

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1070
OFFERED BY MR. SCHWEIKERT**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Company Cap-
3 ital Formation Act of 2011”.

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

5 (a) IN GENERAL.—Section 3(b) of the Securities Act
6 of 1933 (15 U.S.C. 77c(b)) is amended—

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

9 “(b) ADDITIONAL EXEMPTIONS.—

10 “(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—

11 The Commission”; and

12 (2) by adding at the end the following:

13 “(2) ADDITIONAL ISSUES.—The Commission
14 shall by rule or regulation add a class of securities

15 to the securities exempted pursuant to this section

16 in accordance with the following terms and condi-

17 tions:

1 “(A) The aggregate offering amount of all
2 securities sold within the prior 12-month period
3 in reliance on the exemption added in accord-
4 ance with this paragraph shall not exceed
5 \$50,000,000.

6 “(B) The securities may be offered and
7 sold publicly.

8 “(C) The securities shall not be restricted
9 securities within the meaning of the Federal se-
10 curities laws and the regulations promulgated
11 thereunder.

12 “(D) The issuer may solicit interest in the
13 offering prior to filing any offering statement,
14 on such terms and conditions as the Commis-
15 sion may prescribe in the public interest or for
16 the protection of investors.

17 “(E) Such other terms, conditions, or re-
18 quirements as the Commission may determine
19 necessary in the public interest and for the pro-
20 tection of investors, which may include—

21 “(i) a requirement that the issuer pre-
22 pare and electronically file with the Com-
23 mission and distribute to prospective inves-
24 tors an offering statement, and any related
25 documents, in such form and with such

1 content as prescribed by the Commission,
2 which shall include a description of the
3 issuer's business operations, its financial
4 condition, including audited financial state-
5 ments, its corporate governance principles,
6 its use of investor funds, and other appro-
7 priate matters; and

8 “(ii) disqualification provisions under
9 which the exemption shall not be available
10 based upon the disciplinary history of the
11 issuer or its predecessors, affiliates, offi-
12 cers, directors, underwriters, or other re-
13 lated persons, which shall be substantially
14 similar to the disqualification provisions
15 contained in the regulations adopted in ac-
16 cordance with section 926 of the Dodd-
17 Frank Wall Street Reform and Consumer
18 Protection Act (15 U.S.C. 77d note).

19 “(3) LIMITATION.—Only the following types of
20 securities may be exempted under a rule or regula-
21 tion adopted pursuant to paragraph (2): equity secu-
22 rities, debt securities, and debt securities convertible
23 or exchangeable to equity interests, including any
24 guarantees of such securities.

1 “(4) PERIODIC DISCLOSURES.—Upon such
2 terms and conditions as the Commission determines
3 necessary in the public interest and for the protec-
4 tion of investors, the Commission by rule or regula-
5 tion may require an issuer of a class of securities ex-
6 empted under paragraph (2) to make available to in-
7 vestors periodic disclosures regarding the issuer, its
8 business operations, its financial condition, its cor-
9 porate governance principles, its use of investor
10 funds, and other appropriate matters, and also may
11 provide for the suspension and termination of such
12 a requirement with respect to that issuer.

13 “(5) ADJUSTMENT.—Not later than 2 years
14 after the date of enactment of the Small Company
15 Capital Formation Act of 2011 and every 2 years
16 thereafter, the Commission shall review the offering
17 amount limitation described in paragraph (2)(A) and
18 shall increase such amount as the Commission deter-
19 mines appropriate. If the Commission determines
20 not to increase such amount, it shall report to the
21 Committee on Financial Services of the House of
22 Representatives and the Committee on Banking,
23 Housing, and Urban Affairs of the Senate on its
24 reasons for not increasing the amount.”.

1 (b) TREATMENT AS COVERED SECURITIES FOR PUR-
2 POSES OF NSMIA.—Section 18(b)(4) of the Securities
3 Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

4 (1) in subparagraph (C), by striking “; or” at
5 the end and inserting a semicolon; and

6 (2) by redesignating subparagraph (D) as sub-
7 paragraph (E), and inserting after subparagraph (C)
8 the following:

9 “(D) a rule or regulation adopted pursuant
10 to section 3(b)(2) and such security is—

11 “(i) offered or sold through a broker
12 or dealer;

13 “(ii) offered or sold on a national se-
14 curities exchange; or

15 “(iii) sold to a qualified purchaser as
16 defined by the Commission pursuant to
17 paragraph (3).”.

18 (c) CONFORMING AMENDMENT.—Section 4(5) of the
19 Securities Act of 1933 is amended by striking “section
20 3(b)” and inserting “section 3(b)(1)”.



