

## Union Calendar No. 252

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3448

[Report No. 113-342]

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

FEBRUARY 5, 2014

Additional sponsor: Mr. FINCHER

FEBRUARY 5, 2014

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 12, 2013]

# **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”.*

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

8        *(a) IN GENERAL.—Section 11A(c)(6) of the Securities*  
9 *Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is amended*  
10 *to read as follows:*

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

13            *“(A) QUOTING INCREMENT.—Beginning on the*  
14 *date that is 90 days after the date of the enactment*  
15 *of the Small Cap Liquidity Reform Act of 2013, the*  
16 *securities of a covered emerging growth company shall*  
17 *be quoted using—*

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

19                    *“(ii) if, not later than 60 days after such*  
20 *date of enactment, the company so elects in the*  
21 *manner described in subparagraph (D)—*

22                            *“(I) a minimum increment of \$0.10; or*

23                            *“(II) the increment at which such secu-*  
24 *rities would be quoted without regard to the*

1           *minimum increments established under this*  
2           *paragraph.*

3           “(B) *TRADING INCREMENT.*—*In the case of a*  
4           *covered emerging growth company the securities of*  
5           *which are quoted at a minimum increment of \$0.05*  
6           *or \$0.10 under this paragraph, the Commission shall*  
7           *determine the increment at which the securities of*  
8           *such company are traded.*

9           “(C) *FUTURE RIGHT TO OPT OUT OR CHANGE*  
10          *MINIMUM INCREMENT.*—

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

19                   “(I) *for the securities of such company*  
20                   *to be quoted at the increment at which such*  
21                   *securities would be quoted without regard to*  
22                   *the minimum increments established under*  
23                   *this paragraph; or*

24                   “(II) *to change the minimum incre-*  
25                   *ment at which the securities of such com-*

1           pany are quoted from \$0.05 to \$0.10 or  
2           from \$0.10 to \$0.05.

3           “(i) *WHEN ELECTION EFFECTIVE.*—An  
4           election under this subparagraph shall take effect  
5           on the date that is 30 days after such election is  
6           made.

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

11          “(D) *MANNER OF ELECTION.*—

12           “(i) *IN GENERAL.*—An election is made in  
13          the manner described in this subparagraph by  
14          informing the Commission of such election.

15           “(i) *NOTIFICATION OF EXCHANGES AND*  
16          *OTHER TRADING VENUES.*—Upon being informed  
17          of an election under clause (i), the Commission  
18          shall notify each exchange or other trading venue  
19          where the securities of the covered emerging  
20          growth company are quoted or traded.

21          “(E) *ISSUERS CEASING TO BE COVERED EMERG-*  
22          *ING GROWTH COMPANIES.*—

23           “(i) *IN GENERAL.*—If an issuer the securi-  
24          ties of which are quoted at a minimum incre-  
25          ment of \$0.05 or \$0.10 under this paragraph

1           *ceases to be a covered emerging growth company,*  
2           *the securities of such issuer shall be quoted at the*  
3           *increment at which such securities would be*  
4           *quoted without regard to the minimum incre-*  
5           *ments established under this paragraph.*

6           “(i) *EXCEPTIONS.*—*The Commission may*  
7           *by regulation, as the Commission considers ap-*  
8           *propriate, specify any circumstances under*  
9           *which an issuer shall continue to be considered*  
10           *a covered emerging growth company for purposes*  
11           *of this paragraph after the issuer ceases to meet*  
12           *the requirements of subparagraph (L)(i).*

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

14           “(i) *INITIAL PRICE.*—

15           “(I) *AT EFFECTIVE DATE.*—*If the trad-*  
16           *ing price of the securities of a covered*  
17           *emerging growth company is below \$1 at*  
18           *the close of the last trading day before the*  
19           *date that is 90 days after the date of the en-*  
20           *actment of the Small Cap Liquidity Reform*  
21           *Act of 2013, the securities of such company*  
22           *shall be quoted using the increment at*  
23           *which such securities would be quoted with-*  
24           *out regard to the minimum increments es-*  
25           *tablished under this paragraph.*

1                   “(II) *AT IPO.*—If a covered emerging  
2                   *growth company makes an initial public of-*  
3                   *fering after the day described in subclause*  
4                   *(I) and the first share of the securities of*  
5                   *such company is offered to the public at a*  
6                   *price below \$1, the securities of such com-*  
7                   *pany shall be quoted using the increment at*  
8                   *which such securities would be quoted with-*  
9                   *out regard to the minimum increments es-*  
10                   *tablished under this paragraph.*

11                   “(i) *AVERAGE TRADING PRICE.*—If the av-  
12                   *erage trading price of the securities of a covered*  
13                   *emerging growth company falls below \$1 for any*  
14                   *90-day period beginning on or after the day be-*  
15                   *fore the date of the enactment of the Small Cap*  
16                   *Liquidity Reform Act of 2013, the securities of*  
17                   *such company shall, after the end of such period,*  
18                   *be quoted using the increment at which such se-*  
19                   *curities would be quoted without regard to the*  
20                   *minimum increments established under this*  
21                   *paragraph.*

