

113TH CONGRESS  
1ST SESSION

# H. R. 1800

To amend the Investment Company Act of 1940 to allow business development companies to purchase, otherwise acquire, or hold certain securities, to change the asset coverage ratio and treatment of preferred stock for business development companies, and to direct the Securities and Exchange Commission to revise certain rules relating to business development companies.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. GRIMM (for himself and Mr. GRAVES of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Investment Company Act of 1940 to allow business development companies to purchase, otherwise acquire, or hold certain securities, to change the asset coverage ratio and treatment of preferred stock for business development companies, and to direct the Securities and Exchange Commission to revise certain rules relating to business development companies.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Credit  
3 Availability Act”.

4 **SEC. 2. AMENDMENT TO PERMIT BUSINESS DEVELOPMENT  
5 COMPANIES TO OWN INVESTMENT ADVISERS.**

6 Section 60 of the Investment Company Act of 1940  
7 (15 U.S.C. 80a–59) is amended by striking “except that  
8 the Commission shall not” and inserting the following:

9 “except that—

10 “(1) section 12 shall not apply to the pur-  
11 chasing, otherwise acquiring, or holding by a busi-  
12 ness development company of any security issued by,  
13 or any other interest in the business of, any person  
14 who is an investment adviser registered under title  
15 II of this Act or who is an investment adviser to an  
16 investment company; and

17 “(2) the Commission shall not”.

18 **SEC. 3. AMENDMENTS TO EXPAND ACCESS TO CAPITAL FOR  
19 BUSINESS DEVELOPMENT COMPANIES.**

20 Section 61(a) of the Investment Company Act of  
21 1940 (15 U.S.C. 80a–60(a)) is amended—

22 (1) in paragraph (1), by striking “200” and in-  
23 serting “150”;

24 (2) in paragraph (2), by inserting “or which is  
25 a stock” after “indebtedness”; and

26 (3) by adding at the end the following:

1           “(5) Section 18(a)(2) shall not apply to a busi-  
2           ness development company.”.

3 **SEC. 4. PARITY FOR BUSINESS DEVELOPMENT COMPANIES**  
4                                   **REGARDING OFFERING AND PROXY RULES.**

5           (a) REVISION TO RULES.—Not later than 180 days  
6 after the date of enactment of this Act, the Securities and  
7 Exchange Commission shall revise any rules to the extent  
8 necessary to allow a business development company that  
9 has filed an election pursuant to section 54 of the Invest-  
10 ment Company Act of 1940 (15 U.S.C. 80a–53) to use  
11 the securities offering and proxy rules that are available  
12 to other issuers that are required to file reports under sec-  
13 tion 13 or section 15(d) of the Securities Exchange Act  
14 of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the  
15 Commission takes pursuant to this subsection shall in-  
16 clude the following:

17                   (1) The Commission shall revise rule 405 under  
18           the Securities Act of 1933 (17 C.F.R. 230.405)—

19                           (A) to remove the exclusion of a business  
20           development company from the definition of a  
21           well-known seasoned issuer provided by that  
22           rule; and

23                           (B) to add registration statements filed on  
24           Form N–2 to the definition of automatic shelf  
25           registration statement provided by that rule.

1           (2) The Commission shall revise rules 168 and  
2           169 under the Securities Act of 1933 (17 C.F.R.  
3           230.168 and 230.169) to remove the exclusion of a  
4           business development company from an issuer that  
5           can use the exemptions provided by those rules.

6           (3) The Commission shall revise rules 163 and  
7           163A under the Securities Act of 1933 (17 C.F.R.  
8           230.163 and 230.163A) to remove a business devel-  
9           opment company from the list of issuers that are in-  
10          eligible to use the exemptions provided by those  
11          rules.

12          (4) The Commission shall revise rule 134 under  
13          the Securities Act of 1933 (17 C.F.R. 230.134) to  
14          remove the exclusion of a business development com-  
15          pany from that rule.

16          (5) The Commission shall revise rules 138 and  
17          139 under the Securities Act of 1933 (17 C.F.R.  
18          230.138 and 230.139) to specifically include a busi-  
19          ness development company as an issuer to which  
20          those rules apply.

21          (6) The Commission shall revise rule 164 under  
22          the Securities Act of 1933 (17 C.F.R. 230.164) to  
23          remove a business development company from the  
24          list of issuers that are excluded from that rule.

1           (7) The Commission shall revise rule 433 under  
2 the Securities Act of 1933 (17 C.F.R. 230.433) to  
3 specifically include a business development company  
4 that is a well-known seasoned issuer as an issuer to  
5 which that rule applies.

6           (8) The Commission shall revise rule 415 under  
7 the Securities Act of 1933 (17 C.F.R. 230.415)—

8                   (A) to state that the registration for secu-  
9 rities provided by that rule includes securities  
10 registered by a business development company  
11 on Form N-2; and

12                   (B) to provide an exception for a business  
13 development company from the requirement  
14 that a Form N-2 registrant must furnish the  
15 undertakings required by item 34.4 of Form N-  
16 2.

17           (9) The Commission shall revise rule 497 under  
18 the Securities Act of 1933 (17 C.F.R. 230.497) to  
19 include a process for a business development com-  
20 pany to file a form of prospectus that is parallel to  
21 the process for filing a form of prospectus under  
22 rule 424(b).

23           (10) The Commission shall revise rules 172 and  
24 173 under the Securities Act of 1933 (17 C.F.R.  
25 230.172 and 230.173) to remove the exclusion of an

1 offering of a business development company from  
2 those rules.

3 (11) The Commission shall revise rule 418  
4 under the Securities Act of 1933 (17 C.F.R.  
5 230.418) to provide that a business development  
6 company that would otherwise meet the eligibility re-  
7 quirements of General Instruction I.A of Form S-3  
8 shall be exempt from paragraph (a)(3) of that rule.

9 (12) The Commission shall revise rule 14a-101  
10 under the Securities Exchange Act of 1934 (17  
11 C.F.R. 240.14a-101) to provide that a business de-  
12 velopment company that would otherwise meet the  
13 requirements of General Instruction I.A of Form S-  
14 3 shall be deemed to meet the requirements of Form  
15 S-3 for purposes of Schedule 14A.

16 (13) The Commission shall revise rule 103  
17 under Regulation FD (17 C.F.R. 243.103) to pro-  
18 vide that paragraph (a) of that rule applies for pur-  
19 poses of Form N-2.

20 (b) REVISION TO FORM N-2.—The Commission shall  
21 revise Form N-2—

22 (1) to include an item or instruction that is  
23 similar to item 12 on Form S-3 to provide that a  
24 business development company that would otherwise  
25 meet the requirements of Form S-3 shall incor-

1       porate by reference its reports and documents filed  
2       under the Securities Exchange Act of 1934 into its  
3       registration statement filed on Form N-2; and

4               (2) to include an instruction (that is similar to  
5       the instruction regarding automatic shelf offerings  
6       by well-known seasoned issuers on Form S-3) to  
7       provide that a business development company that is  
8       a well-known seasoned issuer may file automatic  
9       shelf offerings on Form N-2.

10       (c) RULE OF CONSTRUCTION.—Any reference in this  
11       section to a rule or form means such rule or form or any  
12       successor rule or form.

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