

112TH CONGRESS
1ST SESSION

S. 1544

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2011

Mr. TESTER (for himself and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Act of 1933 to require 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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

3 “(b) ADDITIONAL EXEMPTIONS.—

4 “(1) SMALL ISSUES EXEMPTIVE AUTHORITY.—
5 The Commission”; and

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

7 “(2) ADDITIONAL ISSUES.—The Commission
8 shall by rule or regulation add a class of securities
9 to the securities exempted pursuant to this section
10 in accordance with the following terms and condi-
11 tions:

12 “(A) The aggregate offering amount of all
13 securities offered and sold within the prior 12-
14 month period in reliance on the exemption
15 added in accordance with this paragraph shall
16 not exceed \$50,000,000.

17 “(B) The securities may be offered and
18 sold publicly.

19 “(C) The securities shall not be restricted
20 securities within the meaning of the Federal se-
21 curities laws and the regulations promulgated
22 thereunder.

23 “(D) The civil liability provision in section
24 12(a)(2) shall apply to any person offering or
25 selling such securities.

1 “(E) 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 in the public interest or for
5 the protection of investors.

6 “(F) The Commission shall require the
7 issuer to file audited financial statements with
8 the Commission annually.

9 “(G) Such other terms, conditions, or re-
10 quirements as the Commission may determine
11 necessary in the public interest and for the pro-
12 tection of investors, which may include—

13 “(i) a requirement that the issuer pre-
14 pare and electronically file with the Com-
15 mission and distribute to prospective inves-
16 tors an offering statement, and any related
17 documents, in such form and with such
18 content as prescribed by the Commission,
19 including audited financial statements and
20 a description of the issuer’s business oper-
21 ations, its financial condition, its corporate
22 governance principles, its use of investor
23 funds, and other appropriate matters; and

24 “(ii) disqualification provisions under
25 which the exemption shall not be available

1 to the issuer or its predecessors, affiliates,
2 officers, directors, underwriters, or other
3 related persons, which shall be substan-
4 tially similar to the disqualification provi-
5 sions contained in the regulations adopted
6 in accordance with section 926 of the
7 Dodd-Frank Wall Street Reform and Con-
8 sumer Protection Act (15 U.S.C. 77d
9 note).

10 “(3) LIMITATION.—Only the following types of
11 securities may be exempted under a rule or regula-
12 tion adopted pursuant to paragraph (2): equity secu-
13 rities, debt securities, and debt securities convertible
14 or exchangeable to equity interests, including any
15 guarantees of such securities.

16 “(4) PERIODIC DISCLOSURES.—Upon such
17 terms and conditions as the Commission determines
18 necessary in the public interest and for the protec-
19 tion of investors, the Commission by rule or regula-
20 tion may require an issuer of a class of securities ex-
21 empted under paragraph (2) to make available to in-
22 vestors and file with the Commission periodic disclo-
23 sures regarding the issuer, its business operations,
24 its financial condition, its corporate governance prin-
25 ciples, its use of investor funds, and other appro-

1 appropriate matters, and also may provide for the suspen-
2 sion and termination of such a requirement with re-
3 spect to that issuer.

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

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

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

21 (2) by redesignating subparagraph (D) as sub-
22 paragraph (E), and inserting after subparagraph (C)
23 the following:

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

1 “(i) offered or sold on a national secu-
2 rities exchange; or

3 “(ii) offered or sold to a qualified pur-
4 chaser as defined by the Commission pur-
5 suant to paragraph (3) with respect to that
6 purchase or sale.”.

7 (c) CONFORMING AMENDMENT.—Section 4(5) of the
8 Securities Act of 1933 is amended by striking “section
9 3(b)” and inserting “section 3(b)(1)”.

10 **SEC. 3. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS**
11 **ON REGULATION A OFFERINGS.**

12 Not later than 3 months after the date of enactment
13 of this Act, the Comptroller General shall—

14 (1) conduct a study on the impact of State laws
15 regulating securities offerings (commonly referred to
16 as “Blue Sky laws”) on offerings made under Regu-
17 lation A (17 C.F.R. 230.251 et seq.); and

18 (2) transmit a report on the findings of the
19 study to the Committee on Financial Services of the
20 House of Representatives and the Committee on
21 Banking, Housing, and Urban Affairs of the Senate.

○