

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 479

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others through exempted offerings under the Securities Act and through investment pools that are excepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies.

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## IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. KERRY, Mr. BRYAN, Mr. MACK, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Securities Act of 1933 and the Investment Company Act of 1940 to promote capital formation for small businesses and others through exempted offerings under the Securities Act and through investment pools that are excepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies.

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 Business Incen-  
3 tive Act of 1993”.

4 **TITLE I—AMENDMENT TO THE**  
5 **SECURITIES ACT OF 1933**

6 **SEC. 101. EXEMPTED SECURITIES.**

7 Section 3(b) of the Securities Act of 1933 (15 U.S.C.  
8 77c(b)) is amended by striking “\$5,000,000” and insert-  
9 ing “\$10,000,000”.

10 **TITLE II—AMENDMENTS TO THE**  
11 **INVESTMENT COMPANY ACT**  
12 **OF 1940**

13 **SEC. 201. EXCLUSIONS FROM THE DEFINITION OF INVEST-**  
14 **MENT COMPANY.**

15 Section 3(c) of the Investment Company Act of 1940  
16 (15 U.S.C. 80a-3(c)) is amended—

17 (1) In paragraph (1) by adding after the first  
18 sentence the following new sentence: “Such issuer  
19 shall be deemed to be an investment company for  
20 purposes of the limitations set forth in subpara-  
21 graphs (A)(i) and (B)(i) of section 12(d)(1) govern-  
22 ing the purchase or other acquisition by such issuer  
23 of any security issued by a registered investment  
24 company and the sale of any security issued by a  
25 registered open-end investment company to any such  
26 issuer.”;

1 (2) In paragraph (1)(A)—

2 (A) by inserting after “issuer,” the first  
3 place it appears “and the company is or, but  
4 for the exceptions set forth in this paragraph  
5 and paragraph (7), would be an investment  
6 company.”;

7 (B) by striking “paper) unless as of the  
8 date” and all that follows through the end of  
9 subparagraph (A) and inserting the following:  
10 “paper).”;

11 (3) by amending paragraph (7) to read as fol-  
12 lows:

13 “(7) Any issuer whose outstanding securities  
14 are owned exclusively by persons who, at the time of  
15 acquisition of such securities, are qualified pur-  
16 chasers, except that such issuer shall be deemed to  
17 be an investment company for purposes of the limi-  
18 tations set forth in subparagraphs (A)(i) and (B)(i)  
19 of section 12(d)(1) governing the purchase or other  
20 acquisition by such issuer of any security issued by  
21 a registered investment company and the sale of any  
22 security issued by a registered open-end investment  
23 company to any such issuer.”.

1 **SEC. 202. DEFINITION OF QUALIFIED PURCHASER.**

2 Section 2(a) of the Investment Company Act of 1940  
3 (15 U.S.C. 80a-2(a)) is amended by adding at the end  
4 the following new paragraph:

5 “(51) ‘Qualified purchaser’ means any person  
6 whom the Commission, by rule or regulation, has de-  
7 termined does not need the protections of this title.  
8 The Commission’s determination shall include con-  
9 sideration of a person’s—

10 “(A) financial sophistication;

11 “(B) net worth;

12 “(C) knowledge of and experience in finan-  
13 cial matters;

14 “(D) amount of assets owned or under  
15 management;

16 “(E) relationship with an issuer; or

17 “(F) such other factors as the Commission  
18 may determine to be consistent with the pur-  
19 poses of this paragraph.”.

20 **SEC. 203. DEFINITION OF INVESTMENT SECURITIES.**

21 Section 3(a) of the Investment Company Act of 1940  
22 (15 U.S.C. 80a-3(a)) is amended in the last sentence by  
23 striking subparagraph (C) and inserting the following:  
24 “(C) securities issued by any majority-owned subsidiary  
25 of the owner, unless such subsidiary is an investment com-  
26 pany or is excluded from the definition of an investment

1 company solely by virtue of paragraph (1) or (7) of section  
2 3(c).”.

3 **SEC. 204. EXEMPTION FOR BUSINESS AND INDUSTRIAL DE-**  
4 **VELOPMENT COMPANIES.**

5 Section 6(a) of the Investment Company Act of 1940  
6 (15 U.S.C. 80a-6(a)) is amended by adding at the end  
7 the following new paragraph:

8 “(5)(A) Any company that is not engaged in  
9 the business of issuing redeemable securities, the op-  
10 erations of which are subject to regulation by the  
11 State in which it is organized under a statute gov-  
12 erning entities that provide financial or managerial  
13 assistance to enterprises doing business, or propos-  
14 ing to do business, primarily in that State if—

15 “(i) the organizational documents of such  
16 company state that the purpose of the company  
17 is limited to providing financial or managerial  
18 assistance to enterprises doing business, or pro-  
19 posing to do business, primarily in that State;

