

Calendar No. 249

103D CONGRESS
1ST SESSION

S. 479

[Report No. 103-166]

A BILL

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

OCTOBER 26 (legislative day, OCTOBER 13), 1993

Reported with an amendment

Calendar No. 249103^D CONGRESS
1ST SESSION**S. 479****[Report No. 103-166]**

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.

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. KERRY, Mr. BRYAN, Mr. MACK, Mr. DOMENICI, Mrs. MURRAY, Mr. GORTON, Mr. THURMOND, Mr. BOND, Mr. STEVENS, Mr. JEFFORDS, Mr. CAMPBELL, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

OCTOBER 26 (legislative day, OCTOBER 13), 1993

Reported by Mr. RIEGLE, with an amendment

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

A BILL

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”.

6 **TITLE I—AMENDMENT TO THE**
 7 **SECURITIES ACT OF 1933**

8 **SEC. 101. EXEMPTED SECURITIES.**

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

12 **TITLE II—AMENDMENTS TO THE**
 13 **INVESTMENT COMPANY ACT**
 14 **OF 1940**

15 **SEC. 201. EXCLUSIONS FROM THE DEFINITION OF INVEST-**
 16 **MENT COMPANY.**

17 Section 3(c) of the Investment Company Act of 1940
 18 (15 U.S.C. 80a-3(c)) is amended—

19 (1) In paragraph (1) by adding after the first
 20 sentence the following new sentence: “Such issuer
 21 shall be deemed to be an investment company for
 22 purposes of the limitations set forth in subpara-
 23 graphs (A)(i) and (B)(i) of section 12(d)(1) govern-
 24 ing the purchase or other acquisition by such issuer

1 of any security issued by a registered investment
2 company and the sale of any security issued by a
3 registered open-end investment company to any such
4 issuer.”;

5 (2) In paragraph (1)(A)—

6 (A) by inserting after “issuer,” the first
7 place it appears “and the company is or, but
8 for the exceptions set forth in this paragraph
9 and paragraph (7), would be an investment
10 company,”;

11 (B) by striking “paper) unless as of the
12 date” and all that follows through the end of
13 subparagraph (A) and inserting the following:
14 “paper).”;

15 (3) by amending paragraph (7) to read as fol-
16 lows:

17 “(7) Any issuer whose outstanding securities
18 are owned exclusively by persons who, at the time of
19 acquisition of such securities, are qualified pur-
20 chasers, except that such issuer shall be deemed to
21 be an investment company for purposes of the limi-
22 tations set forth in subparagraphs (A)(i) and (B)(i)
23 of section 12(d)(1) governing the purchase or other
24 acquisition by such issuer of any security issued by
25 a registered investment company and the sale of any

1 security issued by a registered open-end investment
2 company to any such issuer.”.

3 **SEC. 202. DEFINITION OF QUALIFIED PURCHASER.**

4 Section 2(a) of the Investment Company Act of 1940
5 (15 U.S.C. 80a-2(a)) is amended by adding at the end
6 the following new paragraph:

7 “(51) ‘Qualified purchaser’ means any person
8 whom the Commission, by rule or regulation, has de-
9 termined does not need the protections of this title.
10 The Commission’s determination shall include con-
11 sideration of a person’s—

12 “(A) financial sophistication;

13 “(B) net worth;

14 “(C) knowledge of and experience in finan-
15 cial matters;

16 “(D) amount of assets owned or under
17 management;

18 “(E) relationship with an issuer; or

19 “(F) such other factors as the Commission
20 may determine to be consistent with the pur-
21 poses of this paragraph.”.

22 **SEC. 203. DEFINITION OF INVESTMENT SECURITIES.**

23 Section 3(a) of the Investment Company Act of 1940
24 (15 U.S.C. 80a-3(a)) is amended in the last sentence by
25 striking subparagraph (C) and inserting the following:

1 “(C) securities issued by any majority-owned subsidiary
2 of the owner, unless such subsidiary is an investment com-
3 pany or is excluded from the definition of an investment
4 company solely by virtue of paragraph (1) or (7) of section
5 3(c).”

