

113TH CONGRESS
1ST SESSION

H. R. 3448

To amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 2013

Mr. DUFFY (for himself and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Cap Liquidity
5 Reform Act of 2013”.

1 **SEC. 2. LIQUIDITY PILOT PROGRAM FOR SECURITIES OF**
2 **CERTAIN EMERGING GROWTH COMPANIES.**

3 (a) IN GENERAL.—Section 11A(c)(6) of the Securi-
4 ties Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is
5 amended to read as follows:

6 “(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES
7 OF CERTAIN EMERGING GROWTH COMPANIES.—

8 “(A) QUOTING INCREMENT.—Beginning on the
9 date that is 90 days after the date of the enactment
10 of the Small Cap Liquidity Reform Act of 2013, the
11 securities of a covered emerging growth company
12 shall be quoted using—

13 “(i) a minimum increment of \$0.05; or

14 “(ii) if, not later than 60 days after such
15 date of enactment, the board of directors of the
16 company so elects in the manner described in
17 subparagraph (D)—

18 “(I) a minimum increment of \$0.10;

19 or

20 “(II) the increment at which such se-
21 curities would be quoted without regard to
22 the minimum increments established under
23 this paragraph.

24 “(B) TRADING INCREMENT.—The securities of
25 a covered emerging growth company that are quoted

1 at a minimum increment of \$0.05 or \$0.10 under
2 this paragraph shall be traded at—

3 “(i) such minimum increment; or

4 “(ii) such other increment as permitted by
5 the Commission by regulation, as the Commis-
6 sion considers appropriate.

7 “(C) FUTURE RIGHT TO OPT OUT OR CHANGE
8 MINIMUM INCREMENT.—

9 “(i) IN GENERAL.—At any time beginning
10 on the date that is 90 days after the date of the
11 enactment of the Small Cap Liquidity Reform
12 Act of 2013, the board of directors of a covered
13 emerging growth company the securities of
14 which are quoted at a minimum increment of
15 \$0.05 or \$0.10 under this paragraph may elect
16 in the manner described in subparagraph (D)—

17 “(I) for the securities of such com-
18 pany to be quoted at the increment at
19 which such securities would be quoted
20 without regard to the minimum increments
21 established under this paragraph; or

22 “(II) to change the minimum incre-
23 ment at which the securities of such com-
24 pany are quoted from \$0.05 to \$0.10 or
25 from \$0.10 to \$0.05.

1 “(ii) WHEN ELECTION EFFECTIVE.—An
2 election under this subparagraph shall take ef-
3 fect on the date that is 30 days after such elec-
4 tion is made.

5 “(iii) SINGLE ELECTION TO CHANGE MIN-
6 IMUM INCREMENT.—A covered emerging growth
7 company may not make more than one election
8 under clause (i)(II).

9 “(D) MANNER OF ELECTION.—

10 “(i) IN GENERAL.—An election is made in
11 the manner described in this subparagraph by
12 informing the Commission and each exchange
13 on which the securities of the covered emerging
14 growth company are quoted or traded.

15 “(ii) CONSULTATION.—In making an elec-
16 tion under subparagraph (A)(ii), the board of
17 directors shall first consult with the primary
18 listing market and major shareholders of the
19 covered emerging growth company and with any
20 brokers and dealers that the board of directors
21 considers relevant to the quality of the market
22 for the securities of the company.

23 “(E) ISSUERS CEASING TO BE COVERED
24 EMERGING GROWTH COMPANIES.—

1 “(i) IN GENERAL.—If an issuer the securi-
2 ties of which are quoted at a minimum incre-
3 ment of \$0.05 or \$0.10 under this paragraph
4 ceases to be a covered emerging growth com-
5 pany, the securities of such issuer shall be
6 quoted at the increment at which such securi-
7 ties would be quoted without regard to the min-
8 imum increments established under this para-
9 graph.

10 “(ii) EXCEPTIONS.—The Commission may
11 by regulation, as the Commission considers ap-
12 propriate, specify any circumstances under
13 which an issuer shall continue to be considered
14 a covered emerging growth company for pur-
15 poses of this paragraph after the issuer ceases
16 to meet the requirements of subparagraph
17 (L)(ii).

18 “(F) SECURITIES TRADING BELOW \$1.—

19 “(i) INITIAL PRICE.—

20 “(I) AT EFFECTIVE DATE.—If the
21 trading price of the securities of a covered
22 emerging growth company is below \$1 at
23 the close of the last trading day before the
24 date that is 90 days after the date of the
25 enactment of the Small Cap Liquidity Re-

1 form Act of 2013, the securities of such
2 company shall be quoted using the incre-
3 ment at which such securities would be
4 quoted without regard to the minimum in-
5 crements established under this paragraph.

