

114TH CONGRESS
1ST SESSION

H. R. 3784

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2015

Mr. CARNEY (for himself, Mr. DUFFY, Mr. QUIGLEY, and Mr. CRENSHAW) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, 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 “SEC Small Business
5 Advocate Act of 2015”.

1 **SEC. 2. ESTABLISHMENT OF OFFICE OF THE ADVOCATE**
2 **FOR SMALL BUSINESS CAPITAL FORMATION**
3 **AND SMALL BUSINESS CAPITAL FORMATION**
4 **ADVISORY COMMITTEE.**

5 (a) OFFICE OF THE ADVOCATE FOR SMALL BUSI-
6 NESS CAPITAL FORMATION.—Section 4 of the Securities
7 Exchange Act of 1934 (15 U.S.C. 78d) is amended by
8 adding at the end the following:

9 “(j) OFFICE OF THE ADVOCATE FOR SMALL BUSI-
10 NESS CAPITAL FORMATION.—

11 “(1) OFFICE ESTABLISHED.—There is estab-
12 lished within the Commission the Office of the Advo-
13 cate for Small Business Capital Formation (here-
14 after in this subsection referred to as the ‘Office’).

15 “(2) ADVOCATE FOR SMALL BUSINESS CAPITAL
16 FORMATION.—

17 “(A) IN GENERAL.—The head of the Of-
18 fice shall be the Advocate for Small Business
19 Capital Formation, who shall—

20 “(i) report directly to the Commission;

21 and

22 “(ii) be appointed by the Commission,
23 from among individuals having experience
24 in advocating for the interests of small
25 businesses and encouraging small business
26 capital formation.

1 “(B) COMPENSATION.—The annual rate of
2 pay for the Advocate for Small Business Cap-
3 ital Formation shall be equal to the highest rate
4 of annual pay for other senior executives who
5 report directly to the Commission.

6 “(C) NO CURRENT EMPLOYEE OF THE
7 COMMISSION.—An individual may not be ap-
8 pointed as the Advocate for Small Business
9 Capital Formation if the individual is currently
10 employed by the Commission.

11 “(3) STAFF OF OFFICE.—The Advocate for
12 Small Business Capital Formation, after consulta-
13 tion with the Commission, may retain or employ
14 independent counsel, research staff, and service
15 staff, as the Advocate for Small Business Capital
16 Formation determines to be necessary to carry out
17 the functions of the Office.

18 “(4) FUNCTIONS OF THE ADVOCATE FOR
19 SMALL BUSINESS CAPITAL FORMATION.—The Advo-
20 cate for Small Business Capital Formation shall—

21 “(A) assist small businesses and small
22 business investors in resolving significant prob-
23 lems such businesses and investors may have
24 with the Commission or with self-regulatory or-
25 ganizations;

1 “(B) identify areas in which small busi-
2 nesses and small business investors would ben-
3 efit from changes in the regulations of the
4 Commission or the rules of self-regulatory orga-
5 nizations;

6 “(C) identify problems that small busi-
7 nesses have with securing access to capital;

8 “(D) analyze the potential impact on small
9 businesses and small business investors of—

10 “(i) proposed regulations of the Com-
11 mission that are likely to have a significant
12 economic impact on small businesses and
13 small business capital formation; and

14 “(ii) proposed rules that are likely to
15 have a significant economic impact on
16 small businesses and small business capital
17 formation of self-regulatory organizations
18 registered under this title;

19 “(E) conduct outreach to small businesses
20 and small business investors, including through
21 regional roundtables, in order to solicit views on
22 relevant capital formation issues;

23 “(F) to the extent practicable, propose to
24 the Commission changes in the regulations or
25 orders of the Commission and to Congress any

1 legislative, administrative, or personnel changes
2 that may be appropriate to mitigate problems
3 identified under this paragraph and to promote
4 the interests of small businesses and small busi-
5 ness investors;

6 “(G) consult with the Investor Advocate on
7 proposed recommendations made under sub-
8 paragraph (F); and

9 “(H) advise the Investor Advocate on
10 issues related to small businesses and small
11 business investors.

12 “(5) ACCESS TO DOCUMENTS.—The Commis-
13 sion shall ensure that the Advocate for Small Busi-
14 ness Capital Formation has full access to the docu-
15 ments and information of the Commission and any
16 self-regulatory organization, as necessary to carry
17 out the functions of the Office.

