

103^D CONGRESS
1ST SESSION

S. 479

AN ACT

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 accepted or exempted from regulation under the Investment Company Act of 1940 and through business development companies.

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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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Incen-
5 tive Act of 1993”.

1 **SEC. 2. EXEMPTED SECURITIES.**

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

5 **SEC. 3. EXCLUSIONS FROM THE DEFINITION OF INVEST-**
6 **MENT COMPANY.**

7 Section 3(c) of the Investment Company Act of 1940
8 (15 U.S.C. 80a–3(c)) is amended—

9 (1) in paragraph (1), by inserting after the first
10 sentence the following new sentence: “Such issuer
11 shall be deemed to be an investment company for
12 purposes of the limitations set forth in subpara-
13 graphs (A)(i) and (B)(i) of section 12(d)(1) govern-
14 ing the purchase or other acquisition by such issuer
15 of any security issued by a registered investment
16 company and the sale of any security issued by a
17 registered open-end investment company to any such
18 issuer.”;

19 (2) in paragraph (1)(A)—

20 (A) by inserting after “issuer” the first
21 place it appears “and the company is or (but
22 for the exceptions set forth in this paragraph
23 and paragraph (7)) would be an investment
24 company”; and

1 (B) by striking “unless as of the date” and
2 all that follows through the end of subpara-
3 graph (A) and inserting a period; and
4 (3) by amending paragraph (7) to read as
5 follows:

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

17 **SEC. 4. DEFINITION OF QUALIFIED PURCHASER.**

18 Section 2(a) of the Investment Company Act of 1940
19 (15 U.S.C. 80a–2(a)) is amended by adding at the end
20 the following new paragraph:

21 “(51) ‘Qualified purchaser’ means—

22 “(A) any natural person who owns at least
23 \$10,000,000 in securities of issuers, each of
24 which is not an affiliated person, as defined in
25 section 2(a)(3)(C), of such person;

1 “(B) any person, acting for its own ac-
2 count or the accounts of other qualified pur-
3 chasers, who in the aggregate owns and invests
4 on a discretionary basis, not less than
5 \$100,000,000 in securities of issuers, each of
6 which is not an affiliated person, as defined in
7 section 2(a)(3)(C), of such person; or

8 “(C) any person, who may own or invest a
9 lesser amount in securities than specified in
10 subparagraphs (A) and (B), that the Commis-
11 sion, by rule or regulation, has determined does
12 not need the protections of this title, after con-
13 sideration of factors such as—

14 “(i) a high degree of financial sophis-
15 tication, including extensive knowledge of
16 and experience in financial matters;

17 “(ii) sizable net worth;

18 “(iii) a substantial amount of assets
19 owned or under management;

20 “(iv) relationship with an issuer; or

21 “(v) such other factors as the Com-
22 mission may determine to be consistent
23 with the purpose of this paragraph.

24 The Commission also may adopt such rules and reg-
25 ulations governing the persons specified in subpara-

1 graphs (A) and (B) as it determines are necessary
2 or appropriate in the public interest and for the pro-
3 tection of investors.”.

4 **SEC. 5. DEFINITION OF INVESTMENT SECURITIES.**

5 Section 3(a) of the Investment Company Act of 1940
6 (15 U.S.C. 80a–3(a)) is amended in the last sentence by
7 striking subparagraph (C) and inserting the following:
8 “(C) securities issued by any majority-owned subsidiary
9 of the owner, unless such subsidiary is an investment com-
10 pany or is excluded from the definition of an investment
11 company solely by virtue of paragraph (1) or (7) of sub-
12 section (c).”.

13 **SEC. 6. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-**
14 **DUSTRIAL DEVELOPMENT COMPANIES.**

15 Section 6(a) of the Investment Company Act of 1940
16 (15 U.S.C. 80a–6(a)) is amended by adding at the end
17 the following new paragraph:

18 “(5)(A) Any company that is not engaged in
19 the business of issuing redeemable securities, the op-
20 erations of which are subject to regulation by the
21 State in which the company is organized under a
22 statute governing entities that provide financial or
23 managerial assistance to enterprises doing business,
24 or proposing to do business, in that State if—