6 “(II) AT IPO.—If a covered emerging
7 growth company makes an initial public of-
8 fering after the day described in subclause
9 (I) and the first share of the securities of
10 such company is offered to the public at a
11 price below \$1, the securities of such com-
12 pany shall be quoted using the increment
13 at which such securities would be quoted
14 without regard to the minimum increments
15 established under this paragraph.

16 “(ii) AVERAGE TRADING PRICE.—If the av-
17 erage trading price of the securities of a cov-
18 ered emerging growth company falls below \$1
19 for any 90-day period beginning on or after the
20 day before the date of the enactment of the
21 Small Cap Liquidity Reform Act of 2013, the
22 securities of such company shall, after the end
23 of such period, be quoted using the increment
24 at which such securities would be quoted with-

1 out regard to the minimum increments estab-
2 lished under this paragraph.

3 “(G) FRAUD OR MANIPULATION.—If the Com-
4 mission determines that a covered emerging growth
5 company has violated any provision of the securities
6 laws prohibiting fraudulent, manipulative, or decep-
7 tive acts or practices, the securities of such company
8 shall, after the date of the determination, be quoted
9 using the increment at which such securities would
10 be quoted without regard to the minimum incre-
11 ments established under this paragraph.

12 “(H) INELIGIBILITY FOR INCREASED MINIMUM
13 INCREMENT PERMANENT.—The securities of an
14 issuer may not be quoted at a minimum increment
15 of \$0.05 or \$0.10 under this paragraph at any time
16 after—

17 “(i) such issuer makes an election under
18 subparagraph (A)(ii)(II);

19 “(ii) such issuer makes an election under
20 subparagraph (C)(i)(I), except during the pe-
21 riod before such election takes effect; or

22 “(iii) the securities of such issuer are re-
23 quired by this paragraph to be quoted using the
24 increment at which such securities would be

1 quoted without regard to the minimum incre-
2 ments established under this paragraph.

3 “(I) ADDITIONAL REPORTS AND DISCLO-
4 SURES.—The Commission shall require a covered
5 emerging growth company the securities of which
6 are quoted at a minimum increment of \$0.05 or
7 \$0.10 under this paragraph to make such reports
8 and disclosures as the Commission considers nec-
9 essary or appropriate in the public interest or for
10 the protection of investors.

11 “(J) LIMITATION OF LIABILITY.—An issuer (or
12 any officer, director, manager, or other agent of
13 such issuer) shall not be liable to any person under
14 any law or regulation of the United States, any con-
15 stitution, law, or regulation of any State or political
16 subdivision thereof, or any contract or other legally
17 enforceable agreement (including any arbitration
18 agreement) for any losses caused solely by the
19 quoting of the securities of such issuer at a min-
20 imum increment of \$0.05 or \$0.10, by the trading
21 of such securities at such minimum increment or
22 such other increment as permitted by the Commis-
23 sion under subparagraph (B)(ii), or by both such
24 quoting and trading, as provided in this paragraph.

1 “(K) REPORT TO CONGRESS.—Not later than 6
2 months after the date of the enactment of the Small
3 Cap Liquidity Reform Act of 2013, and every 6
4 months thereafter, the Commission, in coordination
5 with each exchange on which the securities of cov-
6 ered emerging growth companies are quoted or trad-
7 ed, shall submit to Congress a report on the quoting
8 and trading of securities in increments permitted by
9 this paragraph and the extent to which such quoting
10 and trading are increasing liquidity and active trad-
11 ing by incentivizing capital commitment, research
12 coverage, and brokerage support, together with any
13 legislative recommendations the Commission may
14 have.

15 “(L) DEFINITIONS.—In this paragraph:

16 “(i) BOARD OF DIRECTORS.—The term
17 ‘board of directors’ means a board of directors
18 or any person or persons performing similar
19 functions.

20 “(ii) COVERED EMERGING GROWTH COM-
21 PANY.—The term ‘covered emerging growth
22 company’ means an emerging growth company,
23 as defined in the first paragraph (80) of section
24 3(a), except that—

1 “(I) such paragraph shall be applied
2 by substituting ‘\$750,000,000’ for
3 ‘\$1,000,000,000’ each place it appears;
4 and

5 “(II) subparagraphs (B), (C), and (D)
6 of such paragraph do not apply.”.

7 (b) SUNSET.—Effective on the date that is 5 years
8 after the date of the enactment of this Act, section
9 11A(c)(6) of the Securities Exchange Act of 1934 (15
10 U.S.C. 78k–1(c)(6)) is repealed.

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