6 **SEC. 204. EXEMPTION FOR BUSINESS AND INDUSTRIAL DE-**
7 **VELOPMENT COMPANIES.**

8 Section 6(a) of the Investment Company Act of 1940
9 (15 U.S.C. 80a-6(a)) is amended by adding at the end
10 the following new paragraph:

11 “(5)(A) Any company that is not engaged in
12 the business of issuing redeemable securities, the op-
13 erations of which are subject to regulation by the
14 State in which it is organized under a statute gov-
15 erning entities that provide financial or managerial
16 assistance to enterprises doing business, or propos-
17 ing to do business, primarily in that State if—

18 “(i) the organizational documents of such
19 company state that the purpose of the company
20 is limited to providing financial or managerial
21 assistance to enterprises doing business, or pro-
22 posing to do business, primarily in that State;

23 “(ii) immediately following each sale of the
24 securities of such company by the company or
25 any underwriter for the company, not less than

1 80 percent of the company's securities being of-
2 fered in such sale, on a class-by-class basis, are
3 held by persons who reside or have a substan-
4 tial business presence in that State;

5 “(iii) the securities of such company are
6 sold, or proposed to be sold, by the company or
7 any underwriter for the company, solely to ac-
8 credited investors, as defined in section 2(15) of
9 the Securities Act of 1933, or to such other
10 persons that the Commission, as necessary or
11 appropriate in the public interest and consistent
12 with the protection of investors, may permit by
13 rule, regulation, or order; and

14 “(iv) the company does not purchase any
15 security issued by an investment company, as
16 defined in section 3, or by any company that
17 would be an investment company except for the
18 exclusions from the definition of investment
19 company in section 3(c), other than—

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

23 “(II) any security issued by a reg-
24 istered open-end investment company that
25 is required by its investment policies to in-

1 vest at least 65 percent of its total assets
2 in securities described in subclause (I) or
3 securities that are determined by such reg-
4 istered open-end investment company to be
5 comparable in quality to securities de-
6 scribed in subclause (I).

7 “(B) Notwithstanding the exemption provided
8 in this paragraph, the provisions of section 9 (and,
9 to the extent necessary to enforce such provisions,
10 sections 38 through 51) of this title shall apply to
11 a company described in this paragraph as if the
12 company were an investment company registered
13 under this title.

14 “(C) Any company proposing to rely on the ex-
15 emption provided in this paragraph shall file with
16 the Commission a notification stating that it intends
17 to do so, in such form and manner as the Commis-
18 sion may by rule prescribe.

19 “(D) Any company meeting the requirements of
20 this paragraph may rely on the exemption provided
21 herein immediately upon filing with the Commission
22 the notification required by subparagraph (C), un-
23 less the Commission determines by order that such
24 company’s reliance is not in the public interest or
25 consistent with the protection of investors.

1 “(E) The exemption provided pursuant to this
 2 paragraph may be subject to such additional terms
 3 and conditions as the Commission may by rule, reg-
 4 ulation, or order determine are necessary or appro-
 5 priate in the public interest or for the protection of
 6 investors.”.

7 **SEC. 205. INTRA-STATE CLOSED-END INVESTMENT COM-**
 8 **PANY EXEMPTION.**

9 Section 6(d)(1) of the Investment Company Act of
 10 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking
 11 “\$100,000” and inserting “\$10,000,000, or such other
 12 amount as the Commission may set by rule, regulation,
 13 or order”.

14 **SEC. 206. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

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

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

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

19 and

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

21 “(iii) it has total assets of not more
 22 than \$4,000,000, and capital and surplus
 23 (shareholders equity less retained earnings)
 24 in excess of \$2,000,000, except that the
 25 Commission may adjust such amounts by

1 rule, regulation, or order to reflect changes
 2 in 1 or more generally accepted indices or
 3 other indicators for small businesses; or”.

4 **SEC. 207. DEFINITION OF BUSINESS DEVELOPMENT COM-**
 5 **PANY.**

6 Section ~~2(a)(48)(B)~~ of the Investment Company Act
 7 of 1940 (~~15 U.S.C. 80a-2(a)(48)(B)~~) is amended by in-
 8 serting before the semicolon at the end the following:
 9 “: *And provided further,* That a business development
 10 company need not make available significant managerial
 11 assistance with respect to any company described in sec-
 12 tion ~~55(a)(7)~~ or with respect to any other company that
 13 meets such criteria as the Commission may by rule, regu-
 14 lation, or order permit, as consistent with the public inter-
 15 est, the protection of investors, and the purposes fairly in-
 16 tended by the policy and provisions of this title”.

