.

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가
1979 Employee Retirement Income Security Act “
(Prudent Man Rule)” .

가

가 .56)

(2)

1980 (Small Business Investment
Incentive Act) 1940
(Investment Company Act)

Business Development Companies(BDCs)

. , () 14 .
1981 20%

(3)

가

56) Paul A Compers & Josh Lerner, What Drives Venture Capital Fundrasing?
Brookings Papers on Economic Activity 149, 166 (1998)

2.

IPO M&A

IPO

IPO
M&A

Rule 506 safe harbor of Regulation

D

Rule 144A

Rule

가.

: Rule 506 safe harbor of Regulation

D

1933

가

1933

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. 1933

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1982

Regulation D

, 가

V.

Regulation D Rule 501, 502, 503, 504, 505, 506
 , Rule 501~503 , ,
 Rule 504~506
 . Rule 504 \$1 million , Rule 505
 \$5 million, Rule 506 \$5,000,000 million
 .
 (Safe Harbor) .
 , 가 accredited
 investors 35
 . accredited investor
 non-accredited investor
 가 . 가
 가 .
 accredited investor ,
 .
 가
 .
 Regulation D가
 가 . 2007
 8 21 SEC accredited investor
 Regulation D
 .57) accredited investor , 가 ,
 가 \$750,000(),
 \$5,000,000() 가 .

57) Release No. 33-8828 "Revisions of Limited Offering Exemptions in Regulation D(issued on August 3, 2007)(<http://www.sec.gov/rules/proposed.shtml>)

2.

investor’ Rule 507 가 ‘large accredited

\$2.5million
\$600,000)

\$400,000(

\$10 million

가

가

2012 7 5
LLC, joint venture,

Regulation D

6

6

90

Rule 506

Regulation D

가

(Rule 502(2)).

5

가

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, 5

cease and desist order

Regulation D

Reg.D

가

Form D

가

.58)

58) SEC Release NO. 33-8814, "Electronic Filing and Simplification of Form D"

V.

: Rule 144A⁵⁹⁾

QIB(Qualified Institutional Buyer)

1990 4 SEC Rule 144A ,

QIB(Qualified Institutional Buyer) 1933

. “QIB”

가

가

가

(1)

가

가

가

가

가

가

가

59) Rule 144A

, William K. SJoström, Jr., The Birth of Rule 144A Equity Offering, (Draft of March 10, 2008,, UCLA Law Review, Forthcoming) (Available at SSRN: <http://ssrn.com/abstract=1104706>) ; Chaplinsky, Susan and Latha Ramchand, The Impact of SEC 144A on Corporate Debt Issuance by International Firms, Journal of Business 77(4) (2004)

2.

. Rule 144A

.60) Rule 144A

가 가 .

Rule 144A 가

QIB . QIB

\$100million .

가 가 \$25million . 61).

\$10million (

) QIB

. QIB 가

QIB 62)

(, NASDAQ.

OTCBB Pink Sheets)

가

60) Rule 144A Livingston, Miles, and Lei Zhou, The Impact of Rule 144A Debt Offerings Upon Bond Yields and Underwriter Fees, Financial Management 31 (4) (2002)

61) 17 C.F.R. §230.144A(a)(1)(vi)

62) Dealogic (CommScan LLC), Communicator Inc.

QIB

QIB . Rule 144A

QIB

http://www.compliancehub.com/html/Form_QIB-QP_Certification.pdf;

CommScanLLC, SEC No-Action Letter, 1999 WL 46707 (Feb. 3, 1999)

V.

가 .63)

Rule 144A

QIB

가

Rule 144

(1)

가 가

QIB

가

QIB

Nadaq PORTAL⁶⁴⁾ , Goldman Sachs가

GS Tradable Unregistered Equity OTC (GStrUE) , 2007 7

JPMorgan Chase & Co.가 144A PLUS .65)

Rule 144A

QIB

Investment Banking

144A

가

63) 17 C.F.R §230.144A(d)(4)(i)

64) PORTAL Private Offering, Resale and Trading through Automated Linkages

PORTAL PORYTAL SEC가

Rule 144A QIB Nasdaq 12

Bank of American, Bear Sterns, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, JPMorgan, Lehman Brothers, Merrill Lynch, Morgan Stanley, UBS, Wachovia가 IB QIB

가 . see, Press Release, The Nasdaq Stock

Market, Inc., NASDAQ's Electronic Trading Platform for the 144A is Approved by the SEC (Aug. 1, 2007), available (<http://www.nasdaq.com/newsroom/news/newsroomnews.Story.aspx?textpath=pr2007%5CACQPMZ200708010800PRIMZONEFULLFEED124065.htm&year=08/01/2007%20+8%3A00AM>)

65) 2007 7 Citigroup Inc., Lehman Brothers Holdings Inc., Merrill Lynch & Co., and Morgan Stanley가 Opus-5 , 8 Bear Stearns & Co. Inc.가 Best Markets

2.

가

3.

(1)

IPO M&A

⁶⁶⁾

가

i)

가 IPO

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ii)

가

가

(PEF)

BDC(Business Development Corporation)

IPO

66)

M&A

IPO

V.

가. (secondaries)

LP(Limited Partnership)

(Portfolio Company, PCs) IPO(Initial Public Offering)
secondaries LP (Limited Partner)

IPO LP가 ,
(Limited Partner)

secondaries

IPO 가 .

. BDC(Business Development Company)⁶⁷⁾ IPO

1980 (Small Business Investment Incentive
Act, SBIIA) , ,

Business Development Companies(BDCs) .⁶⁸⁾

BDC 1940 .

1940 BDC 70%

가 (restricted securities)

(distressed firms) (Eligible Portfolio Company,
EPC) .⁶⁹⁾ “70% Basket Rule”

67) BDC Reginald L. Thomas & Paul F. Roye, Regulation
of Business Development Companies under the Investment Company Act, 55 Cal. L.
Rev. 895, 912 (1982)

68) H. R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980)

69) Section 2(a)(48) of the Investment Company Act

BDC

.70) BDC가
, 1934
Regulation E
\$5 million
1933 가 가
가 BDC
90% BDC가
SEC Form N-54A
2004 BDC ,71)
가 IPO
IPO
BDC 가 IPO
BDC BDC가
GP 가 ,
BDC
GP GP
가 .
(2)

BDC

70) 15 U.S.C. §§ 80a-2(48) & 80a-55(a)

71) 2006 Kohlberg, Kravis, Roberts & Co.가 KKR
2007 Fortress Investment Group(FIG) PEF Blackstone
group IPO .

V.

2006 10 SEC 1940
(ECP)

72).

2008 7 21

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\$250 million

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IPO M&A
secondaries, BDC

,75)

IPO

M&A가

72) Rule 2a-46(b)

73) Release No. IC-28266; File No. S7-37-04, (<http://www.sec.gov/rules/final/2008/ic-28266.pdf>)

74) 5

IPO

75)

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