

[DISCUSSION DRAFT]115TH CONGRESS
1ST SESSION**H. R.** _____

To amend the Investment Company Act of 1940 to remove certain restrictions on the ability of business development companies to own securities of investment advisers and certain financial companies, 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

Mr. STIVERS introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Investment Company Act of 1940 to remove certain restrictions on the ability of business development companies to own securities of investment advisers and certain financial companies, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Credit
3 Availability Act”.

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

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

9 (1) by redesignating paragraphs (2) through
10 (4) as paragraphs (3) through (5), respectively; and

11 (2) by striking paragraph (1) and inserting the
12 following:

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

18 “(2) The asset coverage requirements of sub-
19 paragraphs (A) and (B) of section 18(a)(1) and of
20 subparagraphs (A) and (B) of section 18(a)(2) (and
21 any related rule promulgated under this Act) appli-
22 cable to a business development company shall be
23 150 percent if—

24 “(A) within five business days of the ap-
25 proval of the adoption of the asset coverage re-
26 quirements described in clause (ii), the business

1 development company discloses such approval
2 and the date of its effectiveness in a Form 8-
3 K filed with the Commission and in a notice on
4 its website and discloses in its periodic filings
5 made under section 13 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78m)—

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

12 “(ii) that such company has adopted
13 the asset coverage requirements of this
14 subparagraph and the effective date of
15 such requirements;

16 “(B) with respect to a business develop-
17 ment company that issues equity securities that
18 are registered on a national securities exchange,
19 the periodic filings of the company under sec-
20 tion 13(a) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78m) include disclosures rea-
22 sonably designed to ensure that shareholders
23 are informed of—

24 “(i) the amount of indebtedness and
25 asset coverage ratio of the company, deter-

1 mined as of the date of the financial state-
2 ments of the company dated on or most re-
3 cently before the date of such filing; and

4 “(ii) the principal risk factors associ-
5 ated with such indebtedness, to the extent
6 such risk is incurred by the company; and

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

24 “(ii) the company obtains, at a special or
25 annual meeting of shareholders or partners at

1 which a quorum is present, the approval of
2 more than 50 percent of the votes cast of the
3 application of this paragraph to the company,
4 which application shall become effective on the
5 date immediately after the date of the ap-
6 proval.”.

7 (b) CONFORMING AMENDMENTS.—The Investment
8 Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amend-
9 ed—

10 (1) in section 57—

11 (A) in subsection (j)(1), by striking “sec-
12 tion 61(a)(3)(B)” and inserting “section
13 61(a)(4)(B)”;

14 (B) in subsection (n)(2), by striking “sec-
15 tion 61(a)(3)(B)” and inserting “section
16 61(a)(4)(B)”;

17 (2) in section 63(3), by striking “section
18 61(a)(3)” and inserting “section 61(a)(4)”.

19 **SEC. 3. PARITY FOR BUSINESS DEVELOPMENT COMPANIES**
20 **REGARDING OFFERING AND PROXY RULES.**

21 (a) REVISION TO RULES.—Not later than 1 year
22 after the date of enactment of this Act, the Securities and
23 Exchange Commission shall revise any rules to the extent
24 necessary to allow a business development company that
25 has filed an election pursuant to section 54 of the Invest-

1 ment Company Act of 1940 (15 U.S.C. 80a–53) to use
2 the securities offering and proxy rules that are available
3 to other issuers that are required to file reports under sec-
4 tion 13 or section 15(d) of the Securities Exchange Act
5 of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the
6 Commission takes pursuant to this subsection shall in-
7 clude the following:

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

10 (A) to remove the exclusion of a business
11 development company from the definition of a
12 well-known seasoned issuer provided by that
13 rule; and

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

17 (2) The Commission shall revise rules 168 and
18 169 under the Securities Act of 1933 (17 C.F.R.
19 230.168 and 230.169) to remove the exclusion of a
20 business development company from an issuer that
21 can use the exemptions provided by those rules.

22 (3) The Commission shall revise rules 163 and
23 163A under the Securities Act of 1933 (17 C.F.R.
24 230.163 and 230.163A) to remove a business devel-
25 opment company from the list of issuers that are in-

1 eligible to use the exemptions provided by those
2 rules.

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

7 (5) The Commission shall revise rules 138 and
8 139 under the Securities Act of 1933 (17 C.F.R.
9 230.138 and 230.139) to specifically include a busi-
10 ness development company as an issuer to which
11 those rules apply.

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

16 (7) The Commission shall revise rule 433 under
17 the Securities Act of 1933 (17 C.F.R. 230.433) to
18 specifically include a business development company
19 that is a well-known seasoned issuer as an issuer to
20 which that rule applies.

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

23 (A) to state that the registration for secu-
24 rities provided by that rule includes securities

1 registered by a business development company
2 on Form N-2; and

3 (B) to provide an exception for a business
4 development company from the requirement
5 that a Form N-2 registrant must furnish the
6 undertakings required by item 34.4 of Form N-
7 2.

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

14 (10) The Commission shall revise rules 172 and
15 173 under the Securities Act of 1933 (17 C.F.R.
16 230.172 and 230.173) to remove the exclusion of an
17 offering of a business development company from
18 those rules.

19 (11) The Commission shall revise rule 418
20 under the Securities Act of 1933 (17 C.F.R.
21 230.418) to provide that a business development
22 company that would otherwise meet the eligibility re-
23 quirements of General Instruction I.A of Form S-3
24 shall be exempt from paragraph (a)(3) of that rule.

1 (12) The Commission shall revise rule 14a–101
2 under the Securities Exchange Act of 1934 (17
3 C.F.R. 240.14a–101) to provide that a business de-
4 velopment company that would otherwise meet the
5 requirements of General Instruction I.A of Form S–
6 3 shall be deemed to meet the requirements of Form
7 S–3 for purposes of Schedule 14A.

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

12 (b) REVISION TO FORM N–2.—Not later than 1 year
13 after the date of enactment of this Act, the Commission
14 shall revise Form N–2—

15 (1) to include an item or instruction that is
16 similar to item 12 on Form S–3 to provide that a
17 business development company that would otherwise
18 meet the requirements of Form S–3 shall incor-
19 porate by reference its reports and documents filed
20 under the Securities Exchange Act of 1934 into its
21 registration statement filed on Form N–2; and

22 (2) to include an item or instruction that is
23 similar to the instruction regarding automatic shelf
24 offerings by well-known seasoned issuers on Form
25 S–3 to provide that a business development company

1 that is a well-known seasoned issuer may file auto-
2 matic shelf offerings on Form N-2.

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

11 (d) RULE OF CONSTRUCTION.—Any reference in this
12 section to a rule or form means such rule or form or any
13 successor rule or form.