17 **SEC. 208. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
 18 **MENT COMPANIES.**

19 Section 55(a) of the Investment Company Act of
 20 1940 (~~15 U.S.C. 80a-54(a)~~) is amended—

21 (1) by striking “(7)” the first 2 times such fig-
 22 ure appears and inserting “(8)”;

23 (2) by striking “(6)” the first time such figure
 24 appears and inserting “(7)”;

25 (3) in subparagraph (1)(A)—

1 (A) by striking “, or from any person” and
2 inserting “, from any person”; and

3 (B) by inserting before the semicolon “, or
4 from any other person, subject to such rules
5 and regulations as the Commission may pre-
6 scribe as necessary or appropriate in the public
7 interest or for the protection of investors”;

8 (4) in paragraph (6), by striking “and” at the
9 end;

10 (5) by redesignating paragraph (7) as para-
11 graph (8); and

12 (6) by inserting after paragraph (6) the follow-
13 ing new paragraph:

14 “(7) securities of any eligible portfolio company
15 with respect to which the business development com-
16 pany satisfies the requirements of section
17 2(a)(46)(C)(iii); and”.

18 **SEC. 209. CAPITAL STRUCTURE AMENDMENTS.**

19 Section 61(a) of the Investment Company Act of
20 1940 (15 U.S.C. 80a-60(a)) is amended—

21 (1) by striking paragraph (1) and inserting the
22 following:

23 “(1)(A) The asset coverage requirements of
24 subparagraphs (A) and (B) of section 18(a)(1) ap-

1 applicable to business development companies shall be
2 200 percent.

3 ~~“(B) Notwithstanding subsection (a)(1)(A) of~~
4 ~~this section and subparagraphs (A) and (B) of sec-~~
5 ~~tion 18(a)(2), a business development company may~~
6 ~~have an asset coverage of at least 110 percent, if,~~
7 ~~immediately before the issuance or sale of senior se-~~
8 ~~curities, it has—~~

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

15 ~~“(ii) either—~~

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

21 ~~“(II) not less than 50 percent of its~~
22 ~~assets invested in securities described in~~
23 ~~paragraphs (1) through (5) of section~~
24 ~~55(a) throughout 10 months of the preced-~~
25 ~~ing 12-month period.~~

1 ~~“(C) It shall be unlawful for any business devel-~~
2 ~~opment company to issue any class of senior security~~
3 ~~representing indebtedness, or to sell any such secu-~~
4 ~~rity pursuant to subsection (a)(1)(B) of this section,~~
5 ~~unless provision is made to prohibit the declaration~~
6 ~~of any dividend (except a dividend payable in stock~~
7 ~~of the issuer), or the declaration of any other dis-~~
8 ~~tribution upon any class of the capital stock of such~~
9 ~~business development company, or the purchase of~~
10 ~~any such capital stock, unless, in every such case—~~

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

18 ~~“(ii) the business development company~~
19 ~~complies with subparagraph (B)(i) except with~~
20 ~~respect to any amounts that are required to be~~
21 ~~distributed to maintain the company’s status as~~
22 ~~a regulated investment company under the In-~~
23 ~~ternal Revenue Code of 1986.~~

24 ~~“(D) It shall be unlawful for any business de-~~
25 ~~velopment company to issue any class of senior secu-~~

1 rity representing stock, or to sell any such security
2 pursuant to subsection (a)(1)(B) of this section, un-
3 less provision is made to prohibit the declaration of
4 any dividend (except a dividend payable in common
5 stock of the issuer), or the declaration of any other
6 distribution, upon the common stock of such busi-
7 ness development company, or the purchase of any
8 such common stock, unless, in every such case—

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

15 “(ii) the business development company
16 complies with subparagraph (B)(i), except with
17 respect to any amounts that are required to be
18 distributed to maintain the company’s status as
19 a regulated investment company under the In-
20 ternal Revenue Code of 1986.”;

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

25 (3) in paragraph (3)(A)—

1 (A) by striking “senior securities rep-
2 resenting indebtedness accompanied by”;

3 (B) inserting “either alone or accompanied
4 by securities,” after “of such company,”; and

5 (C) in clause (ii), by striking “senior”.

6 **SEC. 210. FILING OF WRITTEN STATEMENTS.**

7 Section 64(b)(1) of the Investment Company Act of
8 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
9 “and capital structure” after “portfolio”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Small Business Incen-*
12 *tive Act of 1993”.*

13 **SEC. 2. EXEMPTED SECURITIES.**

14 Section 3(b) of the Securities Act of 1933 (15 U.S.C.
15 77c(b)) is amended by striking “\$5,000,000” and inserting
16 “\$10,000,000”.

