

SMALL COMPANY CAPITAL FORMATION ACT OF 2011

SEPTEMBER 14, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1070]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Company Capital Formation Act of 2011”.

SEC. 2. AUTHORITY TO EXEMPT CERTAIN SECURITIES.

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

(1) by striking “(b) The Commission” and inserting the following:

“(b) **ADDITIONAL EXEMPTIONS.**—

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

(2) by adding at the end the following:

“(2) **ADDITIONAL ISSUES.**—The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:

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

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

“(C) The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.

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

“(E) The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.

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

“(G) Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—

“(i) a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, which shall include a description of the issuer’s business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and

“(ii) disqualification provisions under which the exemption shall not be available based upon the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

“(3) LIMITATION.—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.

“(4) PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.

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

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

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

(2) by redesignating subparagraph (D) as subparagraph (E), and inserting after subparagraph (C) the following:

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

“(i) offered or sold through a broker or dealer;

“(ii) offered or sold on a national securities exchange; or

“(iii) sold to a qualified purchaser as defined by the Commission pursuant to paragraph (3).”

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

PURPOSE AND SUMMARY

H.R. 1070, the Small Company Capital Formation Act, raises the offering threshold for companies exempted from registration with the U.S. Securities and Exchange Commission (SEC) under Regulation A from \$5 million—the threshold set in the early 1990s—to \$50 million. Raising the offering threshold helps small companies

gain access to capital markets without the costs and delays associated with the full-scale securities registration process. H.R. 1070 provides the SEC with the authority to increase the threshold and requires the SEC to re-examine the threshold every two years and report to Congress on its decisions regarding adjustment of the threshold.

BACKGROUND AND NEED FOR LEGISLATION

Section 3 of the Securities Act of 1933 authorizes the SEC to exempt small securities offerings from registration. Under Section 3, the SEC promulgated Regulation A, which exempts public offerings of less than \$5 million in any 12-month period. The SEC set the threshold at \$5 million in 1992, where it has remained.

Congress originally authorized the SEC to set the Section 3 threshold at \$100,000. It has raised the limit several times since: to \$300,000 in 1945; to \$500,000 in 1972; to \$1,500,000 in 1978; and to \$2,000,000, also in 1978. Before 1980, each time that Congress raised the statutory limit, the SEC promptly exercised its authority and raised the Regulation A threshold. Congress established the current level of \$5,000,000 in 1980, but the SEC waited 12 years, until 1992, before raising the Regulation A threshold to the statutory limit authorized by Congress.

Since the SEC set the Regulation A threshold at \$5 million in 1992, issuers and market participants have pointed out that the offering threshold has been too low to justify the costs of going public under Regulation A. In addition, inflation, which has risen approximately 165% since 1980, when Congress gave the SEC the authority to set the Regulation A offering threshold, has further exacerbated the imbalance between costs and benefits. Between 1995 and 2004, companies have used Regulation A only 78 times; in 2010, only three times. The low number of Regulation A filings—each for the maximum amount of \$5 million—demonstrates that a revision to Regulation A is necessary. To increase the use of Regulation A offerings and help make capital available to small companies, Representative Schweikert introduced H.R. 1070, which increases the offering threshold to \$50 million.

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a legislative hearing on H.R. 1070 on March 16, 2011. At that hearing, David Weild, Senior Advisor—Capital Markets Group, Grant Thornton LLP, testified about the benefits of increasing the Regulation A offering threshold:

The United States stock market, once the envy of the world, has suffered a devastating decline in numbers of small initial public offerings (IPOs). Our research and analysis of relevant data strongly demonstrates that small businesses and entrepreneurs cannot access the capital they need to grow and create jobs. The United States is losing more public companies from our listed stock exchanges than we are replacing with new IPOs. When measured by number of listed companies, America's stock exchanges are declining, while those of other developed nations are increasing. It is imperative that Congress, regulators and stakeholders in the debate evaluate and take action to increase the number of U.S. publicly listed com-

panies. . . . [P]assage of the proposed Reg A bill is a necessary first step in a campaign to bring back the small IPO, generate jobs and revitalize the U.S. economy.

Small companies are critical to economic growth in the United States. Amending Regulation A to make it viable for small companies to access capital will permit greater investment in these companies, resulting in economic growth and jobs. By reducing the regulatory burden and expense of raising capital from the investing public, H.R. 1070 will boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine. Regulation A offerings can also help entrepreneurial businesses attract private capital at lower costs than might be feasible in an initial public offering using full SEC registration procedures.

