

**[DISCUSSION DRAFT]**112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

To amend the Securities Act of 1933 to authorize the Securities and Exchange Commission to exempt a certain class of securities from such Act.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Securities Act of 1933 to authorize the Securities and Exchange Commission to exempt a certain class of securities from such Act.

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 Company Cap-  
5       ital Formation Act of 2011”.

6       **SEC. 2. AUTHORITY TO EXEMPT CERTAIN SECURITIES.**

7       Section 3(b) of the Securities Act of 1933 (15 U.S.C.  
8       77c(b)) is amended—

1 (1) by striking “(b) The Commission” and in-  
2 sserting the following:

3 “(b) ADDITIONAL EXEMPTIONS.—

4 “(1) IN GENERAL.—The Commission”;

5 (2) by inserting “, except as provided in para-  
6 graph (2)” after “but”; and

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

8 “(2) EXCEPTION.—The Commission shall by  
9 rule or regulation exempt a class of securities pursu-  
10 ant to paragraph (1) for which the aggregate offer-  
11 ing amount exceeds \$5,000,000 in accordance with  
12 the following terms and conditions:

13 “(A) The aggregate offering amount shall  
14 not exceed \$50,000,000.

15 “(B) The securities may be offered and  
16 sold publicly.

17 “(C) The securities shall not be restricted  
18 securities within the meaning of the Federal se-  
19 curities laws and the regulations promulgated  
20 thereunder.

21 “(D) The issuer may solicit interest in the  
22 offering prior to filing any offering statement,  
23 on such terms and conditions as the Commis-  
24 sion may prescribe.

1           “(E) Such other terms, conditions, or re-  
2           quirements as the Commission may determine  
3           necessary in the public interest and for the pro-  
4           tection of investors, including, but not limited  
5           to—

6                   “(i) requiring the issuer to file au-  
7                   dited financial statements with the Com-  
8                   mission and distribute such statements to  
9                   prospective investors;

10                   “(ii) requiring the issuer to submit its  
11                   offering statement and related filings to  
12                   the Commission electronically; and

13                   “(iii) establishing disqualification pro-  
14                   visions under which the exemption shall  
15                   not be available based upon the discipli-  
16                   nary history of the issuer or its prede-  
17                   cessors, affiliates, officers, directors, un-  
18                   derwriters, or other related persons.

19           “(3) PERIODIC DISCLOSURES.—Upon such  
20           terms and conditions as the Commission determines  
21           necessary in the public interest and for the protec-  
22           tion of investors, the Commission by rule or regula-  
23           tion may require an issuer of a class of securities ex-  
24           empted under paragraph (2) to make available to in-  
25           vestors periodic disclosures regarding the issuer, its

1 business operations, its financial condition, its use of  
2 investor funds, and other appropriate matters, and  
3 also may provide for the suspension and termination  
4 of such a requirement with respect to that issuer.

5 “(4) ADJUSTMENT.—Not later than 2 years  
6 after the date of enactment of the Small Company  
7 Capital Formation Act of 2011 and every 2 years  
8 thereafter, the Commission shall review the offering  
9 amount limitation described in paragraph (2)(A) and  
10 shall increase such amount as the Commission deter-  
11 mines appropriate. If the Commission determines  
12 not to increase such amount, it shall report to the  
13 Committee on Financial Services of the House of  
14 Representatives and the Committee on Banking of  
15 the Senate on its reasons for not increasing the  
16 amount.”.