

113TH CONGRESS  
2D SESSION

# H. R. 4565

To amend the securities laws to improve the small company capital formation provisions, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2014

Mr. MCHENRY (for himself and Mr. GARRETT) introduced the following bill;  
which was referred to the Committee on Financial Services

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## A BILL

To amend the securities laws to improve the small company capital formation provisions, 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 “Startup Capital Mod-  
5       ernization Act of 2014”.

6       **SEC. 2. INCREASE IN SMALL ISSUES EXEMPTIVE AUTHOR-**  
7       **ITY.**

8       Section 3(b)(1) of the Securities Act of 1933 (15  
9       U.S.C. 77c(b)(1)) is amended by striking “\$5,000,000”  
10      and inserting “\$10,000,000”.

1 **SEC. 3. PREEMPTION OF STATE LAWS.**

2 (a) IN GENERAL.—The first subparagraph (D) of  
3 section 18(b)(4) of the Securities Act of 1933 (15 U.S.C.  
4 77r(b)(4)) (relating to a rule or regulation adopted pursu-  
5 ant to section 3(b)(2)) is amended by inserting “section  
6 3(b)(1) or” before “section 3(b)(2)”.

7 (b) CLARIFICATION OF THE PRESERVATION OF  
8 STATE ENFORCEMENT AUTHORITY.—

9 (1) IN GENERAL.—The amendment made by  
10 subsection (a) relates solely to State registration,  
11 documentation, and offering requirements, as de-  
12 scribed under section 18(a) of the Securities Act of  
13 1933 (15 U.S.C. 77r(a)), and shall have no impact  
14 or limitation on other State authority to take en-  
15 forcement action with regard to an issuer, inter-  
16 mediary, or any other person or entity using the ex-  
17 emption from registration provided by section  
18 3(b)(1) of such Act.

19 (2) CLARIFICATION OF STATE JURISDICTION  
20 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,  
21 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the  
22 Securities Act of 1933 is amended—

23 (A) in subparagraph (A), by striking  
24 “and” at the end;

25 (B) in subparagraph (B), by striking the  
26 period at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(C) with respect to a transaction de-  
3 scribed under section 3(b), unlawful conduct by  
4 an issuer or custodian.”.

5 **SEC. 4. EXCLUSION FROM SHAREHOLDER CAP.**

6 (a) IN GENERAL.—Section 12(g) of the Securities  
7 Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by  
8 adding at the end the following:

9 “(7) EXCLUSION FOR SECURITIES ISSUED  
10 UNDER REGULATION A PURSUANT TO SECTION 3(b)  
11 OF THE SECURITIES ACT OF 1933.—All securities  
12 issued under Regulation A (17 C.F.R. 230.251 et  
13 seq.) pursuant to section 3(b) of the Securities Act  
14 of 1933 shall be exempt from the provisions of this  
15 subsection if the issuer has filed audited financial  
16 statements with the Commission and the issuer is in  
17 compliance with all periodic disclosures required by  
18 the Commission pursuant to section 3(b)(4) of the  
19 Securities Act of 1933.”.

20 (b) RULEMAKING.—The Securities and Exchange  
21 Commission shall issue a rule to carry out section 12(g)(7)  
22 of the Securities Exchange Act of 1934 (15 U.S.C. 78c),  
23 as added by this section, not later than 180 days after  
24 the date of enactment of this section.

1 (c) RULE OF APPLICABILITY.—The exclusion pro-  
2 vided under section 12(g)(7) of the Securities Exchange  
3 Act of 1934 (15 U.S.C. 78c), as added by this section,  
4 shall apply to securities issued before, on, or after the date  
5 of the enactment of this Act.

6 **SEC. 5. EXEMPTED TRANSACTIONS.**

7 (a) EXEMPTED TRANSACTIONS.—Section 4 of the Se-  
8 curities Act of 1933 (15 U.S.C. 77d) is amended—

9 (1) in subsection (a), by adding at the end the  
10 following new paragraph:

11 “(7) transactions meeting the requirements of  
12 subsection (d).”;

13 (2) by redesignating the second subsection (b)  
14 (relating to securities offered and sold in compliance  
15 with Rule 506 of Regulation D) as subsection (c);  
16 and

17 (3) by adding at the end the following:

18 “(d)(1) The transactions referred to in subsection  
19 (a)(7) are transactions where—

20 “(A) each purchaser is an accredited inves-  
21 tor, as that term is defined in section  
22 230.501(a) of title 17, Code of Federal Regula-  
23 tions (or any successor thereto); and

24 “(B) if any securities sold in reliance on  
25 subsection (a)(7) are offered by means of any

1           general solicitation or general advertising, the  
2           seller takes reasonable steps to verify, in the  
3           manner set forth in section 230.506(c)(ii) of  
4           title 17, Code of Federal Regulations (or any  
5           successor regulation), that each purchaser is an  
6           accredited investor.

7           “(2) Securities sold in reliance on subsection (a)(7)  
8           shall be deemed to have been acquired in a transaction  
9           not involving any public offering.

10          “(3) The exemption provided by this subsection shall  
11          not be available for a transaction where the seller is—

12                  “(A) an issuer, its subsidiaries or parent;

13                  “(B) an underwriter acting on behalf of the  
14                  issuer, its subsidiaries or parent, which receives com-  
15                  pensation from the issuer with respect to such sale;

16          or

17                  “(C) a dealer.

18          “(4) A transaction meeting the requirements of this  
19          subsection shall be deemed not to be a distribution for  
20          purposes of section 2(a)(11).”.

21          (b) EXEMPTION IN CONNECTION WITH CERTAIN EX-  
22          EMPT OFFERINGS.—Section 18(b)(4) of the Securities Act  
23          of 1933 (15 U.S.C. 77r(b)(4)) is amended—

1           (1) by redesignating the second subparagraph  
2           (D) and subparagraph (E) as subparagraphs (E)  
3           and (F), respectively;

4           (2) in subparagraph (E), as so redesignated, by  
5           striking “; or” and inserting a semicolon;

6           (3) in subparagraph (F), as so redesignated, by  
7           striking the period and inserting “; or”; and

8           (4) by adding at the end the following new sub-  
9           paragraph:

10                           “(G) section 4(a)(7).”.

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