

112TH CONGRESS  
1ST SESSION

# H. R. 1070

---

## AN ACT

To amend the Securities Act of 1933 to require the Securities and Exchange Commission to exempt a certain class of securities from such Act.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Company Cap-  
3 ital Formation Act of 2011”.

4 **SEC. 2. AUTHORITY TO EXEMPT CERTAIN SECURITIES.**

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

7 (1) by striking “(b) The Commission” and in-  
8 serting the following:

9 “(b) ADDITIONAL EXEMPTIONS.—

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

12 (2) by adding at the end the following:

13 “(2) ADDITIONAL ISSUES.—The Commission  
14 shall by rule or regulation add a class of securities  
15 to the securities exempted pursuant to this section  
16 in accordance with the following terms and condi-  
17 tions:

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

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

25 “(C) The securities shall not be restricted  
26 securities within the meaning of the Federal se-

1 securities laws and the regulations promulgated  
2 thereunder.

3 “(D) The civil liability provision in section  
4 12(a)(2) shall apply to any person offering or  
5 selling such securities.

6 “(E) The issuer may solicit interest in the  
7 offering prior to filing any offering statement,  
8 on such terms and conditions as the Commis-  
9 sion may prescribe in the public interest or for  
10 the protection of investors.

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

14 “(G) Such other terms, conditions, or re-  
15 quirements as the Commission may determine  
16 necessary in the public interest and for the pro-  
17 tection of investors, which may include—

18 “(i) a requirement that the issuer pre-  
19 pare and electronically file with the Com-  
20 mission and distribute to prospective inves-  
21 tors an offering statement, and any related  
22 documents, in such form and with such  
23 content as prescribed by the Commission,  
24 including audited financial statements, a  
25 description of the issuer’s business oper-

1 ations, its financial condition, its corporate  
2 governance principles, its use of investor  
3 funds, and other appropriate matters; and

4 “(ii) disqualification provisions under  
5 which the exemption shall not be available  
6 to the issuer or its predecessors, affiliates,  
7 officers, directors, underwriters, or other  
8 related persons, which shall be substan-  
9 tially similar to the disqualification provi-  
10 sions contained in the regulations adopted  
11 in accordance with section 926 of the  
12 Dodd-Frank Wall Street Reform and Con-  
13 sumer Protection Act (15 U.S.C. 77d  
14 note).

15 “(3) LIMITATION.—Only the following types of  
16 securities may be exempted under a rule or regula-  
17 tion adopted pursuant to paragraph (2): equity secu-  
18 rities, debt securities, and debt securities convertible  
19 or exchangeable to equity interests, including any  
20 guarantees of such securities.

21 “(4) PERIODIC DISCLOSURES.—Upon such  
22 terms and conditions as the Commission determines  
23 necessary in the public interest and for the protec-  
24 tion of investors, the Commission by rule or regula-  
25 tion may require an issuer of a class of securities ex-

1       empted under paragraph (2) to make available to in-  
2       vestors and file with the Commission periodic disclo-  
3       sures regarding the issuer, its business operations,  
4       its financial condition, its corporate governance prin-  
5       ciples, its use of investor funds, and other appro-  
6       priate matters, and also may provide for the suspen-  
7       sion and termination of such a requirement with re-  
8       spect to that issuer.

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

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

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

1           (2) by redesignating subparagraph (D) as sub-  
2           paragraph (E), and inserting after subparagraph (C)  
3           the following:

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

6                           “(i) offered or sold on a national secu-  
7                           rities exchange; or

8                           “(ii) offered or sold to a qualified pur-  
9                           chaser, as defined by the Commission pur-  
10                          suant to paragraph (3) with respect to that  
11                          purchase or sale.”.

12           (c) CONFORMING AMENDMENT.—Section 4(5) of the  
13           Securities Act of 1933 is amended by striking “section  
14           3(b)” and inserting “section 3(b)(1)”.

15           **SEC. 3. STUDY ON THE IMPACT OF STATE BLUE SKY LAWS**  
16                           **ON REGULATION A OFFERINGS.**

17           The Comptroller General shall conduct a study on the  
18           impact of State laws regulating securities offerings, or  
19           “Blue Sky laws”, on offerings made under Regulation A  
20           (17 CFR 230.251 et seq.). The Comptroller General shall  
21           transmit a report on the findings of the study to the Com-  
22           mittee on Financial Services of the House of Representa-  
23           tives, and the Committee on Banking, Housing, and

- 1 Urban Affairs of the Senate not later than 3 months after
- 2 the date of enactment of this Act.

Passed the House of Representatives November 2,  
2011.

Attest:

*Clerk.*

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 1070**

---

**AN ACT**

To amend the Securities Act of 1933 to require the Securities and Exchange Commission to exempt a certain class of securities from such Act.