17 **SEC. 3. EXCLUSIONS FROM THE DEFINITION OF INVEST-**
18 **MENT COMPANY.**

19 Section 3(c) of the Investment Company Act of 1940
20 (15 U.S.C. 80a-3(c)) is amended—

21 (1) in paragraph (1), by inserting after the first
22 sentence the following new sentence: “Such issuer
23 shall be deemed to be an investment company for pur-
24 poses of the limitations set forth in subparagraphs
25 (A)(i) and (B)(i) of section 12(d)(1) governing the

1 *purchase or other acquisition by such issuer of any*
2 *security issued by a registered investment company*
3 *and the sale of any security issued by a registered*
4 *open-end investment company to any such issuer.”;*

5 *(2) in paragraph (1)(A)—*

6 *(A) by inserting after “issuer” the first*
7 *place it appears “and the company is or (but for*
8 *the exceptions set forth in this paragraph and*
9 *paragraph (7)) would be an investment com-*
10 *pany”;* and

11 *(B) by striking “unless as of the date” and*
12 *all that follows through the end of subparagraph*
13 *(A) and inserting a period; and*

14 *(3) by amending paragraph (7) to read as*
15 *follows:*

16 *“(7) Any issuer whose outstanding securities are*
17 *owned exclusively by persons who, at the time of ac-*
18 *quisition of such securities, are qualified purchasers,*
19 *except that such issuer shall be deemed to be an in-*
20 *vestment company for purposes of the limitations set*
21 *forth in subparagraphs (A)(i) and (B)(i) of section*
22 *12(d)(1) governing the purchase or other acquisition*
23 *by such issuer of any security issued by a registered*
24 *investment company and the sale of any security is-*

1 sued by a registered open-end investment company to
2 any such issuer.”.

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

4 Section 2(a) of the Investment Company Act of 1940
5 (15 U.S.C. 80a-2(a)) is amended by adding at the end the
6 following new paragraph:

7 “(51) ‘Qualified purchaser’ means—

8 “(A) any natural person who owns at least
9 \$10,000,000 in securities of issuers, each of
10 which is not an affiliated person, as defined in
11 section 2(a)(3)(C), of such person;

12 “(B) any person, acting for its own account
13 or the accounts of other qualified purchasers,
14 who in the aggregate owns and invests on a dis-
15 cretionary basis, not less than \$100,000,000 in
16 securities of issuers, each of which is not an af-
17 filiated person, as defined in section 2(a)(3)(C),
18 of such person; or

19 “(C) any person, who may own or invest a
20 lesser amount in securities than specified in sub-
21 paragraphs (A) and (B), that the Commission,
22 by rule or regulation, has determined does not
23 need the protections of this title, after consider-
24 ation of factors such as—

1 “(i) a high degree of financial sophis-
2 tication, including extensive knowledge of
3 and experience in financial matters;

4 “(ii) sizable net worth;

5 “(iii) a substantial amount of assets
6 owned or under management;

7 “(iv) relationship with an issuer; or

8 “(v) such other factors as the Commis-
9 sion may determine to be consistent with
10 the purpose of this paragraph.

11 *The Commission also may adopt such rules and regu-*
12 *lations governing the persons specified in subpara-*
13 *graphs (A) and (B) as it determines are necessary or*
14 *appropriate in the public interest and for the protec-*
15 *tion of investors.”.*

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

17 *Section 3(a) of the Investment Company Act of 1940*
18 *(15 U.S.C. 80a-3(a)) is amended in the last sentence by*
19 *striking subparagraph (C) and inserting the following: “(C)*
20 *securities issued by any majority-owned subsidiary of the*
21 *owner, unless such subsidiary is an investment company*
22 *or is excluded from the definition of an investment company*
23 *solely by virtue of paragraph (1) or (7) of subsection (c).”.*

1 **SEC. 6. EXEMPTION FOR ECONOMIC, BUSINESS, AND INDUS-**
2 **TRIAL DEVELOPMENT COMPANIES.**

3 *Section 6(a) of the Investment Company Act of 1940*
4 *(15 U.S.C. 80a-6(a)) is amended by adding at the end the*
5 *following new paragraph:*

6 “(5)(A) *Any company that is not engaged in the*
7 *business of issuing redeemable securities, the oper-*
8 *ations of which are subject to regulation by the State*
9 *in which the company is organized under a statute*
10 *governing entities that provide financial or manage-*
11 *rial assistance to enterprises doing business, or pro-*
12 *posing to do business, in that State if—*

