

# Union Calendar No. 135

112TH CONGRESS  
1ST SESSION

# H. R. 1070

[Report No. 112-206]

To amend the Securities Act of 1933 to authorize the Securities and Exchange Commission to exempt a certain class of securities from such Act.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2011

Mr. SCHWEIKERT (for himself, Mr. GARRETT, Mr. WESTMORELAND, Mr. JONES, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 14, 2011

Additional sponsors: Mr. CANSECO, Mr. MANZULLO, Mr. DUNCAN of Tennessee, Ms. ESHOO, Mrs. BACHMANN, Mr. STIVERS, Mr. DAVID SCOTT of Georgia, Mr. NEUGEBAUER, Mr. WALSH of Illinois, Mr. PAULSEN, Mr. MARCHANT, Mr. QUAYLE, Mr. CULBERSON, Mr. PRICE of Georgia, Mr. ROE of Tennessee, and Ms. HAYWORTH

SEPTEMBER 14, 2011

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 italics]

[For text of introduced bill, see copy of bill as introduced on March 14, 2011]

# **A BILL**

To amend the Securities Act of 1933 to authorize the Securities and Exchange Commission to exempt a certain class of securities from such Act.

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 Company Capital*  
5 *Formation Act of 2011”.*

6 **SEC. 2. AUTHORITY TO EXEMPT CERTAIN SECURITIES.**

7        *(a) IN GENERAL.—Section 3(b) of the Securities Act*  
8 *of 1933 (15 U.S.C. 77c(b)) is amended—*

9            *(1) by striking “(b) The Commission” and in-*  
10 *serting the following:*

11        *“(b) ADDITIONAL EXEMPTIONS.—*

12            *“(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—*  
13 *The Commission”; and*

14            *(2) by adding at the end the following:*

15        *“(2) ADDITIONAL ISSUES.—The Commission*  
16 *shall by rule or regulation add a class of securities to*  
17 *the securities exempted pursuant to this section in ac-*  
18 *cordance with the following terms and conditions:*

19            *“(A) The aggregate offering amount of all*  
20 *securities sold within the prior 12-month period*  
21 *in reliance on the exemption added in accord-*  
22 *ance with this paragraph shall not exceed*  
23 *\$50,000,000.*

24            *“(B) The securities may be offered and sold*  
25 *publicly.*

1           “(C) *The securities shall not be restricted se-*  
2           *curities within the meaning of the Federal secu-*  
3           *rities laws and the regulations promulgated*  
4           *thereunder.*

5           “(D) *The civil liability provision in section*  
6           *12(a)(2) shall apply to any person offering or*  
7           *selling such securities.*

8           “(E) *The issuer may solicit interest in the*  
9           *offering prior to filing any offering statement, on*  
10          *such terms and conditions as the Commission*  
11          *may prescribe in the public interest or for the*  
12          *protection of investors.*

13          “(F) *The Commission shall require the*  
14          *issuer to file audited financial statements with*  
15          *the Commission annually.*

16          “(G) *Such other terms, conditions, or re-*  
17          *quirements as the Commission may determine*  
18          *necessary in the public interest and for the pro-*  
19          *tection of investors, which may include—*

20                  “(i) *a requirement that the issuer pre-*  
21                  *pare and electronically file with the Com-*  
22                  *mission and distribute to prospective inves-*  
23                  *tors an offering statement, and any related*  
24                  *documents, in such form and with such con-*  
25                  *tent as prescribed by the Commission, which*

1           *shall include a description of the issuer’s*  
2           *business operations, its financial condition,*  
3           *its corporate governance principles, its use*  
4           *of investor funds, and other appropriate*  
5           *matters; and*

6           “(ii) *disqualification provisions under*  
7           *which the exemption shall not be available*  
8           *based upon the disciplinary history of the*  
9           *issuer or its predecessors, affiliates, officers,*  
10          *directors, underwriters, or other related per-*  
11          *sons, which shall be substantially similar to*  
12          *the disqualification provisions contained in*  
13          *the regulations adopted in accordance with*  
14          *section 926 of the Dodd-Frank Wall Street*  
15          *Reform and Consumer Protection Act (15*  
16          *U.S.C. 77d note).*

17          “(3) *LIMITATION.*—*Only the following types of*  
18          *securities may be exempted under a rule or regulation*  
19          *adopted pursuant to paragraph (2): equity securities,*  
20          *debt securities, and debt securities convertible or ex-*  
21          *changeable to equity interests, including any guaran-*  
22          *tees of such securities.*

23          “(4) *PERIODIC DISCLOSURES.*—*Upon such terms*  
24          *and conditions as the Commission determines nec-*  
25          *essary in the public interest and for the protection of*

1 *investors, the Commission by rule or regulation may*  
2 *require an issuer of a class of securities exempted*  
3 *under paragraph (2) to make available to investors*  
4 *periodic disclosures regarding the issuer, its business*  
5 *operations, its financial condition, its corporate gov-*  
6 *ernance principles, its use of investor funds, and other*  
7 *appropriate matters, and also may provide for the*  
8 *suspension and termination of such a requirement*  
9 *with respect to that issuer.*

10 *“(5) ADJUSTMENT.—Not later than 2 years after*  
11 *the date of enactment of the Small Company Capital*  
12 *Formation Act of 2011 and every 2 years thereafter,*  
13 *the Commission shall review the offering amount lim-*  
14 *itation described in paragraph (2)(A) and shall in-*  
15 *crease such amount as the Commission determines ap-*  
16 *propriate. If the Commission determines not to in-*  
17 *crease such amount, it shall report to the Committee*  
18 *on Financial Services of the House of Representatives*  
19 *and the Committee on Banking, Housing, and Urban*  
20 *Affairs of the Senate on its reasons for not increasing*  
21 *the amount.”.*

22 *(b) TREATMENT AS COVERED SECURITIES FOR PUR-*  
23 *POSES OF NSMLA.—Section 18(b)(4) of the Securities Act*  
24 *of 1933 (15 U.S.C. 77r(b)(4)) is amended—*

1           (1) *in subparagraph (C), by striking “; or” at*  
2 *the end and inserting a semicolon; and*

3           (2) *by redesignating subparagraph (D) as sub-*  
4 *paragraph (E), and inserting after subparagraph (C)*  
5 *the following:*

6                   “(D) *a rule or regulation adopted pursuant*  
7 *to section 3(b)(2) and such security is—*

8                           “(i) *offered or sold through a broker or*  
9 *dealer;*

10                           “(ii) *offered or sold on a national secu-*  
11 *rities exchange; or*

12                           “(iii) *sold to a qualified purchaser as*  
13 *defined by the Commission pursuant to*  
14 *paragraph (3).”.*

15       (c) *CONFORMING AMENDMENT.—Section 4(5) of the*  
16 *Securities Act of 1933 is amended by striking “section 3(b)”*  
17 *and inserting “section 3(b)(1)”.*

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