

Union Calendar No. 495

115TH CONGRESS
2^D SESSION

H. R. 4267

[Report No. 115-646]

To amend the Investment Company Act of 1940 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

NOVEMBER 7, 2017

Mr. STIVERS (for himself, Mr. SHERMAN, Mr. MCHENRY, and Ms. MOORE) introduced the following bill; which was referred to the Committee on Financial Services

APRIL 24, 2018

Additional sponsors: Mr. ROYCE of California, Mr. HIMES, Mrs. BEATTY, Mrs. WAGNER, Mr. PERLMUTTER, Mr. DAVID SCOTT of Georgia, Ms. TENNEY, Mr. WILLIAMS, Mr. GOTTHEIMER, Mr. MESSER, Mr. MEEKS, Mr. EMMER, Mr. BUDD, Mr. CLAY, Mr. HULTGREN, Mr. FOSTER, Mr. GRAVES of Georgia, Mr. FITZPATRICK, and Mr. HECK

APRIL 24, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Investment Company Act of 1940 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Credit
5 Availability Act”.

6 **SEC. 2. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DE-**
7 **VELOPMENT COMPANIES.**

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

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

13 (2) by striking paragraph (1) and inserting the
14 following:

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

20 “(2) The asset coverage requirements of sub-
21 subparagraphs (A) and (B) of section 18(a)(1) and of
22 subparagraphs (A) and (B) of section 18(a)(2) (and
23 any related rule promulgated under this Act) appli-
24 cable to a business development company shall be
25 150 percent if—

1 “(A) within five business days of the ap-
2 proval of the adoption of the asset coverage re-
3 quirements described in clause (ii), the business
4 development company discloses such approval
5 and the date of its effectiveness in a Form 8-
6 K filed with the Commission and in a notice on
7 its website and discloses in its periodic filings
8 made under section 13(a) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78m(a))—

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

15 “(ii) that such company has adopted
16 the asset coverage requirements of this
17 paragraph and the effective date of such
18 requirements;

19 “(B) with respect to a business develop-
20 ment company that issues equity securities that
21 are registered on a national securities exchange,
22 the periodic filings of the company under sec-
23 tion 13(a) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78m(a)) include disclosures

1 reasonably designed to ensure that shareholders
2 are informed of—

3 “(i) the amount of indebtedness and
4 asset coverage ratio of the company, deter-
5 mined as of the date of the financial state-
6 ments of the company dated on or most re-
7 cently before the date of such filing; and

8 “(ii) the principal risk factors associ-
9 ated with such indebtedness, to the extent
10 such risk is incurred by the company; and

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

1 ties to be repurchased in each of the four quar-
2 ters following such approval date; or

3 “(ii) the company obtains, at a special or
4 annual meeting of shareholders or partners at
5 which a quorum is present, the approval of
6 more than 50 percent of the votes cast of the
7 application of this paragraph to the company,
8 which application shall become effective on the
9 date immediately after the date of the ap-
10 proval.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) INVESTMENT COMPANY ACT OF 1940.—The
13 Investment Company Act of 1940 (15 U.S.C. 80a-
14 1 et seq.) is amended—

15 (A) in section 57—

16 (i) in subsection (j)(1), by striking
17 “section 61(a)(3)(B)” and inserting “sec-
18 tion 61(a)(4)(B)”;

19 (ii) in subsection (n)(2), by striking
20 “section 61(a)(3)(B)” and inserting “sec-
21 tion 61(a)(4)(B)”;

22 (B) in section 63(3), by striking “section
23 61(a)(3)” and inserting “section 61(a)(4)”.

1 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 205(b)(3) of the Investment Advisers Act of
3 1940 (15 U.S.C. 80b-5(b)(3)) is amended—

4 (A) by striking “section 61(a)(3)(B)(iii)”
5 and inserting “section 61(a)(4)(B)(iii)”; and

6 (B) by striking “section 61(a)(3)(B)” and
7 inserting “section 61(a)(4)(B)”.

