

115TH CONGRESS
1ST SESSION

H. R. 4267

To amend the Investment Company Act of 1940 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 7, 2017

Mr. STIVERS (for himself, Mr. SHERMAN, Mr. MCHENRY, and Ms. MOORE) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Investment Company Act of 1940 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”.

1 **SEC. 2. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DE-**
2 **VELOPMENT COMPANIES.**

3 (a) IN GENERAL.—Section 61(a) of the Investment
4 Company Act of 1940 (15 U.S.C. 80a–60(a)) is amend-
5 ed—

6 (1) by redesignating paragraphs (2) through
7 (4) as paragraphs (3) through (5), respectively; and
8 (2) by striking paragraph (1) and inserting the
9 following:

10 “(1) Except as provided in paragraph (2), the
11 asset coverage requirements of subparagraphs (A)
12 and (B) of section 18(a)(1) (and any related rule
13 promulgated under this Act) applicable to business
14 development companies shall be 200 percent.

15 “(2) The asset coverage requirements of sub-
16 paragraphs (A) and (B) of section 18(a)(1) and of
17 subparagraphs (A) and (B) of section 18(a)(2) (and
18 any related rule promulgated under this Act) appli-
19 cable to a business development company shall be
20 150 percent if—

21 “(A) within five business days of the ap-
22 proval of the adoption of the asset coverage re-
23 quirements described in clause (ii), the business
24 development company discloses such approval
25 and the date of its effectiveness in a Form 8–
26 K filed with the Commission and in a notice on

1 its website and discloses in its periodic filings
2 made under section 13(a) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78m(a))—

4 “(i) the aggregate value of the senior
5 securities issued by such company and the
6 asset coverage percentage as of the date of
7 such company’s most recent financial
8 statements; and

9 “(ii) that such company has adopted
10 the asset coverage requirements of this
11 paragraph and the effective date of such
12 requirements;

13 “(B) with respect to a business develop-
14 ment company that issues equity securities that
15 are registered on a national securities exchange,
16 the periodic filings of the company under sec-
17 tion 13(a) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78m(a)) include disclosures
19 reasonably designed to ensure that shareholders
20 are informed of—

21 “(i) the amount of indebtedness and
22 asset coverage ratio of the company, deter-
23 mined as of the date of the financial state-
24 ments of the company dated on or most re-
25 cently before the date of such filing; and

1 “(ii) the principal risk factors associ-
2 ated with such indebtedness, to the extent
3 such risk is incurred by the company; and

4 “(C)(i) the application of this paragraph to
5 the company is approved by the required major-
6 ity (as defined in section 57(o)) of the directors
7 of or general partners of such company who are
8 not interested persons of the business develop-
9 ment company, which application shall become
10 effective on the date that is 1 year after the
11 date of the approval, and, with respect to a
12 business development company that issues eq-
13 uity securities that are not registered on a na-
14 tional securities exchange, the company extends,
15 to each person who is a shareholder as of the
16 date of the approval, an offer to repurchase the
17 equity securities held by such person as of such
18 approval date, with 25 percent of such securi-
19 ties to be repurchased in each of the four quar-
20 ters following such approval date; or

21 “(ii) the company obtains, at a special or
22 annual meeting of shareholders or partners at
23 which a quorum is present, the approval of
24 more than 50 percent of the votes cast of the
25 application of this paragraph to the company,

1 which application shall become effective on the
2 date immediately after the date of the ap-
3 proval.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) INVESTMENT COMPANY ACT OF 1940.—The
6 Investment Company Act of 1940 (15 U.S.C. 80a–
7 1 et seq.) is amended—

8 (A) in section 57—

9 (i) in subsection (j)(1), by striking
10 “section 61(a)(3)(B)” and inserting “sec-
11 tion 61(a)(4)(B)”;

12 (ii) in subsection (n)(2), by striking
13 “section 61(a)(3)(B)” and inserting “sec-
14 tion 61(a)(4)(B)”;

15 (B) in section 63(3), by striking “section
16 61(a)(3)” and inserting “section 61(a)(4)”.

17 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
18 tion 205(b)(3) of the Investment Advisers Act of
19 1940 (15 U.S.C. 80b–5(b)(3)) is amended—

20 (A) by striking “section 61(a)(3)(B)(iii)”
21 and inserting “section 61(a)(4)(B)(iii)”;

22 (B) by striking “section 61(a)(3)(B)” and
23 inserting “section 61(a)(4)(B)”.

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

3 (a) REVISION TO RULES.—Not later than 1 year
4 after the date of enactment of this Act, the Securities and
5 Exchange Commission shall revise any rules to the extent
6 necessary to allow a business development company that
7 has filed an election pursuant to section 54 of the Invest-
8 ment Company Act of 1940 (15 U.S.C. 80a–53) to use
9 the securities offering and proxy rules that are available
10 to other issuers that are required to file reports under sec-
11 tion 13(a) or section 15(d) of the Securities Exchange Act
12 of 1934 (15 U.S.C. 78m(a); 78o(d)). Any action that the
13 Commission takes pursuant to this subsection shall in-
14 clude the following:

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

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

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

24 (2) The Commission shall revise rules 168 and
25 169 under the Securities Act of 1933 (17 C.F.R.
26 230.168 and 230.169) to remove the exclusion of a

1 business development company from an issuer that
2 can use the exemptions provided by those rules.

3 (3) The Commission shall revise rules 163 and
4 163A under the Securities Act of 1933 (17 C.F.R.
5 230.163 and 230.163A) to remove a business devel-
6 opment company from the list of issuers that are in-
7 eligible to use the exemptions provided by those
8 rules.

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

13 (5) The Commission shall revise rules 138 and
14 139 under the Securities Act of 1933 (17 C.F.R.
15 230.138 and 230.139) to specifically include a busi-
16 ness development company as an issuer to which
17 those rules apply.

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

22 (7) The Commission shall revise rule 433 under
23 the Securities Act of 1933 (17 C.F.R. 230.433) to
24 specifically include a business development company

1 that is a well-known seasoned issuer as an issuer to
2 which that rule applies.

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

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

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

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

20 (10) The Commission shall revise rules 172 and
21 173 under the Securities Act of 1933 (17 C.F.R.
22 230.172 and 230.173) to remove the exclusion of an
23 offering of a business development company from
24 those rules.

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

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

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

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

21 (1) to include an item or instruction that is
22 similar to item 12 on Form S-3 to provide that a
23 business development company that would otherwise
24 meet the requirements of Form S-3 shall incor-
25 porate by reference its reports and documents filed

1 under the Securities Exchange Act of 1934 into its
2 registration statement filed on Form N-2; and

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

9 (c) TREATMENT IF REVISIONS NOT COMPLETED IN
10 TIMELY MANNER.—If the Commission fails to complete
11 the revisions required by subsections (a) and (b) by the
12 time required by such subsections, a business development
13 company shall be entitled to treat such revisions as having
14 been completed in accordance with the actions required to
15 be taken by the Commission by such subsections until such
16 time as such revisions are completed by the Commission.

17 (d) RULE OF CONSTRUCTION.—Any reference in this
18 section to a rule or form means such rule or form or any
19 successor rule or form.

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