13 “(i) *the organizational documents of the*
14 *company state that the activities of the company*
15 *are limited to the promotion of economic, busi-*
16 *ness, or industrial development in the State*
17 *through the provision of financial or managerial*
18 *assistance to enterprises doing business, or pro-*
19 *posing to do business, in that State, and such*
20 *other activities that are incidental or necessary*
21 *to carry out that purpose;*

22 “(ii) *immediately following each sale of the*
23 *securities of the company by the company or any*
24 *underwriter for the company, not less than 80*
25 *percent of the securities of the company being of-*
26 *fered in such sale, on a class-by-class basis, are*

1 *held by persons who reside or have a substantial*
2 *business presence in that State;*

3 “(iii) *the securities of the company are sold,*
4 *or proposed to be sold, by the company or any*
5 *underwriter for the company, solely to accredited*
6 *investors, as defined in section 2(15) of the Secu-*
7 *rities Act of 1933, or to such other persons that*
8 *the Commission, as necessary or appropriate in*
9 *the public interest and consistent with the pro-*
10 *tection of investors, may permit by rule, regula-*
11 *tion, or order; and*

12 “(iv) *the company does not purchase any*
13 *security issued by an investment company, as*
14 *defined in section 3, or by any company that*
15 *would be an investment company except for the*
16 *exclusions from the definition of investment com-*
17 *pany in section 3(c), other than—*

18 “(I) *any security that is rated invest-*
19 *ment grade by at least 1 nationally recog-*
20 *nized statistical rating organization; or*

21 “(II) *any security issued by a reg-*
22 *istered open-end investment company that*
23 *is required by its investment policies to in-*
24 *vest not less than 65 percent of its total as-*
25 *sets in securities described in subclause (I)*

1 or securities that are determined by such
2 registered open-end investment company to
3 be comparable in quality to securities de-
4 scribed in subclause (I).

5 “(B) Notwithstanding the exemption provided by
6 this paragraph, the provisions of section 9 (and, to
7 the extent necessary to enforce such provisions, sec-
8 tions 38 through 51) of this title shall apply to a com-
9 pany described in this paragraph as if the company
10 were an investment company registered under this
11 title.

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

17 “(D) Any company meeting the requirements of
18 this paragraph may rely on the exemption provided
19 by this paragraph upon filing with the Commission
20 the notification required by subparagraph (C), until
21 such time as the Commission determines by order that
22 such reliance is not in the public interest or consist-
23 ent with the protection of investors.

24 “(E) The exemption provided by this paragraph
25 may be subject to such additional terms and condi-

1 **SEC. 9. DEFINITION OF BUSINESS DEVELOPMENT COM-**
2 **PANY.**

3 *Section 2(a)(48)(B) of the Investment Company Act*
4 *of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by insert-*
5 *ing before the semicolon at the end the following: “, and*
6 *provided further that a business development company need*
7 *not make available significant managerial assistance with*
8 *respect to any company described in section*
9 *2(a)(46)(C)(iii), or with respect to any other company that*
10 *meets such criteria as the Commission may by rule, regula-*
11 *tion, or order permit, as consistent with the public interest,*
12 *the protection of investors, and the purposes fairly intended*
13 *by the policy and provisions of this title”.*

14 **SEC. 10. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
15 **MENT COMPANIES.**

16 *Section 55(a)(1)(A) of the Investment Company Act*
17 *of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—*

18 *(1) by striking “or from any person” and insert-*
19 *ing “from any person”; and*

20 *(2) by inserting before the semicolon “, or from*
21 *any other person, subject to such rules and regula-*
22 *tions as the Commission may prescribe as necessary*
23 *or appropriate in the public interest or for the protec-*
24 *tion of investors”.*

1 **SEC. 11. CAPITAL STRUCTURE AMENDMENTS.**

2 *Section 61(a) of the Investment Company Act of 1940*
3 *(15 U.S.C. 80a-60(a)) is amended—*

4 *(1) by striking paragraph (1) and inserting the*
5 *following:*

6 *“(1)(A) The asset coverage requirements of sub-*
7 *paragraphs (A) and (B) of section 18(a)(1) applicable*
8 *to business development companies shall be 200 per-*
9 *cent.*

10 *“(B) Notwithstanding subparagraph (A) of this*
11 *section or subparagraphs (A) and (B) of section*
12 *18(a)(2), a business development company may have*
13 *an asset coverage of not less than 110 percent, if, im-*
14 *mediately before the issuance or sale of senior securi-*
15 *ties, the business development company has—*