HEARINGS

On March 16, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled "Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty," at which H.R. 1070 was one of the proposals discussed. The following witnesses testified:

- Mr. Kenneth A. Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals
- Mr. Tom Deutsch, Executive Director, American Securitization Forum
- Ms. Pam Hendrickson, Chief Operating Officer, The Riverside Company
- Mr. Damon Silvers, Policy Director and Special Counsel, AFL-CIO
- Mr. David Weild, Senior Advisor, Grant Thornton, LLP
- Mr. Luke Zubrod, Director, Chatham Financial

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on May 3 and 4, 2011, and ordered H.R. 1070, as amended, favorably reported to the full Committee by voice vote.

The Committee on Financial Services met in open session on June 22, 2011, and ordered H.R. 1070, as amended, favorably reported to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

On June 22, 2011, the Committee on Financial Services met in open session and ordered H.R. 1070, as amended, favorably reported to the House by voice vote.

During consideration of H.R. 1070 by the Committee, the following amendments were considered:

1. An amendment offered by Mr. Frank, no. 1c, to an amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, to remove the broker-dealer exemption from all fifty states' securities

laws for selling Regulation A offerings, was not agreed to by a record vote of 20 yeas and 26 nays (Record vote no. FC-43).

RECORD VOTE NO. FC-43

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)				Mrs. Maloney			
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks			
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa			
Mr. Garrett		X		Mr. Clay			
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca			
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)				Mr. Al Green (TX)	X		
Mr. Pearce				Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison	X		
Mr. Westmoreland				Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson			
Mr. Duffy				Mr. Himes	X		
Ms. Hayworth				Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers							
Mr. Fincher		X					

2. An amendment offered by Ms. Velázquez, no. 1e, to an amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, to expand Regulation A offerings to include securities offered by a small business investment company, was not agreed to by a record vote of 24 yeas and 27 nays (Record vote no. FC-44).

RECORD VOTE NO. FC-44

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)				Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks			
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)	X		
Mr. McHenry		X		Mr. Baca			
Mr. Campbell		X		Mr. Lynch	X		

RECORD VOTE NO. FC-44—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Bachmann		X	.....	Mr. Miller (NC)	X	.....	.....
Mr. McCotter		X	.....	Mr. David Scott (GA)	X	.....	.....
Mr. McCarthy (CA)	Mr. Al Green (TX)	X	.....	.....
Mr. Pearce	Mr. Cleaver	X	.....	.....
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison	X	.....	.....
Mr. Westmoreland	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy		X	.....	Mr. Himes	X	.....	.....
Ms. Hayworth	Mr. Peters	X	.....	.....
Mr. Renacci		X	.....	Mr. Carney	X	.....	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers				
Mr. Fincher		X	.....			

The following amendments and motions were also considered by the Committee:

1. An amendment offered by Mr. Ackerman, no. 1a, to an amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, to require issuers to file annual audited financial statements with the Securities and Exchange Commission, was agreed to by voice vote.

2. An amendment offered by Mr. Schweikert, no. 1bi, to an amendment offered by Mr. Frank, no. 1b, to treat the prospectus for a Regulation A offering to be subject to liability under section 12(a)(2) of the Securities Act of 1933 instead of section 11 of the Act, was agreed to by voice vote.

3. An amendment offered by Mr. Frank, no. 1b, as amended by an amendment offered by Mr. Schweikert, no. 1bi, to an amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, to treat a prospectus for a Regulation A offering to be subject to liability under section 12(a)(2) of the Securities Act of 1933, was agreed to by voice vote.

4. An amendment offered by Ms. Velázquez, no. 1d, to an amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, to expand Regulation A offerings to include securities offered by a small business investment company, was offered and withdrawn.

5. A motion offered by Mr. Frank, to move the previous question on H.R. 1070, was agreed to by voice vote.

6. An amendment in the nature of a substitute offered by Mr. Schweikert, no. 1, as amended by an amendment offered by Mr. Ackerman, no. 1a, and an amendment offered by Mr. Frank, no. 1b, as amended by an amendment offered by Mr. Schweikert, no. 1bi, to make technical and clarifying changes, to enhance investor protections, to treat a prospectus for a Regulation A offering to be subject to liability under section 12(a)(2) of the Securities Act of 1933, and to clarify that Regulation A offerings are exempt from state securities laws only if they are listed on an exchange, offered by a broker dealer, or sold to a qualified purchaser, was agreed to by voice vote.

