

115TH CONGRESS
2D SESSION

S. 3723

To amend the Securities Exchange Act of 1934 to allow for the registration of venture exchanges, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2018

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to allow for the registration of venture exchanges, 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 “Main Street Growth
5 Act”.

6 **SEC. 2. VENTURE EXCHANGES.**

7 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
8 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
9 is amended by adding at the end the following:

10 “(m) VENTURE EXCHANGE.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) EARLY-STAGE, GROWTH COMPANY.—

3 “(i) IN GENERAL.—The term ‘early-
4 stage, growth company’ means an issuer—

5 “(I) that has not made any reg-
6 istered initial public offering of any
7 securities of the issuer; and

8 “(II) with a public float of not
9 more than the value of public float re-
10 quired to qualify as a large acceler-
11 ated filer under section 240.12b–2 of
12 title 17, Code of Federal Regulations,
13 or any successor regulation.

14 “(ii) TREATMENT WHEN PUBLIC
15 FLOAT EXCEEDS THRESHOLD.—An issuer
16 shall not cease to be an early-stage, growth
17 company by reason of the public float of
18 the issuer exceeding the threshold specified
19 in clause (i)(II) until the later of—

20 “(I) the end of the period of 24
21 consecutive months during which the
22 public float of the issuer exceeds
23 \$2,000,000,000 (as such amount is
24 indexed for inflation every 5 years by
25 the Commission to reflect the change

1 in the Consumer Price Index for All
2 Urban Consumers published by the
3 Bureau of Labor Statistics, setting
4 the threshold to the nearest
5 \$1,000,000); and

6 “(II) the end of the 1-year period
7 following the end of the 24-month pe-
8 riod described in subclause (I), if the
9 issuer requests the 1-year extension
10 from a venture exchange and the ven-
11 ture exchange elects to provide that
12 extension.

13 “(B) PUBLIC FLOAT.—With respect to an
14 issuer, the term ‘public float’ means the aggre-
15 gate worldwide market value of the voting and
16 non-voting common equity of the issuer held by
17 non-affiliates.

18 “(C) VENTURE SECURITY.—

19 “(i) IN GENERAL.—The term ‘venture
20 security’ means—

21 “(I) a security of an early-stage,
22 growth company that is exempt from
23 registration pursuant to section 3(b)
24 of the Securities Act of 1933 (15
25 U.S.C. 77c(b));

1 “(II) a security of an emerging
2 growth company; or

3 “(III) a security registered under
4 section 12(b) and listed on a venture
5 exchange (or, prior to listing on a ven-
6 ture exchange, listed on a national se-
7 curities exchange) where—

8 “(aa) the issuer of the secu-
9 rity has a public float that is not
10 more than the value of public
11 float required to qualify as a
12 large accelerated filer under sec-
13 tion 240.12b-2 of title 17, Code
14 of Federal Regulations, or any
15 successor regulation; or

16 “(bb) the average daily
17 trade volume is not more than
18 75,000 shares during a contin-
19 uous 60-day period.

20 “(ii) TREATMENT WHEN PUBLIC
21 FLOAT EXCEEDS THRESHOLD.—A security
22 shall not cease to be a venture security by
23 reason of the public float of the issuer of
24 the security exceeding the threshold speci-

1 fied in clause (i)(III)(aa) until the later
2 of—

3 “(I) the end of the period of 24
4 consecutive months beginning on the
5 date on which—

6 “(aa) the public float of the
7 issuer exceeds \$2,000,000,000;
8 and

9 “(bb) the average daily
10 trade volume of the security is
11 not less than 100,000 shares
12 during a continuous 60-day pe-
13 riod; and

14 “(II) the end of the 1-year period
15 following the end of the 24-month pe-
16 riod described under subclause (I), if
17 the issuer of the security requests the
18 1-year extension from a venture ex-
19 change and the venture exchange
20 elects to provide that extension.

21 “(2) REGISTRATION.—

22 “(A) IN GENERAL.—A person may register
23 (and a national securities exchange may reg-
24 ister a listing tier of the exchange) as a na-
25 tional securities exchange solely for the purpose

1 of trading venture securities by filing an appli-
2 cation with the Commission pursuant to sub-
3 section (a) and the rules and regulations there-
4 under.

5 “(B) PUBLICATION OF NOTICE.—The
6 Commission shall, upon the filing of an applica-
7 tion under subparagraph (A), publish notice of
8 the filing and afford interested persons an op-
9 portunity to submit written data, views, and ar-
10 guments concerning the application.

11 “(C) APPROVAL OR DENIAL.—

12 “(i) IN GENERAL.—Not later than 90
13 days after the date on which a notice is
14 published under subparagraph (B), or
15 within such longer period as to which the
16 applicant consents, the Commission shall—

17 “(I) by order grant the registra-
18 tion; or

19 “(II) institute a denial pro-
20 ceeding under clause (ii) to determine
21 whether registration should be denied.

22 “(ii) DENIAL PROCEEDING.—

23 “(I) IN GENERAL.—A proceeding
24 under clause (i)(II) shall—

1 “(aa) include notice of the
2 grounds for denial under consid-
3 eration and opportunity for hear-
4 ing; and

5 “(bb) be concluded not later
6 than 180 days after the date on
7 which the notice is published
8 under subparagraph (B).

9 “(II) ORDER.—At the conclusion
10 of a proceeding under clause (i)(II),
11 the Commission shall by order grant
12 or deny the registration.

