

113TH CONGRESS
2D SESSION

H. R. 3448

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2014

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Exchange Act of 1934 to provide
for an optional pilot program allowing certain emerging
growth companies to increase the tick sizes of their
stocks.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Cap Liquidity
3 Reform Act of 2014”.

4 **SEC. 2. LIQUIDITY PILOT PROGRAM FOR SECURITIES OF**
5 **CERTAIN EMERGING GROWTH COMPANIES.**

6 (a) IN GENERAL.—Section 11A(c)(6) of the Securi-
7 ties Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is
8 amended to read as follows:

9 “(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES
10 OF CERTAIN EMERGING GROWTH COMPANIES.—

11 “(A) QUOTING INCREMENT.—Beginning on the
12 date that is 90 days after the date of the enactment
13 of the Small Cap Liquidity Reform Act of 2014, the
14 securities of a covered emerging growth company
15 shall be quoted using—

16 “(i) a minimum increment of \$0.05; or

17 “(ii) if, not later than 60 days after such
18 date of enactment, the company so elects in the
19 manner described in subparagraph (D)—

20 “(I) a minimum increment of \$0.10;

21 or

22 “(II) the increment at which such se-
23 curities would be quoted without regard to
24 the minimum increments established under
25 this paragraph.

1 “(B) TRADING INCREMENT.—In the case of a
2 covered emerging growth company the securities of
3 which are quoted at a minimum increment of \$0.05
4 or \$0.10 under this paragraph, the Commission shall
5 determine the increment at which the securities of
6 such company are traded.

7 “(C) FUTURE RIGHT TO OPT OUT OR CHANGE
8 MINIMUM INCREMENT.—

9 “(i) IN GENERAL.—At any time beginning
10 on the date that is 90 days after the date of the
11 enactment of the Small Cap Liquidity Reform
12 Act of 2014, a covered emerging growth com-
13 pany the securities of which are quoted at a
14 minimum increment of \$0.05 or \$0.10 under
15 this paragraph may elect in the manner de-
16 scribed in subparagraph (D)—

17 “(I) for the securities of such com-
18 pany to be quoted at the increment at
19 which such securities would be quoted
20 without regard to the minimum increments
21 established under this paragraph; or

22 “(II) to change the minimum incre-
23 ment at which the securities of such com-
24 pany are quoted from \$0.05 to \$0.10 or
25 from \$0.10 to \$0.05.

1 “(ii) WHEN ELECTION EFFECTIVE.—An
2 election under this subparagraph shall take ef-
3 fect on the date that is 30 days after such elec-
4 tion is made.

5 “(iii) SINGLE ELECTION TO CHANGE MIN-
6 IMUM INCREMENT.—A covered emerging growth
7 company may not make more than one election
8 under clause (i)(II).

9 “(D) MANNER OF ELECTION.—

10 “(i) IN GENERAL.—An election is made in
11 the manner described in this subparagraph by
12 informing the Commission of such election.

13 “(ii) NOTIFICATION OF EXCHANGES AND
14 OTHER TRADING VENUES.—Upon being in-
15 formed of an election under clause (i), the Com-
16 mission shall notify each exchange or other
17 trading venue where the securities of the cov-
18 ered emerging growth company are quoted or
19 traded.

20 “(E) ISSUERS CEASING TO BE COVERED
21 EMERGING GROWTH COMPANIES.—

22 “(i) IN GENERAL.—If an issuer the securi-
23 ties of which are quoted at a minimum incre-
24 ment of \$0.05 or \$0.10 under this paragraph
25 ceases to be a covered emerging growth com-

pany, the securities of such issuer shall be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

“(ii) EXCEPTIONS.—The Commission may by regulation, as the Commission considers appropriate, specify any circumstances under which an issuer shall continue to be considered a covered emerging growth company for purposes of this paragraph after the issuer ceases to meet the requirements of subparagraph (L)(i).

“(F) SECURITIES TRADING BELOW \$1.—

“(i) INITIAL PRICE.—

“(I) AT EFFECTIVE DATE.—If the trading price of the securities of a covered emerging growth company is below \$1 at the close of the last trading day before the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2014, the securities of such company shall be quoted using the increment at which such securities would be

1 quoted without regard to the minimum in-
2 crements established under this paragraph.

3 “(II) AT IPO.—If a covered emerging
4 growth company makes an initial public of-
5 fering after the day described in subclause
6 (I) and the first share of the securities of
7 such company is offered to the public at a
8 price below \$1, the securities of such com-
9 pany shall be quoted using the increment
10 at which such securities would be quoted
11 without regard to the minimum increments
12 established under this paragraph.