7. A motion offered by Mr. Garrett, to move the previous question on H.R. 1070, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 1070, the Small Company Capital Formation Act, increases the offering threshold for companies exempted from SEC registration under Regulation A from \$5 million to \$50 million. The purpose of the change is to help small issuers, such as venture-capital backed companies, gain access to funding without the costs and delays associated with the full-scale securities registration process. The legislation provides the SEC with the authority to increase the threshold and requires the SEC to re-examine the threshold every two years and report to Congress on decisions regarding the adjustment of the threshold.

The objective of H.R. 1070 is to make Regulation A into a viable channel for small companies to access capital, which will permit greater investment in these companies, resulting in economic growth and jobs. Small companies are critical to economic growth in the United States. By reducing the regulatory burden and expense of raising capital from the investing public, H.R. 1070 will boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine. Regulation A offerings can also help entrepreneurial businesses attract private capital by providing companies with additional working capital at reduced costs than might be feasible when compared with an initial public offering using full SEC registration.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 13, 2011.

Hon. SPENCER BACHUS,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1070, the Small Company Capital Formation Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1070—Small Company Capital Formation Act of 2011

Under current law, companies issuing securities with an aggregate offering amount that is less than \$5 million are not required to register the offering with the Securities and Exchange Commission (SEC). H.R. 1070 would increase that threshold from \$5 million to \$50 million for issuances that meet certain conditions, including filing an audited financial statement with the SEC each year. The bill would require the SEC to review this threshold every two years and increase the amount as it determines appropriate.

Based on information from the SEC, CBO estimates that implementing H.R. 1070 would cost about \$2 million over the 2012–2016 period, assuming appropriation of the necessary funds. The SEC would incur additional costs for staffing and overhead as a result of the expected additional securities offerings exempt from the registration requirement, but those discretionary costs would be less than \$500,000 in any year during that period. Enacting H.R. 1070 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1070 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting states from requiring issuers of some securities to register the securities with the state, or to pay registration fees, prior to issuance. The cost of the mandate would be the amount of fee revenue that states would be precluded from collecting. Based on information from the SEC, states, and industry sources, CBO estimates that forgone revenues would be small and would not exceed the threshold established in UMRA for intergovernmental mandates (\$71 million in 2011, adjusted annually for inflation).

H.R. 1070 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Elizabeth Cove Delisle (for the impact on state and local governments). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1070 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides a short title to the bill by citing it as the “Small Company Capital Formation Act of 2011.”

Section 2. Authority to exempt certain securities

This section amends Section 3 of the Securities Act of 1933 and provides that the Securities and Exchange Commission shall add a class of exempt securities with the following characteristics: (1) the aggregate offering amount of all securities sold within the prior 12-month period in reliance on the exemption shall not exceed \$50 million; (2) the securities may be offered and sold publicly; (3) the securities shall not be restricted securities within the meaning of the Federal securities laws; and (4) the securities must be either equity securities, debt securities, or debt securities convertible or exchangeable to equity interests.

This section allows the issuer to solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the SEC may prescribe in the public interest or for the protection of investors. The SEC shall require issuers to submit an audited financial statement annually.

This section also gives the SEC the authority to set forth other terms and conditions for these offerings, which may include (1) a requirement that the issuer of the securities prepare and electronically file with the SEC and distribute to investors an offering statement and (2) disqualification provisions under which the exemption shall not be available.

This section subjects Regulation A prospectuses to liability under section 12(a)(2) of the Securities Act of 1933.

This section also allows the SEC to require the issuer to make available to investors periodic disclosures regarding the issuer, its

business operations, its financial condition, its corporate governance principles, and its use of investor funds.

This section requires the SEC to review the offering amount every two years and to increase the amount as the SEC determines appropriate. If the SEC determines not to increase the amount, it shall report to the Committee on Financial Services of the House and the Committee on Banking, Housing and Urban Affairs of the Senate on its reasons for not increasing the amount.

This section exempts securities issued using Regulation A from state securities laws that are offered or sold through a broker or dealer; offered or sold on a national securities exchange; or sold to a qualified purchaser as defined by the SEC.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933

TITLE I—SHORT TITLE

* * * * *

EXEMPTED SECURITIES

SEC. 3. (a) * * *

[(b) The Commission]

(b) *ADDITIONAL EXEMPTIONS.*—

(1) *SMALL ISSUES EXEMPTIVE AUTHORITY.*—*The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds \$5,000,000.*

(2) *ADDITIONAL ISSUES.*—*The Commission shall by rule or regulation add a class of securities to the securities exempted pursuant to this section in accordance with the following terms and conditions:*

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

(B) *The securities may be offered and sold publicly.*

(C) *The securities shall not be restricted securities within the meaning of the Federal securities laws and the regulations promulgated thereunder.*

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

(E) *The issuer may solicit interest in the offering prior to filing any offering statement, on such terms and conditions as the Commission may prescribe in the public interest or for the protection of investors.*

(F) *The Commission shall require the issuer to file audited financial statements with the Commission annually.*

(G) *Such other terms, conditions, or requirements as the Commission may determine necessary in the public interest and for the protection of investors, which may include—*

(i) *a requirement that the issuer prepare and electronically file with the Commission and distribute to prospective investors an offering statement, and any related documents, in such form and with such content as prescribed by the Commission, which shall include a description of the issuer's business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters; and*

(ii) *disqualification provisions under which the exemption shall not be available based upon the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, underwriters, or other related persons, which shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).*

(3) *LIMITATION.—Only the following types of securities may be exempted under a rule or regulation adopted pursuant to paragraph (2): equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.*

(4) *PERIODIC DISCLOSURES.—Upon such terms and conditions as the Commission determines necessary in the public interest and for the protection of investors, the Commission by rule or regulation may require an issuer of a class of securities exempted under paragraph (2) to make available to investors periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also may provide for the suspension and termination of such a requirement with respect to that issuer.*

(5) *ADJUSTMENT.—Not later than 2 years after the date of enactment of the Small Company Capital Formation Act of 2011 and every 2 years thereafter, the Commission shall review the offering amount limitation described in paragraph (2)(A) and shall increase such amount as the Commission determines appropriate. If the Commission determines not to increase such amount, it shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on its reasons for not increasing the amount.*

* * * * *

EXEMPTED TRANSACTIONS

SEC. 4. The provisions of section 5 shall not apply to—

(1) * * *

* * * * *

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under [section 3(b)] section 3(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

* * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) * * *

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) * * *

* * * * *

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) * * *

* * * * *

(C) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located[; or];

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

- (i) offered or sold through a broker or dealer;
(ii) offered or sold on a national securities exchange;

or

(iii) sold to a qualified purchaser as defined by the Commission pursuant to paragraph (3).

[(D)] (E) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996.

* * * * *

MINORITY VIEWS ON H.R. 1070

There is consensus on the Committee that the Securities and Exchange Commission (SEC) should raise the exemption limit for Regulation A ("Reg A") security offerings, as the current rule with a limit of \$5 million is little used by issuers due to the small size of issuances permitted. Last year, when we were in the majority, we sent a letter to the SEC recommending that the SEC raise the exemption limit. Likewise, H.R. 1070 would provide small and medium companies the ability to offer securities up to \$50 million publicly without the full cost of a registered offering, potentially expanding their access to capital beyond the private offerings many now use.

During the markup, Democrats made some improvements to H.R. 1070. The Ackerman amendment, for example, provides investors with audited financial statements on an annual basis. Another Democratic amendment affords investors legal recourse for misstatements made in prospectuses. The Majority has also offered to work with Democrats on other issues such as permitting Small Business Investment Companies to issue Regulation A securities.

There was one contentious issue that arose during the markup that had nothing to do with the principle of an exemption limit increase, but instead with new language preempting state law. This language preempts state securities law for Regulation A securities offered or sold by a broker or dealer, creating a class of security not subject to state level review, but which will not receive adequate attention at the federal level. Regulation A securities are sometimes high-risk offerings that may be susceptible to fraud, making the protections provided by state review essential. To address these concerns, the Democrats offered an amendment to clarify that state securities would only be preempted if the Regulation A security is sold on an exchange or sold only to a qualified purchaser. While that amendment was defeated, we will continue to work to ensure that the final bill provides adequate oversight.

BARNEY FRANK.
EMANUEL CLEAVER.
JOHN C. CARNEY.
STEPHEN F. LYNCH.
CAROLYN B. MALONEY.
AL GREEN.
WM. LACY CLAY.
BRAD MILLER.
MICHAEL E. CAPUANO.
GARY L. ACKERMAN.
ANDRÉ CARSON.
LUIS V. GUTIERREZ.
RUBÉN HINOJOSA.
MELVIN L. WATT.
GWEN MOORE.
MAXINE WATERS.