1 “(i) the organizational documents of the
2 company state that the activities of the com-
3 pany are limited to the promotion of economic,
4 business, or industrial development in the State
5 through the provision of financial or managerial
6 assistance to enterprises doing business, or pro-
7 posing to do business, in that State, and such
8 other activities that are incidental or necessary
9 to carry out that purpose;

10 “(ii) immediately following each sale of the
11 securities of the company by the company or
12 any underwriter for the company, not less than
13 80 percent of the securities of the company
14 being offered in such sale, on a class-by-class
15 basis, are held by persons who reside or have a
16 substantial business presence in that State;

17 “(iii) the securities of the company are
18 sold, or proposed to be sold, by the company or
19 any underwriter for the company, solely to ac-
20 credited investors, as defined in section 2(15) of
21 the Securities Act of 1933, or to such other
22 persons that the Commission, as necessary or
23 appropriate in the public interest and consistent
24 with the protection of investors, may permit by
25 rule, regulation, or order; and

1 “(iv) the company does not purchase any
2 security issued by an investment company, as
3 defined in section 3, or by any company that
4 would be an investment company except for the
5 exclusions from the definition of investment
6 company in section 3(c), other than—

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

10 “(II) any security issued by a reg-
11 istered open-end investment company that
12 is required by its investment policies to in-
13 vest not less than 65 percent of its total
14 assets in securities described in subclause
15 (I) or securities that are determined by
16 such registered open-end investment com-
17 pany to be comparable in quality to securi-
18 ties described in subclause (I).

19 “(B) Notwithstanding the exemption provided
20 by this paragraph, the provisions of section 9 (and,
21 to the extent necessary to enforce such provisions,
22 sections 38 through 51) of this title shall apply to
23 a company described in this paragraph as if the
24 company were an investment company registered
25 under this title.

1 “(C) Any company proposing to rely on the ex-
 2 emption provided by this paragraph shall file with
 3 the Commission a notification stating that the com-
 4 pany intends to do so, in such form and manner as
 5 the Commission may prescribe by rule.

6 “(D) Any company meeting the requirements of
 7 this paragraph may rely on the exemption provided
 8 by this paragraph upon filing with the Commission
 9 the notification required by subparagraph (C), until
 10 such time as the Commission determines by order
 11 that such reliance is not in the public interest or
 12 consistent with the protection of investors.

13 “(E) The exemption provided by this paragraph
 14 may be subject to such additional terms and condi-
 15 tions as the Commission may by rule, regulation, or
 16 order determine are necessary or appropriate in the
 17 public interest or for the protection of investors.”.

18 **SEC. 7. INTRASTATE CLOSED-END INVESTMENT COMPANY**

19 **EXEMPTION.**

20 Section 6(d)(1) of the Investment Company Act of
 21 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking
 22 “\$100,000” and inserting “\$10,000,000, or such other
 23 amount as the Commission may set by rule, regulation,
 24 or order”.

1 **SEC. 8. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

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

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

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

6 and

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

8 “(iii) it has total assets of not more
9 than \$4,000,000, and capital and surplus
10 (shareholders’ equity less retained earn-
11 ings) of not more than \$2,000,000, except
12 that the Commission may adjust such
13 amounts by rule, regulation, or order to re-
14 flect changes in 1 or more generally ac-
15 cepted indices or other indicators for small
16 businesses; or”.

17 **SEC. 9. DEFINITION OF BUSINESS DEVELOPMENT COM-**
18 **PANY.**

19 Section 2(a)(48)(B) of the Investment Company Act
20 of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by in-
21 serting before the semicolon at the end the following: “,
22 and provided further that a business development com-
23 pany need not make available significant managerial as-
24 sistance with respect to any company described in section
25 2(a)(46)(C)(iii), or with respect to any other company that
26 meets such criteria as the Commission may by rule, regu-

1 lation, or order permit, as consistent with the public inter-
 2 est, the protection of investors, and the purposes fairly in-
 3 tended by the policy and provisions of this title”.

4 **SEC. 10. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
 5 **MENT COMPANIES.**

6 Section 55(a)(1)(A) of the Investment Company Act
 7 of 1940 (15 U.S.C. 80a–54(a)(1)(A)) is amended—

8 (1) by striking “or from any person” and in-
 9 serting “from any person”; and

10 (2) by inserting before the semicolon “, or from
 11 any other person, subject to such rules and regula-
 12 tions as the Commission may prescribe as necessary
 13 or appropriate in the public interest or for the pro-
 14 tection of investors”.