20 “(ii) immediately following each sale of the  
21 securities of such company by the company or  
22 any underwriter for the company, not less than  
23 80 percent of the company’s securities being of-  
24 fered in such sale, on a class-by-class basis, are

1 held by persons who reside or have a substan-  
2 tial business presence in that State;

3 “(iii) the securities of such company are  
4 sold, or proposed to be sold, by the company or  
5 any underwriter for the company, solely to ac-  
6 credited investors, as defined in section 2(15) of  
7 the Securities Act of 1933, or to such other  
8 persons that the Commission, as necessary or  
9 appropriate in the public interest and consistent  
10 with the protection of investors, may permit by  
11 rule, regulation, or order; and

12 “(iv) the company does not purchase any  
13 security issued by an investment company, as  
14 defined in section 3, or by any company that  
15 would be an investment company except for the  
16 exclusions from the definition of investment  
17 company in section 3(c), other than—

18 “(I) any security that is rated invest-  
19 ment grade by at least 1 nationally recog-  
20 nized statistical rating organization; or

21 “(II) any security issued by a reg-  
22 istered open-end investment company that  
23 is required by its investment policies to in-  
24 vest at least 65 percent of its total assets  
25 in securities described in subclause (I) or

1 securities that are determined by such reg-  
2 istered open-end investment company to be  
3 comparable in quality to securities de-  
4 scribed in subclause (I).

5 “(B) Notwithstanding the exemption provided  
6 in this paragraph, the provisions of section 9 (and,  
7 to the extent necessary to enforce such provisions,  
8 sections 38 through 51) of this title shall apply to  
9 a company described in this paragraph as if the  
10 company were an investment company registered  
11 under this title.

12 “(C) Any company proposing to rely on the ex-  
13 emption provided in this paragraph shall file with  
14 the Commission a notification stating that it intends  
15 to do so, in such form and manner as the Commis-  
16 sion may by rule prescribe.

17 “(D) Any company meeting the requirements of  
18 this paragraph may rely on the exemption provided  
19 herein immediately upon filing with the Commission  
20 the notification required by subparagraph (C), un-  
21 less the Commission determines by order that such  
22 company’s reliance is not in the public interest or  
23 consistent with the protection of investors.

24 “(E) The exemption provided pursuant to this  
25 paragraph may be subject to such additional terms

1 and conditions as the Commission may by rule, reg-  
2 ulation, or order determine are necessary or appro-  
3 priate in the public interest or for the protection of  
4 investors.”.

5 **SEC. 205. INTRA-STATE CLOSED-END INVESTMENT COM-**  
6 **PANY EXEMPTION.**

7 Section 6(d)(1) of the Investment Company Act of  
8 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking  
9 “\$100,000” and inserting “\$10,000,000, or such other  
10 amount as the Commission may set by rule, regulation,  
11 or order”.

12 **SEC. 206. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

13 Section 2(a)(46)(C) of the Investment Company Act  
14 of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

15 (1) in clause (ii), by striking “or” at the end;

16 (2) by redesignating clause (iii) as clause (iv);

17 and

18 (3) by inserting after clause (ii) the following:

19 “(iii) it has total assets of not more  
20 than \$4,000,000, and capital and surplus  
21 (shareholders equity less retained earnings)  
22 in excess of \$2,000,000, except that the  
23 Commission may adjust such amounts by  
24 rule, regulation, or order to reflect changes

1 in 1 or more generally accepted indices or  
 2 other indicators for small businesses; or”.

3 **SEC. 207. DEFINITION OF BUSINESS DEVELOPMENT COM-**  
 4 **PANY.**

5 Section 2(a)(48)(B) of the Investment Company Act  
 6 of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by in-  
 7 serting before the semicolon at the end the following:  
 8 “: *And provided further*, That a business development  
 9 company need not make available significant managerial  
 10 assistance with respect to any company described in sec-  
 11 tion 55(a)(7) or with respect to any other company that  
 12 meets such criteria as the Commission may by rule, regu-  
 13 lation, or order permit, as consistent with the public inter-  
 14 est, the protection of investors, and the purposes fairly in-  
 15 tended by the policy and provisions of this title”.