16 *“(i) total interest and dividend income for*
17 *the 12 months preceding such issuance or sale*
18 *that exceeds 120 percent of the sum of its total*
19 *expenses (including taxes and interest expenses*
20 *accrued) and dividends declared on senior secu-*
21 *rities for that 12-month period; and*

22 *“(ii) either—*

23 *“(I) an average of not less than 50 per-*
24 *cent of its assets invested in securities de-*
25 *scribed in paragraphs (1) through (5) of*

1 *section 55(a) throughout the preceding 12-*
2 *month period; or*

3 *“(II) not less than 50 percent of its as-*
4 *sets invested in securities described in para-*
5 *graphs (1) through (5) of section 55(a)*
6 *throughout 10 months of the preceding 12-*
7 *month period.*

8 *“(C) It shall be unlawful for any business devel-*
9 *opment company to issue any class of senior security*
10 *representing indebtedness, or to sell any such security*
11 *pursuant to subparagraph (B), unless provision is*
12 *made to prohibit the declaration of any dividend (ex-*
13 *cept a dividend payable in stock of the issuer), or the*
14 *declaration of any other distribution upon any class*
15 *of the capital stock of such business development com-*
16 *pany, or the purchase of any such capital stock, un-*
17 *less, in every such case—*

18 *“(i) the class of senior securities has, at the*
19 *time of the declaration of any such dividend or*
20 *distribution or at the time of any such purchase,*
21 *an asset coverage of not less than 110 percent*
22 *after deducting the amount of such dividend, dis-*
23 *tribution, or purchase price, as the case may be;*
24 *and*

1 “(ii) the business development company
2 complies with subparagraph (B)(i), except with
3 respect to any amounts that are required to be
4 distributed to maintain the status of the com-
5 pany as a regulated investment company under
6 the Internal Revenue Code of 1986.

7 “(D) It shall be unlawful for any business devel-
8 opment company to issue any class of senior security
9 representing stock, or to sell any such security pursu-
10 ant to subparagraph (B), unless provision is made to
11 prohibit the declaration of any dividend (except a
12 dividend payable in common stock of the issuer), or
13 the declaration of any other distribution, upon the
14 common stock of such business development company,
15 or the purchase of any such common stock, unless, in
16 every such case—

17 “(i) the class of senior securities has, at the
18 time of the declaration of any such dividend or
19 distribution or at the time of any such purchase
20 an asset coverage of not less than 110 percent
21 after deducting the amount of such dividend, dis-
22 tribution, or purchase price, as the case may be;
23 and

24 “(ii) the business development company
25 complies with subparagraph (B)(i), except with

1 *respect to any amounts that are required to be*
2 *distributed to maintain the status of the com-*
3 *pany as a regulated investment company under*
4 *the Internal Revenue Code of 1986.”;*

5 *(2) in paragraph (2), by striking “if such busi-*
6 *ness development company” and all that follows*
7 *through the end of paragraph (2) and inserting a pe-*
8 *riod;*

9 *(3) in paragraph (3)(A)—*

10 *(A) by striking “senior securities represent-*
11 *ing indebtedness accompanied by”;*

12 *(B) inserting “accompanied by securities,”*
13 *after “of such company,”; and*

14 *(C) in clause (ii), by striking “senior”; and*

15 *(4) in paragraph (3)—*

16 *(A) in subparagraph (A), by striking “and”*
17 *at the end;*

18 *(B) in subparagraph (B), by striking the*
19 *period at the end of clause (iv) and inserting “;*
20 *and”;* and

21 *(C) by inserting after subparagraph (B) the*
22 *following new subparagraph:*

23 *“(C) a business development company may*
24 *issue warrants, options, or rights to subscribe to,*

1 *convert to, or purchase voting securities not ac-*
2 *companied by securities, if—*

3 *“(i) such warrants, options, or rights*
4 *satisfy the conditions in clauses (i) and*
5 *(iii) of subparagraph (A); and*

6 *“(ii) the proposal to issue such war-*
7 *rants, options, or rights is authorized by the*
8 *shareholders or partners of such business de-*
9 *velopment company, and such issuance is*
10 *approved by the required majority (as de-*
11 *finied in section 57(o)) of the directors of or*
12 *general partners in such company on the*
13 *basis that such issuance is in the best inter-*
14 *ests of the company and its shareholders or*
15 *partners.”.*

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

17 *Section 64(b)(1) of the Investment Company Act of*
18 *1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting*
19 *“and capital structure” after “portfolio”.*

S 479 RS—2