

**[DISCUSSION DRAFT]**

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To amend the securities laws to improve the small company capital formation provisions, and for other purposes

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IN THE HOUSE OF REPRESENTATIVES

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

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**A BILL**

To amend the securities laws to improve the small company capital formation provisions, 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 “Startup Capital Mod-  
5       ernization Act of 2014”.

1 **SEC. 2. INCREASE IN SMALL ISSUES EXEMPTIVE AUTHOR-**  
2 **ITY.**

3 Section 3(b)(1) of the Securities Act of 1933 (15  
4 U.S.C. 77c(b)(1)) is amended by striking “\$5,000,000”  
5 and inserting “\$10,000,000”.

6 **SEC. 3. PREEMPTION OF STATE LAWS.**

7 (a) **IN GENERAL.**—The first subparagraph (D) of  
8 section 18(b)(4) of the Securities Act of 1933 (15 U.S.C.  
9 77r(b)(4)) (relating to a rule or regulation adopted pursu-  
10 ant to section 3(b)(2)) is amended by inserting “section  
11 3(b)(1) or” before “section 3(b)(2)”.

12 (b) **CLARIFICATION OF THE PRESERVATION OF**  
13 **STATE ENFORCEMENT AUTHORITY.**—

14 (1) **IN GENERAL.**—The amendment made by  
15 subsection (a) relates solely to State registration,  
16 documentation, and offering requirements, as de-  
17 scribed under section 18(a) of Securities Act of 1933  
18 (15 U.S.C. 77r(a)), and shall have no impact or lim-  
19 itation on other State authority to take enforcement  
20 action with regard to an issuer, intermediary, or any  
21 other person or entity using the exemption from reg-  
22 istration provided by section 3(b)(1) of such Act.

23 (2) **CLARIFICATION OF STATE JURISDICTION**  
24 **OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,**  
25 **ISSUERS, AND CUSTODIANS.**—Section 18(c)(1) of the  
26 Securities Act of 1933 is amended—

1 (A) in subparagraph (A), by striking  
2 “and” at the end;

3 (B) in subparagraph (B), by striking the  
4 period at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(C) with respect to a transaction de-  
7 scribed under section 3(b), unlawful conduct by  
8 an issuer or custodian.”.

9 **SEC. 4. EXCLUSION FROM SHAREHOLDER CAP.**

10 (a) **IN GENERAL.**—Section 12(g) of the Securities  
11 Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by  
12 adding at the end the following:

13 “(7) **EXCLUSION FOR SECURITIES ISSUED**  
14 **UNDER REGULATION A PURSUANT TO SECTION 3(B)**  
15 **OF THE SECURITIES ACT OF 1933.**—All securities  
16 issued under Regulation A (17 C.F.R. 230.251 et  
17 seq.) pursuant to section 3(b) of the Securities Act  
18 of 1933 shall be exempt from the provisions of this  
19 subsection if the issuer has filed audited financial  
20 statements with the Commission and the issuer is in  
21 compliance with all periodic disclosures required by  
22 the Commission pursuant to section 3(b)(4) of the  
23 Securities Act of 1933.”.

24 (b) **RULEMAKING.**—The Securities and Exchange  
25 Commission shall issue a rule to carry out section 12(g)(7)

1 of the Securities Exchange Act of 1934 (15 U.S.C. 78c),  
2 as added by this section, not later than 180 days after  
3 the date of enactment of this section.

4 (c) **RULE OF APPLICABILITY.**—The exclusion pro-  
5 vided under section 12(g)(7) of the Securities Exchange  
6 Act of 1934 (15 U.S.C. 78c), as added by this section,  
7 shall apply to securities issued before, on, or after the date  
8 of the enactment of this Act.

9 **SEC. 5. EXEMPTED TRANSACTIONS.**

10 (a) **EXEMPTED TRANSACTIONS.**—Section 4 of the Se-  
11 curities Act of 1933 (15 U.S.C. 77d) is amended—

12 (1) in subsection (a), by adding at the end the  
13 following new paragraph:

14 “(7) transactions meeting the requirements of  
15 subsection (d).”;

16 (2) by redesignating the second subsection (b)  
17 (relating to securities offered and sold in compliance  
18 with Rule 506 of Regulation D) as subsection (c);  
19 and

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

21 “(d)(1) The transactions referred to in subsection  
22 (a)(7) are transactions where—

23 “(A) each purchaser is an accredited inves-  
24 tor, as that term is defined in section

1           230.501(a) of title 17, Code of Federal Regula-  
2           tions (or any successor thereto); and

3           “(B) if any securities sold in reliance on  
4           subsection (a)(7) are offered by means of any  
5           general solicitation or general advertising, the  
6           seller takes reasonable steps to verify, in the  
7           manner set forth in section 230.506(c)(ii) of  
8           title 17, Code of Federal Regulations (or any  
9           successor regulation), that each purchaser is an  
10          accredited investor.

11          “(2) Securities sold in reliance on subsection (a)(7)  
12          shall be deemed to have been acquired in a transaction  
13          not involving any public offering.

14          “(3) The exemption provided by this subsection shall  
15          not be available for a transaction where the seller is—

16                 “(A) an issuer, its subsidiaries or parent;

17                 “(B) an underwriter acting on behalf of the  
18                 issuer, its subsidiaries or parent, which receives com-  
19                 pensation from the issuer with respect to such sale;  
20                 or

21                 “(C) a dealer.

22          “(4) A transaction meeting the requirements of this  
23          subsection shall be deemed not to be a distribution for  
24          purposes of section 2(a)(11).”.

1 (b) EXEMPTION IN CONNECTION WITH CERTAIN EX-  
2 EMPT OFFERINGS.—Section 18(b)(4) of the Securities Act  
3 of 1933 (15 U.S.C. 77r(b)(4)) is amended—

4 (1) by redesignating the second subparagraph  
5 (D) and subparagraph (E) as subparagraphs (E)  
6 and (F), respectively;

7 (2) in subparagraph (E), as so redesignated, by  
8 striking “; or” and inserting a semicolon;

9 (3) in subparagraph (F), as so redesignated, by  
10 striking the period and inserting “; or”; and

11 (4) by adding at the end the following new sub-  
12 paragraph:

13 “(G) section 4(a)(7).”.