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112TH CONGRESS
2D SESSION

H. R. 5929

To amend the Investment Company Act of 1940 to change the asset coverage ratio and treatment of preferred stock for business development companies, to allow business development companies to purchase, otherwise acquire, or hold certain securities, and to direct the Securities and Exchange Commission to revise rules under the Securities Act of 1933 relating to business development companies.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2012

Ms. VELÁZQUEZ (for herself and Mr. GRIMM) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Investment Company Act of 1940 to change the asset coverage ratio and treatment of preferred stock for business development companies, to allow business development companies to purchase, otherwise acquire, or hold certain securities, and to direct the Securities and Exchange Commission to revise rules under the Securities Act of 1933 relating to 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,*

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Next Steps for Credit Availability Act''.

SEC. 2. AMENDMENTS TO PERMIT BUSINESS DEVELOPMENT COMPANIES TO OWN INVESTMENT ADVISERS.

Section 60 of the Investment Company Act of 1940 (15 U.S.C. 80a–59) is amended by striking ''except that the Commission shall not'' and inserting the following: ''except that—

''(1) section 12 shall not apply to the purchasing, otherwise acquiring, or holding by a business development company of any security issued by, or any other interest in the business of, any person who is an investment adviser registered under title II of this Act or who is an investment adviser to an investment company; and

''(2) the Commission shall not''.

SEC. 3. AMENDMENTS TO EXPAND ACCESS TO CAPITAL FOR BUSINESS DEVELOPMENT COMPANIES.

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

(1) in paragraph (1), by striking ''200'' and inserting ''150'';

(2) in paragraph (2), by inserting ''or which is a stock'' after ''indebtedness''; and

(3) by inserting after paragraph (4) the following new paragraph:

"(5) Section 18(a)(2) shall not apply to a business development company.".

SEC. 4. PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING RULES.

(a) REVISION TO RULES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall revise any rules (or any successor rules) to the extent necessary to allow a business development company that has filed an election pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)) to use the securities offering rules that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (Public Law 73–404; 48 Stat. 881). Any action that the Commission takes pursuant to this subsection shall include the following:

(1) The Commission shall revise rule 405 under the Securities Act of 1933 (17 C.F.R. 230.405)—

(A) to remove the exclusion of a business development company from the definition of a well-known seasoned issuer provided by that rule; and

(B) to add registration statements filed on Form N–2 to the definition of ''automatic shelf registration statement'' provided by that rule.

(2) The Commission shall revise rules 168 and 169 under the Securities Act of 1933 (17 C.F.R. 230.168 and 230.169) to remove the exclusion of a business development company from an issuer that can use the exemptions provided by those rules.

(3) The Commission shall revise rules 163 and 163A under the Securities Act of 1933 (17 C.F.R. 230.163 and 230.163A) to remove a business development company from the list of issuers that are ineligible to use the exemptions provided by those rules.

(4) The Commission shall revise rule 134 under the Securities Act of 1933 (17 C.F.R. 230.134) to remove the exclusion of a business development company from that rule.

(5) The Commission shall revise rules 138 and 139 under the Securities Act of 1933 (17 C.F.R. 230.138 and 230.139) to specifically include a business development company as an issuer to which those rules apply.

(6) The Commission shall revise rule 164 under the Securities Act of 1933 (17 C.F.R. 230.164) to

remove a business development company from the list of issuers that are excluded from that rule.

(7) The Commission shall revise rule 433 under the Securities Act of 1933 (17 C.F.R. 230.433) to specifically include a business development company that is a well-known seasoned issuer as an issuer to which that rule applies.

(8) The Commission shall revise rule 415 under the Securities Act of 1933 (17 C.F.R. 230.415)—

(A) to state that the registration for securities provided by that rule includes securities registered by a business development company on Form N–2; and

(B) to provide an exception for a business development company from the requirement that a Form N–2 registrant must furnish the undertakings required by item 34.4 of Form N–2.

(9) The Commission shall revise rule 497 under the Securities Act of 1933 (17 C.F.R. 230.497) to include a process for a business development company to file a form of prospectus that is parallel to the process for filing a form of prospectus under rule 424(b).

(10) The Commission shall revise rules 172 and 173 under the Securities Act of 1933 (17 C.F.R. 230.172 and 230.173) to remove the exclusion of an offering of a business development company from those rules.

(b) REVISION TO FORM N–2.—The Commission shall revise Form N–2—

(1) to include an item or instruction that is similar to item 12 on Form S–3 to provide that a business development company that meets the requirements of Form S–3 shall incorporate by reference its reports and documents filed under the Securities Exchange Act of 1934 into its registration statement filed on Form N–2; and

(2) to include an instruction (that is similar to the instruction regarding automatic shelf offerings by well-known seasoned issuers on Form S–3) to provide that a business development company that is a well-known seasoned issuer may file automatic shelf offerings on Form N–2 (or any successor form).

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