18 “(6) ANNUAL REPORT ON ACTIVITIES.—

19 “(A) IN GENERAL.—Not later than De-
20 cember 31 of each year after 2015, the Advo-
21 cate for Small Business Capital Formation shall
22 submit to the Committee on Banking, Housing,
23 and Urban Affairs of the Senate and the Com-
24 mittee on Financial Services of the House of
25 Representatives a report on the activities of the

1 Advocate for Small Business Capital Formation
2 during the immediately preceding fiscal year.

3 “(B) CONTENTS.—Each report required
4 under subparagraph (A) shall include—

5 “(i) appropriate statistical information
6 and full and substantive analysis;

7 “(ii) information on steps that the
8 Advocate for Small Business Capital For-
9 mation has taken during the reporting pe-
10 riod to improve small business services and
11 the responsiveness of the Commission and
12 self-regulatory organizations to small busi-
13 ness and small business investor concerns;

14 “(iii) a summary of the most serious
15 issues encountered by small businesses and
16 small business investors during the report-
17 ing period;

18 “(iv) an inventory of the items sum-
19 marized under clause (iii) (including items
20 summarized under such clause for any
21 prior reporting period on which no action
22 has been taken or that have not been re-
23 solved to the satisfaction of the Advocate
24 for Small Business Capital Formation as

1 of the beginning of the reporting period
2 covered by the report) that includes—

3 “(I) identification of any action
4 taken by the Commission or the self-
5 regulatory organization and the result
6 of such action;

7 “(II) the length of time that each
8 item has remained on such inventory;
9 and

10 “(III) for items on which no ac-
11 tion has been taken, the reasons for
12 inaction, and an identification of any
13 official who is responsible for such ac-
14 tion;

15 “(v) recommendations for such
16 changes to the regulations, guidance and
17 orders of the Commission and such legisla-
18 tive actions as may be appropriate to re-
19 solve problems with the Commission and
20 self-regulatory organizations encountered
21 by small businesses and small business in-
22 vestors and to encourage small business
23 capital formation; and

1 “(vi) any other information, as deter-
2 mined appropriate by the Advocate for
3 Small Business Capital Formation.

4 “(C) CONFIDENTIALITY.—No report re-
5 quired by subparagraph (A) may contain con-
6 fidential information.

7 “(D) INDEPENDENCE.—Each report re-
8 quired under subparagraph (A) shall be pro-
9 vided directly to the committees of Congress
10 listed in such subparagraph without any prior
11 review or comment from the Commission, any
12 commissioner, any other officer or employee of
13 the Commission, or the Office of Management
14 and Budget.

15 “(7) REGULATIONS.—The Commission shall es-
16 tablish procedures requiring a formal response to all
17 recommendations submitted to the Commission by
18 the Advocate for Small Business Capital Formation,
19 not later than 3 months after the date of such sub-
20 mission.

21 “(8) GOVERNMENT-BUSINESS FORUM ON SMALL
22 BUSINESS CAPITAL FORMATION.—The Advocate for
23 Small Business Capital Formation shall be respon-
24 sible for planning, organizing, and executing the an-
25 nual Government-Business Forum on Small Busi-

1 tion, as such rules, regulations, and policies re-
2 late to—

3 “(i) capital raising by emerging, pri-
4 vately held small businesses (‘emerging
5 companies’) and publicly traded companies
6 with less than \$250,000,000 in public mar-
7 ket capitalization (‘smaller public compa-
8 nies’) through securities offerings, includ-
9 ing private and limited offerings and initial
10 and other public offerings;

11 “(ii) trading in the securities of
12 emerging companies and smaller public
13 companies; and

14 “(iii) public reporting and corporate
15 governance requirements of emerging com-
16 panies and smaller public companies.

17 “(B) LIMITATION.—The Committee shall
18 not provide any advice with respect to any poli-
19 cies, practices, actions, or decisions concerning
20 the Commission’s enforcement program.

21 “(b) MEMBERSHIP.—

22 “(1) IN GENERAL.—The members of the Com-
23 mittee shall be—

24 “(A) the Advocate for Small Business Cap-
25 ital Formation;

1 “(B) not fewer than 10, and not more than
2 20, members appointed by the Commission,
3 from among individuals—

4 “(i) who represent—

5 “(I) emerging companies engag-
6 ing in private and limited securities
7 offerings or considering initial public
8 offerings (‘IPO’) (including the com-
9 panies’ officers and directors);

10 “(II) the professional advisors of
11 such companies (including attorneys,
12 accountants, investment bankers, and
13 financial advisors); and

14 “(III) the investors in such com-
15 panies (including angel investors, ven-
16 ture capital funds, and family offices);

