

Union Calendar No. 388

114TH CONGRESS
2^D SESSION

H. R. 3868

[Report No. 114–508]

To amend the Investment Company Act of 1940 to remove certain restrictions on the ability of business development companies to own securities of investment advisers and certain financial companies, to change certain requirements relating to the capital structure of business development companies, to direct the Securities and Exchange Commission to revise certain rules relating to business development companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 2, 2015

Mr. MULVANEY introduced the following bill; which was referred to the Committee on Financial Services

APRIL 19, 2016

Additional sponsors: Mr. STIVERS, Mr. SHERMAN, Mr. SCHWEIKERT, Mr. PITTENGER, Mr. KILDEE, and Mr. DOLD

APRIL 19, 2016

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 2, 2015]

A BILL

To amend the Investment Company Act of 1940 to remove certain restrictions on the ability of business development companies to own securities of investment advisers and certain financial companies, to change certain requirements relating to the capital structure of business development companies, to direct the Securities and Exchange Commission to revise certain rules relating to business development companies, and for other purposes.

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 Business Credit*
5 *Availability Act”.*

6 **SEC. 2. BUSINESS DEVELOPMENT COMPANY OWNERSHIP**
7 **OF SECURITIES OF INVESTMENT ADVISERS**
8 **AND CERTAIN FINANCIAL COMPANIES.**

9 *(a) IN GENERAL.—*

10 *(1) IN GENERAL.—Not later than 1 year after*
11 *the date of enactment of this Act, the Securities and*
12 *Exchange Commission shall promulgate regulations to*
13 *codify the order in Investment Company Act Release*
14 *No. 30024, dated March 30, 2012. If the Commission*
15 *fails to complete the regulations as required by this*
16 *subsection, a business development company shall be*
17 *entitled to treat such regulations as having been com-*
18 *pleted in accordance with the actions required to be*
19 *taken by the Commission until such time as such reg-*
20 *ulations are completed by the Commission.*

21 *(2) RULE OF CONSTRUCTION.—Nothing in this*
22 *subsection shall prevent the Commission from issuing*
23 *rules to address potential conflicts of interest between*
24 *business development companies and investment ad-*
25 *visers.*

1 (b) *PERMISSIBLE ASSETS OF AN ELIGIBLE PORTFOLIO*
 2 *COMPANY.*—Section 55 of the Investment Company Act of
 3 1940 (15 U.S.C. 80a–54) is amended by adding at the end
 4 the following:

5 “(c) *SECURITIES DEEMED TO BE PERMISSIBLE AS-*
 6 *SETS.*—Notwithstanding subsection (a), securities that
 7 would be described in paragraphs (1) through (6) of such
 8 subsection except that the issuer is a company described in
 9 paragraph (2), (3), (4), (5), (6), or (9) of section 3(c) may
 10 be deemed to be assets described in paragraphs (1) through
 11 (6) of subsection (a) to the extent necessary for the sum of
 12 the assets to equal 70 percent of the value of a business de-
 13 velopment company’s total assets (other than assets de-
 14 scribed in paragraph (7) of subsection (a)), provided that
 15 the aggregate value of such securities counting toward such
 16 70 percent shall not exceed 20 percent of the value of the
 17 business development company’s total assets.”.

18 **SEC. 3. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DE-**
 19 **VELOPMENT COMPANIES.**

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

22 (1) by redesignating paragraphs (2) through (4)
 23 as paragraphs (3) through (5), respectively;

24 (2) by striking paragraph (1) and inserting the
 25 following:

1 “(1) *Except as provided in paragraph (2), the*
2 *asset coverage requirements of subparagraphs (A) and*
3 *(B) of section 18(a)(1) (and any related rule promul-*
4 *gated under this Act) applicable to business develop-*
5 *ment companies shall be 200 percent.*

6 “(2) *The asset coverage requirements of subpara-*
7 *graphs (A) and (B) of section 18(a)(1) and of sub-*
8 *paragraphs (A) and (B) of section 18(a)(2) (and any*
9 *related rule promulgated under this Act) applicable to*
10 *a business development company shall be 150 percent*
11 *if—*

12 “(A) *within five business days of the ap-*
13 *proval of the adoption of the asset coverage re-*
14 *quirements described in clause (ii), the business*
15 *development company discloses such approval*
16 *and the date of its effectiveness in a Form 8-K*
17 *filed with the Commission and in a notice on its*
18 *website and discloses in its periodic filings made*
19 *under section 13 of the Securities Exchange Act*
20 *of 1934 (15 U.S.C. 78m)—*

21 “(i) *the aggregate value of the senior*
22 *securities issued by such company and the*
23 *asset coverage percentage as of the date of*
24 *such company’s most recent financial state-*
25 *ments; and*

1 “(ii) that such company has adopted
2 the asset coverage requirements of this sub-
3 paragraph and the effective date of such re-
4 quirements;

5 “(B) with respect to a business development
6 company that issues equity securities that are
7 registered on a national securities exchange, the
8 periodic filings of the company under section
9 13(a) of the Securities Exchange Act of 1934 (15
10 U.S.C. 78m) include disclosures reasonably de-
11 signed to ensure that shareholders are informed
12 of—

