

[COMMITTEE PRINT]

[Showing H.R. 1070 as reported by the Subcommittee on Capital Markets and Government Sponsored Enterprises on May 4, 2011]

112TH CONGRESS
1ST SESSION

H. R. 1070

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 2011

Mr. SCHWEIKERT (for himself, Mr. GARRETT, Mr. WESTMORELAND, Mr. JONES, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services

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,*

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

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

9 “(b) **ADDITIONAL EXEMPTIONS.—**

10 “(1) **IN GENERAL.—**The Commission”;

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

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

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

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

21 “(B) The securities may be offered and
22 sold publicly.

23 “(C) The securities shall not be restricted
24 securities within the meaning of the Federal se-
25 curities laws and the regulations promulgated
26 thereunder.

1 “(D) The issuer may solicit interest in the
2 offering prior to filing any offering statement,
3 on such terms and conditions as the Commis-
4 sion may prescribe.

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

10 “(i) requiring the issuer to file au-
11 dited financial statements with the Com-
12 mission and distribute such statements to
13 prospective investors;

14 “(ii) requiring the issuer to submit its
15 offering statement and related filings to
16 the Commission electronically;

17 “(iii) establishing disqualification pro-
18 visions under which the exemption shall
19 not be available based upon the discipli-
20 nary history of the issuer or its prede-
21 cessors, affiliates, officers, directors, un-
22 derwriters, or other related persons; and

23 “(iv) requiring the issuer to imple-
24 ment suitable and appropriate corporate
25 governance provisions.

1 “(3) LIMITATION.—The following types of secu-
2 rities may not be exempted under this subsection:
3 any note, security future, bond, debenture, evidence
4 of indebtedness, certificate of interest or participa-
5 tion in any profit-sharing agreement, collateral-trust
6 certificate, transferable share, investment contract,
7 voting-trust certificate, certificate of deposit for a se-
8 curity, fractional undivided interest in oil, gas, or
9 other mineral rights, any put, call, straddle, option,
10 or privilege on any security, certificate of deposit, or
11 group or index of securities (including any interest
12 therein or based on the value thereof), or any put,
13 call, straddle, option, or privilege entered into on a
14 national securities exchange relating to foreign cur-
15 rency, or, in general, any interest or instrument
16 commonly known as a security, or any certificate of
17 interest or participation in, temporary or interim
18 certificate for, receipt for, or guarantee of, any of
19 the foregoing.

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

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

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

18 “(6) EXEMPTION FROM STATE REGULATION.—
19 Any securities exempted under this subsection that
20 are offered by any means other than through a
21 broker or dealer shall not be covered securities with-
22 in the meaning of section 18(b) or exempt from
23 State regulation under section 18(a).”.