13 “(III) EXTENSION.—The Com-
14 mission may extend the time for con-
15 clusion of a proceeding under clause
16 (i)(II) for a period of not more than
17 90 days if the Commission—

18 “(aa) finds good cause for
19 the extension; and

20 “(bb) publishes the reasons
21 for the finding described in item
22 (aa) or for such longer period as
23 to which the applicant consents.

24 “(iii) CRITERIA FOR APPROVAL OR
25 DENIAL.—The Commission shall—

1 “(I) grant a registration under
2 this paragraph if the Commission
3 finds that the requirements of this
4 Act and the rules and regulations
5 thereunder with respect to the appli-
6 cant are satisfied; and

7 “(II) deny a registration under
8 this paragraph if the Commission does
9 not make the finding described in sub-
10 clause (I).

11 “(3) POWERS AND RESTRICTIONS.—In addition
12 to the powers and restrictions otherwise applicable
13 to a national securities exchange, a venture ex-
14 change—

15 “(A) may only constitute, maintain, or pro-
16 vide a market place or facilities for bringing to-
17 gether purchasers and sellers of venture securi-
18 ties;

19 “(B) may not extend unlisted trading
20 privileges to any venture security;

21 “(C) may only, if the venture exchange is
22 a listing tier of another national securities ex-
23 change, allow trading in securities that are reg-
24 istered under section 12(b) on a national securi-

1 ties exchange other than a venture exchange;
2 and

3 “(D) may, subject to the rule filing process
4 under section 19(b)—

5 “(i) determine the increment to be
6 used for quoting and trading venture secu-
7 rities on the exchange; and

8 “(ii) choose to carry out periodic auc-
9 tions for the sale of a venture security in-
10 stead of providing continuous trading of
11 the venture security.

12 “(4) TREATMENT OF CERTAIN EXEMPTED SE-
13 CURITIES.—A security that is exempt from registra-
14 tion pursuant to section 3(b) of the Securities Act
15 of 1933 (15 U.S.C. 77c(b)) shall be exempt from
16 section 12(a) of this Act to the extent the security
17 is traded on a venture exchange, if the issuer of the
18 security is in compliance with—

19 “(A) all disclosure obligations of such sec-
20 tion 3(b) and the regulations issued under such
21 section; and

22 “(B) ongoing disclosure obligations of the
23 applicable venture exchange that are similar to
24 those provided by an issuer under tier 2, as de-
25 scribed in sections 230.251 through 230.263 of

1 title 17, Code of Federal Regulations, or any
2 successor regulation.

3 “(5) VENTURE SECURITIES TRADED ON VEN-
4 TURE EXCHANGES MAY NOT TRADE ON NON-VEN-
5 TURE EXCHANGES.—A venture security may not be
6 traded on a national securities exchange that is not
7 a venture exchange during any period in which the
8 venture security is being traded on a venture ex-
9 change.

10 “(6) COMMISSION AUTHORITY TO LIMIT CER-
11 TAIN TRADING.—The Commission may limit trans-
12 actions in venture securities that are not effected on
13 a national securities exchange as appropriate to pro-
14 mote efficiency, competition, capital formation, and
15 to protect investors.

16 “(7) DISCLOSURES TO INVESTORS.—The Com-
17 mission shall issue regulations to ensure that per-
18 sons selling or purchasing venture securities on a
19 venture exchange are provided disclosures sufficient
20 to understand—

21 “(A) the characteristics unique to venture
22 securities; and

23 “(B) in the case of a venture exchange
24 that is a listing tier of another national securi-
25 ties exchange, that the venture exchange is dis-

1 tinct from the other national securities ex-
2 change.

3 “(8) RULE OF CONSTRUCTION.—Nothing in
4 this subsection may be construed as requiring trans-
5 actions in venture securities to be effected on a na-
6 tional securities exchange.”.

7 (b) SECURITIES ACT OF 1933.—Section 18 of the Se-
8 curities Act of 1933 (15 U.S.C. 77r) is amended—

9 (1) by redesignating subsection (d) as sub-
10 section (e); and

11 (2) by inserting after subsection (c) the fol-
12 lowing:

13 “(d) TREATMENT OF SECURITIES LISTED ON A VEN-
14 TURE EXCHANGE.—Notwithstanding subsection (b), a se-
15 curity is not a covered security pursuant to subsection
16 (b)(1)(A) if the security is only listed, or authorized for
17 listing, on a venture exchange, as defined in section 6(m)
18 of the Securities Exchange Act of 1934.”.

19 (c) SENSE OF CONGRESS.—It is the sense of the Con-
20 gress that the Securities and Exchange Commission
21 should—

22 (1) when necessary or appropriate in the public
23 interest and consistent with the protection of inves-
24 tors, make use of the general exemptive authority of
25 the Commission under section 36 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78mm) with re-
2 spect to the provisions added by the amendments
3 made by this section; and

4 (2) if the Commission determines appropriate,
5 create an Office of Venture Exchanges within the
6 Division of Trading and Markets of the Commission.

7 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion or the amendments made by this section shall be con-
9 strued to impair or limit the construction of the antifraud
10 provisions of the securities laws, as defined in section 3(a)
11 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78c(a)), or the authority of the Securities and Exchange
13 Commission under those provisions.

14 (e) EFFECTIVE DATE FOR TIERS OF EXISTING NA-
15 TIONAL SECURITIES EXCHANGES.—In the case of a secu-
16 rities exchange that is registered as a national securities
17 exchange under section 6 of the Securities Exchange Act
18 of 1934 (15 U.S.C. 78f) on the date of the enactment of
19 this Act, any election for a listing tier of that exchange
20 to be treated as a venture exchange under subsection (m)
21 of such section shall not take effect before the date that
22 is 180 days after such date of enactment.

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