22                   “(G) *FRAUD OR MANIPULATION.*—If the Commis-  
23                   *sion determines that a covered emerging growth com-*  
24                   *pany has violated any provision of the securities laws*  
25                   *prohibiting fraudulent, manipulative, or deceptive*

1     *acts or practices, the securities of such company shall,*  
2     *after the date of the determination, be quoted using*  
3     *the increment at which such securities would be*  
4     *quoted without regard to the minimum increments es-*  
5     *tablished under this paragraph.*

6             “(H) *INELIGIBILITY FOR INCREASED MINIMUM*  
7     *INCREMENT PERMANENT.—The securities of an issuer*  
8     *may not be quoted at a minimum increment of \$0.05*  
9     *or \$0.10 under this paragraph at any time after—*

10            “(i) *such issuer makes an election under*  
11     *subparagraph (A)(i)(II);*

12            “(ii) *such issuer makes an election under*  
13     *subparagraph (C)(i)(I), except during the period*  
14     *before such election takes effect; or*

15            “(iii) *the securities of such issuer are re-*  
16     *quired by this paragraph to be quoted using the*  
17     *increment at which such securities would be*  
18     *quoted without regard to the minimum incre-*  
19     *ments established under this paragraph.*

20            “(I) *ADDITIONAL REPORTS AND DISCLOSURES.—*  
21     *The Commission shall require a covered emerging*  
22     *growth company the securities of which are quoted at*  
23     *a minimum increment of \$0.05 or \$0.10 under this*  
24     *paragraph to make such reports and disclosures as the*



1        *Commission considers necessary or appropriate in the*  
2        *public interest or for the protection of investors.*

3            *“(J) LIMITATION OF LIABILITY.—An issuer (or*  
4        *any officer, director, manager, or other agent of such*  
5        *issuer) shall not be liable to any person (other than*  
6        *such issuer) under any law or regulation of the*  
7        *United States, any constitution, law, or regulation of*  
8        *any State or political subdivision thereof, or any con-*  
9        *tract or other legally enforceable agreement (including*  
10       *any arbitration agreement) for any losses caused sole-*  
11       *ly by the quoting of the securities of such issuer at a*  
12       *minimum increment of \$0.05 or \$0.10, by the trading*  
13       *of such securities at the increment determined by the*  
14       *Commission under subparagraph (B), or by both such*  
15       *quoting and trading, as provided in this paragraph.*

16           *“(K) REPORT TO CONGRESS.—Not later than 6*  
17       *months after the date of the enactment of the Small*  
18       *Cap Liquidity Reform Act of 2013, and every 6*  
19       *months thereafter, the Commission, in coordination*  
20       *with each exchange on which the securities of covered*  
21       *emerging growth companies are quoted or traded,*  
22       *shall submit to Congress a report on the quoting and*  
23       *trading of securities in increments permitted by this*  
24       *paragraph and the extent to which such quoting and*  
25       *trading are increasing liquidity and active trading*

1 *by incentivizing capital commitment, research cov-*  
2 *erage, and brokerage support, together with any legis-*  
3 *lative recommendations the Commission may have.*

4 “(L) *DEFINITIONS.*—*In this paragraph:*

5 “(i) *COVERED EMERGING GROWTH COM-*  
6 *PANY.*—*The term ‘covered emerging growth com-*  
7 *pany’ means an emerging growth company, as*  
8 *defined in the first paragraph (80) of section*  
9 *3(a), except that—*

10 “(I) *such paragraph shall be applied*  
11 *by substituting ‘\$750,000,000’ for*  
12 *‘\$1,000,000,000’ each place it appears; and*

13 “(II) *subparagraphs (B), (C), and (D)*  
14 *of such paragraph do not apply.*

15 “(ii) *SECURITY.*—*The term ‘security’ means*  
16 *an equity security.*

17 “(M) *SAVINGS PROVISION.*—*Notwithstanding*  
18 *any other provision of this paragraph, the Commis-*  
19 *sion may—*

20 “(i) *make such adjustments to the pilot pro-*  
21 *gram specified in this paragraph as the Commis-*  
22 *sion considers necessary or appropriate to ensure*  
23 *that such program can provide statistically*  
24 *meaningful or reliable results, including adjust-*  
25 *ments to eliminate selection bias among partici-*

1            *pants, expand the number of participants eligi-*  
2            *ble to participate in such program, and change*  
3            *the duration of such program for one or more*  
4            *participants; and*

5            *“(i) conduct any other study or pilot pro-*  
6            *gram, in conjunction with or separate from the*  
7            *pilot program specified in this paragraph (as*  
8            *such program may be adjusted pursuant to*  
9            *clause (i)), to evaluate quoting or trading in*  
10           *various minimum increments.”.*

11           *(b) SUNSET.—Effective on the date that is 5 years*  
12           *after the date of the enactment of this Act, section 11A(c)(6)*  
13           *of the Securities Exchange Act of 1934 (15 U.S.C. 78k-*  
14           *1(c)(6)) is repealed.*

Union Calendar No. 252

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 3448**

[Report No. 113-342]

---

---

## **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.

---

---

FEBRUARY 5, 2014

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed