

## Union Calendar No. 223

112TH CONGRESS  
1ST SESSION

# H. R. 2167

[Report No. 112-327]

To amend the Securities Exchange Act of 1934 to change the threshold number of shareholders for required registration under that Act.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Mr. SCHWEIKERT (for himself, Mr. HIMES, Mr. CANSECO, Mr. QUIGLEY, Mr. JONES, Mr. PERLMUTTER, Mrs. BIGGERT, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 12, 2011

Additional sponsors: Mr. CAMPBELL, Mr. MCHENRY, Mr. MANZULLO, Mr. LATA, Mr. POLIS, Mr. MEEKS, Mr. HURT, Ms. LORETTA SANCHEZ of California, Mr. WELCH, Mr. BOREN, Mr. FITZPATRICK, Ms. HAYWORTH, Mr. ACKERMAN, Mr. DOLD, Mrs. MALONEY, Mr. HINOJOSA, Mr. SMITH of Washington, Mr. CARNEY, Mr. CONNOLLY of Virginia, and Mr. KLINE

DECEMBER 12, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

# **A BILL**

To amend the Securities Exchange Act of 1934 to change the threshold number of shareholders for required registration under that 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 “Private Company  
5 Flexibility and Growth Act”.

6 **SEC. 2. THRESHOLD FOR REGISTRATION.**

7 Section 12(g)(1)(B) of the Securities Exchange Act  
8 of 1934 (15 U.S.C. 78l(g)(1)(B)) is amended by striking  
9 “shall—” and all that follows through “register” and in-  
10 sert “shall, within 120 days after the last day of its first  
11 fiscal year ended on which the issuer has total assets ex-  
12 ceeding \$10,000,000 and a class of equity security (other  
13 than an exempted security) held of record by 1,000 per-  
14 sons, register”.

15 **SEC. 3. ACCREDITED INVESTORS AND EMPLOYEES.**

16 Section 12(g)(5) of the Securities Exchange Act of  
17 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the  
18 end the following: “For purposes of determining whether  
19 an issuer is required to register a security with the Com-  
20 mission pursuant to paragraph (1), the definition of ‘held  
21 of record’ shall not include securities held by persons who  
22 qualify as accredited investors (as that term is defined by  
23 the Commission) or securities that are held by persons  
24 who received the securities pursuant to an employee com-  
25 pensation plan in transactions exempted from the registra-

1 tion requirements of section 5 of the Securities Act of  
2 1933.”.

3 **SEC. 4. COMMISSION RULEMAKING.**

4       The Securities and Exchange Commission shall revise  
5 the definition of “held of record” pursuant to section  
6 ~~12(g)(5)~~ of the Securities Exchange Act of 1934 (~~15~~  
7 ~~U.S.C. 78l(g)(5)~~) to implement the amendment made by  
8 section 2. The Commission shall also adopt safe harbor  
9 provisions that issuers can follow when determining  
10 whether holders of their securities are accredited investors  
11 or that holders of their securities received the securities  
12 pursuant to an employee compensation plan in trans-  
13 actions that were exempt from the registration require-  
14 ments of section 5 of the Securities Act of 1933.

15 **SECTION 1. SHORT TITLE.**

16       *This Act may be cited as the “Private Company Flexi-*  
17 *bility and Growth Act”.*

18 **SEC. 2. THRESHOLD FOR REGISTRATION.**

19       *Section 12(g)(1) of the Securities Exchange Act of*  
20 *1934 (15 U.S.C. 78l(g)(1)) is amended by striking “shall—*  
21 *” and all that follows through the first instance of “register”*  
22 *and insert “shall, within 120 days after the last day of its*  
23 *first fiscal year ended on which the issuer has total assets*  
24 *exceeding \$10,000,000 and a class of equity security (other*

1 *than an exempted security) held of record by 1,000 persons,*  
2 *register”.*

3 **SEC. 3. EMPLOYEES.**

4 *Section 12(g)(5) of the Securities Exchange Act of*  
5 *1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the*  
6 *end the following: “For purposes of determining whether an*  
7 *issuer is required to register a security with the Commission*  
8 *pursuant to paragraph (1), the definition of ‘held of record’*  
9 *shall not include securities held by persons who received the*  
10 *securities pursuant to an employee compensation plan in*  
11 *transactions exempted from the registration requirements of*  
12 *section 5 of the Securities Act of 1933.”.*

13 **SEC. 4. COMMISSION RULEMAKING.**

14 *The Securities and Exchange Commission shall revise*  
15 *the definition of “held of record” pursuant to section*  
16 *12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C.*  
17 *78l(g)(5)) to implement the amendment made by section 2.*  
18 *The Commission shall also adopt safe harbor provisions*  
19 *that issuers can follow when determining that holders of*  
20 *their securities received the securities pursuant to an em-*  
21 *ployee compensation plan in transactions that were exempt*  
22 *from the registration requirements of section 5 of the Secu-*  
23 *rities Act of 1933.*

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1<sup>ST</sup> Session

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