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(Original signature of Member)

103D CONGRESS  
2D SESSION

**H. R. 4858**

\_\_\_\_\_  
**IN THE HOUSE OF REPRESENTATIVES**

Mr. MARKEY introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_  
\_\_\_\_\_

**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 busi-  
ness 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. FILING OF WRITTEN STATEMENTS.**

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