8 **SEC. 3. PARITY FOR BUSINESS DEVELOPMENT COMPANIES**
9 **REGARDING OFFERING AND PROXY RULES.**

10 (a) REVISION TO RULES.—Not later than 1 year
11 after the date of enactment of this Act, the Securities and
12 Exchange Commission shall revise any rules to the extent
13 necessary to allow a business development company that
14 has filed an election pursuant to section 54 of the Invest-
15 ment Company Act of 1940 (15 U.S.C. 80a-53) to use
16 the securities offering and proxy rules that are available
17 to other issuers that are required to file reports under sec-
18 tion 13(a) or section 15(d) of the Securities Exchange Act
19 of 1934 (15 U.S.C. 78m(a); 78o(d)). Any action that the
20 Commission takes pursuant to this subsection shall in-
21 clude the following:

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

24 (A) to remove the exclusion of a business
25 development company from the definition of a

1 well-known seasoned issuer provided by that
2 rule; and

3 (B) to add registration statements filed on
4 Form N-2 to the definition of automatic shelf
5 registration statement provided by that rule.

6 (2) The Commission shall revise rules 168 and
7 169 under the Securities Act of 1933 (17 C.F.R.
8 230.168 and 230.169) to remove the exclusion of a
9 business development company from an issuer that
10 can use the exemptions provided by those rules.

11 (3) The Commission shall revise rules 163 and
12 163A under the Securities Act of 1933 (17 C.F.R.
13 230.163 and 230.163A) to remove a business devel-
14 opment company from the list of issuers that are in-
15 eligible to use the exemptions provided by those
16 rules.

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

21 (5) The Commission shall revise rules 138 and
22 139 under the Securities Act of 1933 (17 C.F.R.
23 230.138 and 230.139) to specifically include a busi-
24 ness development company as an issuer to which
25 those rules apply.

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

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

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

12 (A) to state that the registration for secu-
13 rities provided by that rule includes securities
14 registered by a business development company
15 on Form N-2; and

16 (B) to provide an exception for a business
17 development company from the requirement
18 that a Form N-2 registrant must furnish the
19 undertakings required by item 34.4 of Form N-
20 2.

21 (9) The Commission shall revise rule 497 under
22 the Securities Act of 1933 (17 C.F.R. 230.497) to
23 include a process for a business development com-
24 pany to file a form of prospectus that is parallel to

1 the process for filing a form of prospectus under
2 rule 424(b).

3 (10) The Commission shall revise rules 172 and
4 173 under the Securities Act of 1933 (17 C.F.R.
5 230.172 and 230.173) to remove the exclusion of an
6 offering of a business development company from
7 those rules.

8 (11) The Commission shall revise rule 418
9 under the Securities Act of 1933 (17 C.F.R.
10 230.418) to provide that a business development
11 company that would otherwise meet the eligibility re-
12 quirements of General Instruction I.A of Form S-3
13 shall be exempt from paragraph (a)(3) of that rule.

14 (12) The Commission shall revise rule 14a-101
15 under the Securities Exchange Act of 1934 (17
16 C.F.R. 240.14a-101) to provide that a business de-
17 velopment company that would otherwise meet the
18 requirements of General Instruction I.A of Form S-
19 3 shall be deemed to meet the requirements of Form
20 S-3 for purposes of Schedule 14A.

21 (13) The Commission shall revise rule 103
22 under Regulation FD (17 C.F.R. 243.103) to pro-
23 vide that paragraph (a) of that rule applies for pur-
24 poses of Form N-2.

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

4 (1) to include an item or instruction that is
5 similar to item 12 on Form S-3 to provide that a
6 business development company that would otherwise
7 meet the requirements of Form S-3 shall incor-
8 porate by reference its reports and documents filed
9 under the Securities Exchange Act of 1934 into its
10 registration statement filed on Form N-2; and

11 (2) to include an item or instruction that is
12 similar to the instruction regarding automatic shelf
13 offerings by well-known seasoned issuers on Form
14 S-3 to provide that a business development company
15 that is a well-known seasoned issuer may file auto-
16 matic shelf offerings on Form N-2.

17 (c) TREATMENT IF REVISIONS NOT COMPLETED IN
18 TIMELY MANNER.—If the Commission fails to complete
19 the revisions required by subsections (a) and (b) by the
20 time required by such subsections, a business development
21 company shall be entitled to treat such revisions as having
22 been completed in accordance with the actions required to
23 be taken by the Commission by such subsections until such
24 time as such revisions are completed by the Commission.

1 (d) RULE OF CONSTRUCTION.—Any reference in this
2 section to a rule or form means such rule or form or any
3 successor rule or form.

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