13 “(ii) AVERAGE TRADING PRICE.—If the av-
14 erage trading price of the securities of a cov-
15 ered emerging growth company falls below \$1
16 for any 90-day period beginning on or after the
17 day before the date of the enactment of the
18 Small Cap Liquidity Reform Act of 2014, the
19 securities of such company shall, after the end
20 of such period, be quoted using the increment
21 at which such securities would be quoted with-
22 out regard to the minimum increments estab-
23 lished under this paragraph.

24 “(G) FRAUD OR MANIPULATION.—If the Com-
25 mission determines that a covered emerging growth

1 company has violated any provision of the securities
2 laws prohibiting fraudulent, manipulative, or decep-
3 tive acts or practices, the securities of such company
4 shall, after the date of the determination, be quoted
5 using the increment at which such securities would
6 be quoted without regard to the minimum incre-
7 ments established under this paragraph.

8 “(H) INELIGIBILITY FOR INCREASED MINIMUM
9 INCREMENT PERMANENT.—The securities of an
10 issuer may not be quoted at a minimum increment
11 of \$0.05 or \$0.10 under this paragraph at any time
12 after—

13 “(i) such issuer makes an election under
14 subparagraph (A)(ii)(II);

15 “(ii) such issuer makes an election under
16 subparagraph (C)(i)(I), except during the pe-
17 riod before such election takes effect; or

18 “(iii) the securities of such issuer are re-
19 quired by this paragraph to be quoted using the
20 increment at which such securities would be
21 quoted without regard to the minimum incre-
22 ments established under this paragraph.

23 “(I) ADDITIONAL REPORTS AND DISCLO-
24 SURES.—The Commission shall require a covered
25 emerging growth company the securities of which

1 are quoted at a minimum increment of \$0.05 or
2 \$0.10 under this paragraph to make such reports
3 and disclosures as the Commission considers nec-
4 essary or appropriate in the public interest or for
5 the protection of investors.

6 “(J) LIMITATION OF LIABILITY.—An issuer (or
7 any officer, director, manager, or other agent of
8 such issuer) shall not be liable to any person (other
9 than such issuer) under any law or regulation of the
10 United States, any constitution, law, or regulation of
11 any State or political subdivision thereof, or any con-
12 tract or other legally enforceable agreement (includ-
13 ing any arbitration agreement) for any losses caused
14 solely by the quoting of the securities of such issuer
15 at a minimum increment of \$0.05 or \$0.10, by the
16 trading of such securities at the increment deter-
17 mined by the Commission under subparagraph (B),
18 or by both such quoting and trading, as provided in
19 this paragraph.

20 “(K) REPORT TO CONGRESS.—Not later than 6
21 months after the date of the enactment of the Small
22 Cap Liquidity Reform Act of 2014, and every 6
23 months thereafter, the Commission, in coordination
24 with each exchange on which the securities of cov-
25 ered emerging growth companies are quoted or trad-

1 ed, shall submit to Congress a report on the quoting
2 and trading of securities in increments permitted by
3 this paragraph and the extent to which such quoting
4 and trading are increasing liquidity and active trad-
5 ing by incentivizing capital commitment, research
6 coverage, and brokerage support, together with any
7 legislative recommendations the Commission may
8 have.

9 “(L) DEFINITIONS.—In this paragraph:

10 “(i) COVERED EMERGING GROWTH COM-
11 PANY.—The term ‘covered emerging growth
12 company’ means an emerging growth company,
13 as defined in the first paragraph (80) of section
14 3(a), except that—

15 “(I) such paragraph shall be applied
16 by substituting ‘\$750,000,000’ for
17 ‘\$1,000,000,000’ each place it appears;
18 and

19 “(II) subparagraphs (B), (C), and (D)
20 of such paragraph do not apply.

21 “(ii) SECURITY.—The term ‘security’
22 means an equity security.

23 “(M) SAVINGS PROVISION.—Notwithstanding
24 any other provision of this paragraph, the Commis-
25 sion may—

1 “(i) make such adjustments to the pilot
2 program specified in this paragraph as the
3 Commission considers necessary or appropriate
4 to ensure that such program can provide statis-
5 tically meaningful or reliable results, including
6 adjustments to eliminate selection bias among
7 participants, expand the number of participants
8 eligible to participate in such program, and
9 change the duration of such program for one or
10 more participants; and

11 “(ii) conduct any other study or pilot pro-
12 gram, in conjunction with or separate from the
13 pilot program specified in this paragraph (as
14 such program may be adjusted pursuant to
15 clause (i)), to evaluate quoting or trading in
16 various minimum increments.”.

17 (b) SUNSET.—Effective on the date that is 5 years
18 after the date of the enactment of this Act, section
19 11A(c)(6) of the Securities Exchange Act of 1934 (15
20 U.S.C. 78k–1(c)(6)) is repealed.

 Passed the House of Representatives February 11,
2014.

Attest:

KAREN L. HAAS,

Clerk.