15 **SEC. 11. CAPITAL STRUCTURE AMENDMENTS.**

16 Section 61(a) of the Investment Company Act of
 17 1940 (15 U.S.C. 80a–60(a)) is amended—

18 (1) by striking paragraph (1) and inserting the
 19 following:

20 “(1)(A) The asset coverage requirements of
 21 subparagraphs (A) and (B) of section 18(a)(1) ap-
 22 plicable to business development companies shall be
 23 200 percent.

24 “(B) Notwithstanding subparagraph (A) of this
 25 section or subparagraphs (A) and (B) of section

1 18(a)(2), a business development company may have
2 an asset coverage of not less than 110 percent, if,
3 immediately before the issuance or sale of senior se-
4 curities, the business development company has—

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

11 “(ii) either—

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

17 “(II) not less than 50 percent of its
18 assets invested in securities described in
19 paragraphs (1) through (5) of section
20 55(a) throughout 10 months of the preced-
21 ing 12-month period.

22 “(C) It shall be unlawful for any business devel-
23 opment company to issue any class of senior security
24 representing indebtedness, or to sell any such secu-
25 rity pursuant to subparagraph (B), unless provision

1 is made to prohibit the declaration of any dividend
2 (except a dividend payable in stock of the issuer), or
3 the declaration of any other distribution upon any
4 class of the capital stock of such business develop-
5 ment company, or the purchase of any such capital
6 stock, unless, in every such case—

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

14 “(ii) the business development company
15 complies with subparagraph (B)(i), except with
16 respect to any amounts that are required to be
17 distributed to maintain the status of the com-
18 pany as a regulated investment company under
19 the Internal Revenue Code of 1986.

20 “(D) It shall be unlawful for any business de-
21 velopment company to issue any class of senior secu-
22 rity representing stock, or to sell any such security
23 pursuant to subparagraph (B), unless provision is
24 made to prohibit the declaration of any dividend (ex-
25 cept a dividend payable in common stock of the is-

1 suer), or the declaration of any other distribution,
2 upon the common stock of such business develop-
3 ment company, or the purchase of any such common
4 stock, unless, in every such case—

5 “(i) the class of senior securities has, at
6 the time of the declaration of any such dividend
7 or distribution or at the time of any such pur-
8 chase an asset coverage of not less than 110
9 percent after deducting the amount of such div-
10 idend, distribution, or purchase price, as the
11 case may be; and

12 “(ii) the business development company
13 complies with subparagraph (B)(i), except with
14 respect to any amounts that are required to be
15 distributed to maintain the status of the com-
16 pany as a regulated investment company under
17 the Internal Revenue Code of 1986.”;

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

22 (3) in paragraph (3)(A)—

23 (A) by striking “senior securities rep-
24 resenting indebtedness accompanied by”;

1 (B) inserting “accompanied by securities,”
2 after “of such company,”; and

3 (C) in clause (ii), by striking “senior”; and
4 (4) in paragraph (3)—

5 (A) in subparagraph (A), by striking
6 “and” at the end;

7 (B) in subparagraph (B), by striking the
8 period at the end of clause (iv) and inserting “;
9 and”; and

10 (C) by inserting after subparagraph (B)
11 the following new subparagraph:

12 “(C) a business development company may
13 issue warrants, options, or rights to subscribe
14 to, convert to, or purchase voting securities not
15 accompanied by securities, if—

16 “(i) such warrants, options, or rights
17 satisfy the conditions in clauses (i) and
18 (iii) of subparagraph (A); and

19 “(ii) the proposal to issue such war-
20 rants, options, or rights is authorized by
21 the shareholders or partners of such busi-
22 ness development company, and such issu-
23 ance is approved by the required majority
24 (as defined in section 57(o)) of the direc-
25 tors of or general partners in such com-

1 pany on the basis that such issuance is in
2 the best interests of the company and its
3 shareholders or partners.”.

4 **SEC. 12. FILING OF WRITTEN STATEMENTS.**

5 Section 64(b)(1) of the Investment Company Act of
6 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
7 “and capital structure” after “portfolio”.

Passed the Senate November 2, 1993.

Attest:

Secretary.

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