13 “(i) the amount of indebtedness and
14 asset coverage ratio of the company, deter-
15 mined as of the date of the financial state-
16 ments of the company dated on or most re-
17 cently before the date of such filing; and

18 “(ii) the principal risk factors associ-
19 ated with such indebtedness, to the extent
20 such risk is incurred by the company; and

21 “(C)(i) the application of this paragraph to
22 the company is approved by the required major-
23 ity (as defined in section 57(o)) of the directors
24 of or general partners of such company who are
25 not interested persons of the business develop-

1 *ment company, which application shall become*
2 *effective on the date that is 1 year after the date*
3 *of the approval, and, with respect to a business*
4 *development company that issues equity securi-*
5 *ties that are not registered on a national securi-*
6 *ties exchange, the company extends, to each per-*
7 *son who is a shareholder as of the date of the ap-*
8 *proval, an offer to repurchase the equity securi-*
9 *ties held by such person as of such approval date,*
10 *with 25 percent of such securities to be repur-*
11 *chased in each of the four quarters following such*
12 *approval date; or*

13 *“(ii) the company obtains, at a special or*
14 *annual meeting of shareholders or partners at*
15 *which a quorum is present, the approval of more*
16 *than 50 percent of the votes cast of the applica-*
17 *tion of this paragraph to the company, which*
18 *application shall become effective on the date im-*
19 *mediately after the date of the approval.”;*

20 *(3) in paragraph (3) (as redesignated), by in-*
21 *serting “or which is a stock, provided that all such*
22 *stock is issued in accordance with paragraph (6)”*
23 *after “indebtedness”;*

24 *(4) in subparagraph (A) of paragraph (4) (as re-*
25 *designated)—*

1 (A) in the matter preceding clause (i), by
2 striking “voting”; and

3 (B) by amending clause (iii) to read as fol-
4 lows:

5 “(iii) the exercise or conversion price
6 at the date of issuance of such warrants, op-
7 tions, or rights is not less than—

8 “(I) the market value of the secu-
9 rities issuable upon the exercise of such
10 warrants, options, or rights at the date
11 of issuance of such warrants, options,
12 or rights; or

13 “(II) if no such market value ex-
14 ists, the net asset value of the securities
15 issuable upon the exercise of such war-
16 rants, options, or rights at the date of
17 issuance of such warrants, options, or
18 rights; and”; and

19 (5) by adding at the end the following:

20 “(6)(A) QUALIFIED INSTITUTIONAL BUYER.—Ex-
21 cept as provided in subparagraph (B), the following
22 shall not apply to a senior security which is a stock
23 and which is issued to and held by a qualified insti-
24 tutional buyer (as defined in section 3(a)(64) of the
25 Securities Exchange Act of 1934):

1 “(i) Subparagraphs (C) and (D) of section
2 18(a)(2).

3 “(ii) Subparagraph (E) of section 18(a)(2),
4 to the extent such subparagraph requires any
5 priority over any other class of stock as to dis-
6 tribution of assets upon liquidation.

7 “(iii) With respect to a senior security
8 which is a stock, subsections (c) and (i) of sec-
9 tion 18.

10 “(B) INDIVIDUAL INVESTORS WHO ARE NOT
11 QUALIFIED INSTITUTIONAL BUYERS.—Subparagraph
12 (A) shall not apply with respect to a senior security
13 which is a stock and which is issued to a person who
14 is not known by the business development company to
15 be a qualified institutional buyer (as defined in sec-
16 tion 3(a) of the Securities Exchange Act of 1934).

17 “(7) RULE OF CONSTRUCTION.—Notwithstanding
18 any other provision of law, any additional class of
19 stock issued pursuant to this section must be issued
20 in accordance with all investor protections contained
21 in all applicable federal securities laws administered
22 by the Commission.”.

23 (b) CONFORMING AMENDMENTS.—The Investment
24 Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amend-
25 ed—

1 (1) in section 57—

2 (A) in subsection (j)(1), by striking “section
3 61(a)(3)(B)” and inserting “section
4 61(a)(4)(B)”; and

5 (B) in subsection (n)(2), by striking “sec-
6 tion 61(a)(3)(B)” and inserting “section
7 61(a)(4)(B)”; and

8 (2) in section 63(3), by striking “section
9 61(a)(3)” and inserting “section 61(a)(4)”.

10 **SEC. 4. PARITY FOR BUSINESS DEVELOPMENT COMPANIES**

11 **REGARDING OFFERING AND PROXY RULES.**

12 (a) *REVISION TO RULES.*—Not later than 1 year after
13 the date of enactment of this Act, the Securities and Ex-
14 change Commission shall revise any rules to the extent nec-
15 essary to allow a business development company that has
16 filed an election pursuant to section 54 of the Investment
17 Company Act of 1940 (15 U.S.C. 80a–53) to use the securi-
18 ties offering and proxy rules that are available to other
19 issuers that are required to file reports under section 13
20 or section 15(d) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78m; 78o(d)). Any action that the Commission takes
22 pursuant to this subsection shall include the following:

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

1 (A) to remove the exclusion of a business de-
2 velopment company from the definition of a
3 well-known seasoned issuer provided by that rule;
4 and

5 (B) to add registration statements filed on
6 Form N-2 to the definition of automatic shelf
7 registration statement provided by that rule.