16 **SEC. 208. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**  
 17 **MENT COMPANIES.**

18 Section 55(a) of the Investment Company Act of  
 19 1940 (15 U.S.C. 80a-54(a)) is amended—

20 (1) by striking “(7)” the first 2 times such fig-  
 21 ure appears and inserting “(8)”;

22 (2) by striking “(6)” the first time such figure  
 23 appears and inserting “(7)”;

24 (3) in subparagraph (1)(A)—

1 (A) by striking “, or from any person” and  
2 inserting “, from any person”; and

3 (B) by inserting before the semicolon “, or  
4 from any other person, subject to such rules  
5 and regulations as the Commission may pre-  
6 scribe as necessary or appropriate in the public  
7 interest or for the protection of investors”;

8 (4) in paragraph (6), by striking “and” at the  
9 end;

10 (5) by redesignating paragraph (7) as para-  
11 graph (8); and

12 (6) by inserting after paragraph (6) the follow-  
13 ing new paragraph:

14 “(7) securities of any eligible portfolio company  
15 with respect to which the business development com-  
16 pany satisfies the requirements of section  
17 2(a)(46)(C)(iii); and”.

18 **SEC. 209. CAPITAL STRUCTURE AMENDMENTS.**

19 Section 61(a) of the Investment Company Act of  
20 1940 (15 U.S.C. 80a-60(a)) is amended—

21 (1) by striking paragraph (1) and inserting the  
22 following:

23 “(1)(A) The asset coverage requirements of  
24 subparagraphs (A) and (B) of section 18(a)(1) ap-

1 applicable to business development companies shall be  
2 200 percent.

3 “(B) Notwithstanding subsection (a)(1)(A) of  
4 this section and subparagraphs (A) and (B) of sec-  
5 tion 18(a)(2), a business development company may  
6 have an asset coverage of at least 110 percent, if,  
7 immediately before the issuance or sale of senior se-  
8 curities, it has—

9 “(i) total interest and dividend income for  
10 the 12 months preceding such issuance or sale  
11 that exceeds 120 percent of the sum of its total  
12 expenses (including taxes and interest expenses  
13 accrued) and dividends declared on senior secu-  
14 rities for that 12-month period; and

15 “(ii) either—

16 “(I) an average of not less than 50  
17 percent of its assets invested in securities  
18 described in paragraphs (1) through (5) of  
19 section 55(a) throughout the preceding 12-  
20 month period; or

21 “(II) not less than 50 percent of its  
22 assets invested in securities described in  
23 paragraphs (1) through (5) of section  
24 55(a) throughout 10 months of the preced-  
25 ing 12-month period.

1           “(C) It shall be unlawful for any business devel-  
2           opment company to issue any class of senior security  
3           representing indebtedness, or to sell any such secu-  
4           rity pursuant to subsection (a)(1)(B) of this section,  
5           unless provision is made to prohibit the declaration  
6           of any dividend (except a dividend payable in stock  
7           of the issuer), or the declaration of any other dis-  
8           tribution upon any class of the capital stock of such  
9           business development company, or the purchase of  
10          any such capital stock, unless, in every such case—

11                 “(i) such class of senior securities has, at  
12                 the time of the declaration of any such dividend  
13                 or distribution or at the time of any such pur-  
14                 chase, an asset coverage of not less than 110  
15                 percent after deducting the amount of such div-  
16                 idend, distribution, or purchase price as the  
17                 case may be; and

18                 “(ii) the business development company  
19                 complies with subparagraph (B)(i) except with  
20                 respect to any amounts that are required to be  
21                 distributed to maintain the company’s status as  
22                 a regulated investment company under the In-  
23                 ternal Revenue Code of 1986.

24           “(D) It shall be unlawful for any business de-  
25          velopment company to issue any class of senior secu-

1 rity representing stock, or to sell any such security  
2 pursuant to subsection (a)(1)(B) of this section, un-  
3 less provision is made to prohibit the declaration of  
4 any dividend (except a dividend payable in common  
5 stock of the issuer), or the declaration of any other  
6 distribution, upon the common stock of such busi-  
7 ness development company, or the purchase of any  
8 such common stock, unless, in every such case—

9 “(i) such class of senior securities has, at  
10 the time of the declaration of any such dividend  
11 or distribution or at the time of any such pur-  
12 chase an asset coverage of not less than 110  
13 percent after deducting the amount of such div-  
14 idend, distribution or purchase price; and

15 “(ii) the business development company  
16 complies with subparagraph (B)(i), except with  
17 respect to any amounts that are required to be  
18 distributed to maintain the company’s status as  
19 a regulated investment company under the In-  
20 ternal Revenue Code of 1986.”;

21 (2) in paragraph (2), by striking “if such busi-  
22 ness development company” and all that follows  
23 through the end of paragraph (2) and inserting a  
24 period; and

25 (3) in paragraph (3)(A)—

1 (A) by striking “senior securities rep-  
2 resenting indebtedness accompanied by”;

3 (B) inserting “either alone or accompanied  
4 by securities,” after “of such company,”; and

5 (C) in clause (ii), by striking “senior”.

6 **SEC. 210. FILING OF WRITTEN STATEMENTS.**

7 Section 64(b)(1) of the Investment Company Act of  
8 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting  
9 “and capital structure” after “portfolio”.

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