17 “(ii) who represent—

18 “(I) smaller public companies
19 (including the companies’ officers and
20 directors);

21 “(II) the professional advisors of
22 such companies (including attorneys,
23 auditors, underwriters, and financial
24 advisors); and

1 “(III) the pre-IPO and post-IPO
2 investors in such companies (both in-
3 stitutional, such as venture capital
4 funds, and individual, such as angel
5 investors); and

6 “(iii) who represent participants in
7 the marketplace for the securities of
8 emerging companies and smaller public
9 companies, such as securities exchanges,
10 alternative trading systems, analysts, infor-
11 mation processors, and transfer agents;
12 and

13 “(C) 3 non-voting members—

14 “(i) 1 of whom shall be appointed by
15 the Investor Advocate;

16 “(ii) 1 of whom shall be appointed by
17 the North American Securities Administra-
18 tors Association; and

19 “(iii) 1 of whom shall be appointed by
20 the Administrator of the Small Business
21 Administration.

22 “(2) TERM.—Each member of the Committee
23 appointed under subparagraph (B), (C)(ii), or
24 (C)(iii) of paragraph (1) shall serve for a term of 4
25 years.

1 “(3) MEMBERS NOT COMMISSION EMPLOY-
2 EES.—Members appointed under subparagraph (B),
3 (C)(ii), or (C)(iii) of paragraph (1) shall not be
4 treated as employees or agents of the Commission
5 solely because of membership on the Committee.

6 “(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; AS-
7 SISTANT SECRETARY.—

8 “(1) IN GENERAL.—The members of the Com-
9 mittee shall elect, from among the members of the
10 Committee—

11 “(A) a chairman;

12 “(B) a vice chairman;

13 “(C) a secretary; and

14 “(D) an assistant secretary.

15 “(2) TERM.—Each member elected under para-
16 graph (1) shall serve for a term of 3 years in the
17 capacity for which the member was elected under
18 paragraph (1).

19 “(d) MEETINGS.—

20 “(1) FREQUENCY OF MEETINGS.—The Com-
21 mittee shall meet—

22 “(A) not less frequently than four times
23 annually, at the call of the chairman of the
24 Committee; and

1 “(B) from time to time, at the call of the
2 Commission.

3 “(2) NOTICE.—The chairman of the Committee
4 shall give the members of the Committee written no-
5 tice of each meeting, not later than 2 weeks before
6 the date of the meeting.

7 “(e) COMPENSATION AND TRAVEL EXPENSES.—
8 Each member of the Committee who is not a full-time em-
9 ployee of the United States shall—

10 “(1) be entitled to receive compensation at a
11 rate not to exceed the daily equivalent of the annual
12 rate of basic pay in effect for a position at level V
13 of the Executive Schedule under section 5316 of title
14 5, United States Code, for each day during which
15 the member is engaged in the actual performance of
16 the duties of the Committee; and

17 “(2) while away from the home or regular place
18 of business of the member in the performance of
19 services for the Committee, be allowed travel ex-
20 penses, including per diem in lieu of subsistence, in
21 the same manner as persons employed intermittently
22 in the Government service are allowed expenses
23 under section 5703 of title 5, United States Code.

1 “(f) STAFF.—The Commission shall make available
2 to the Committee such staff as the chairman of the Com-
3 mittee determines are necessary to carry out this section.

4 “(g) REVIEW BY COMMISSION.—The Commission
5 shall—

6 “(1) review the findings and recommendations
7 of the Committee; and

8 “(2) each time the Committee submits a finding
9 or recommendation to the Commission, promptly
10 issue a public statement—

11 “(A) assessing the finding or recommenda-
12 tion of the Committee; and

13 “(B) disclosing the action, if any, the Com-
14 mission intends to take with respect to the find-
15 ing or recommendation.

16 “(h) FEDERAL ADVISORY COMMITTEE ACT.—The
17 Federal Advisory Committee Act (5 U.S.C. App.) shall not
18 apply with respect to the Committee and its activities.”.

19 “(c) ANNUAL GOVERNMENT-BUSINESS FORUM ON
20 SMALL BUSINESS CAPITAL FORMATION.—Section 503(a)
21 of the Small Business Investment Incentive Act of 1980
22 (15 U.S.C. 80c–1(a)) is amended by inserting “(acting
23 through the Office of the Advocate for Small Business
24 Capital Formation and in consultation with the Small

- 1 Business Capital Formation Advisory Committee)” after
- 2 “Securities and Exchange Commission”.

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