8 (2) The Commission shall revise rules 168 and
9 169 under the Securities Act of 1933 (17 C.F.R.
10 230.168 and 230.169) to remove the exclusion of a
11 business development company from an issuer that
12 can use the exemptions provided by those rules.

13 (3) The Commission shall revise rules 163 and
14 163A under the Securities Act of 1933 (17 C.F.R.
15 230.163 and 230.163A) to remove a business develop-
16 ment company from the list of issuers that are ineli-
17 gible to use the exemptions provided by those rules.

18 (4) The Commission shall revise rule 134 under
19 the Securities Act of 1933 (17 C.F.R. 230.134) to re-
20 move the exclusion of a business development com-
21 pany from that rule.

22 (5) The Commission shall revise rules 138 and
23 139 under the Securities Act of 1933 (17 C.F.R.
24 230.138 and 230.139) to specifically include a busi-

1 *ness development company as an issuer to which those*
2 *rules apply.*

3 *(6) The Commission shall revise rule 164 under*
4 *the Securities Act of 1933 (17 C.F.R. 230.164) to re-*
5 *move a business development company from the list*
6 *of issuers that are excluded from that rule.*

7 *(7) The Commission shall revise rule 433 under*
8 *the Securities Act of 1933 (17 C.F.R. 230.433) to spe-*
9 *cifically include a business development company that*
10 *is a well-known seasoned issuer as an issuer to which*
11 *that rule applies.*

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

14 *(A) to state that the registration for securi-*
15 *ties provided by that rule includes securities reg-*
16 *istered by a business development company on*
17 *Form N-2; and*

18 *(B) to provide an exception for a business*
19 *development company from the requirement that*
20 *a Form N-2 registrant must furnish the under-*
21 *takings required by item 34.4 of Form N-2.*

22 *(9) The Commission shall revise rule 497 under*
23 *the Securities Act of 1933 (17 C.F.R. 230.497) to in-*
24 *clude a process for a business development company*
25 *to file a form of prospectus that is parallel to the*

1 *process for filing a form of prospectus under rule*
2 *424(b).*

3 *(10) The Commission shall revise rules 172 and*
4 *173 under the Securities Act of 1933 (17 C.F.R.*
5 *230.172 and 230.173) to remove the exclusion of an*
6 *offering of a business development company from*
7 *those rules.*

8 *(11) The Commission shall revise rule 418 under*
9 *the Securities Act of 1933 (17 C.F.R. 230.418) to pro-*
10 *vide that a business development company that would*
11 *otherwise meet the eligibility requirements of General*
12 *Instruction I.A of Form S-3 shall be exempt from*
13 *paragraph (a)(3) of that rule.*

14 *(12) The Commission shall revise rule 14a-101*
15 *under the Securities Exchange Act of 1934 (17 C.F.R.*
16 *240.14a-101) to provide that a business development*
17 *company that would otherwise meet the requirements*
18 *of General Instruction I.A of Form S-3 shall be*
19 *deemed to meet the requirements of Form S-3 for*
20 *purposes of Schedule 14A.*

21 *(13) The Commission shall revise rule 103 under*
22 *Regulation FD (17 C.F.R. 243.103) to provide that*
23 *paragraph (a) of that rule applies for purposes of*
24 *Form N-2.*

1 (b) *REVISION TO FORM N-2.*—Not later than 1 year
2 after the date of enactment of this Act, the Commission shall
3 revise Form N-2—

4 (1) to include an item or instruction that is
5 similar to item 12 on Form S-3 to provide that a
6 business development company that would otherwise
7 meet the requirements of Form S-3 shall incorporate
8 by reference its reports and documents filed under the
9 Securities Exchange Act of 1934 into its registration
10 statement filed on Form N-2; and

11 (2) to include an item or instruction that is
12 similar to the instruction regarding automatic shelf
13 offerings by well-known seasoned issuers on Form S-
14 3 to provide that a business development company
15 that is a well-known seasoned issuer may file auto-
16 matic shelf offerings on Form N-2.

17 (c) *TREATMENT IF REVISIONS NOT COMPLETED IN*
18 *TIMELY MANNER.*—If the Commission fails to complete the
19 revisions required by subsections (a) and (b) by the time
20 required by such subsections, a business development com-
21 pany shall be entitled to treat such revisions as having been
22 completed in accordance with the actions required to be
23 taken by the Commission by such subsections until such
24 time as such revisions are completed by the Commission.

- 1 *(d) RULE OF CONSTRUCTION.—Any reference in this*
- 2 *section to a rule or form means such rule or form or any*
- 3 *successor rule or form.*

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[Report No. 114-508]

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