

1999

1 (2) by striking “subsection (e)(2)” and insert-  
2 ing “subsection (f)(2)”.

3 **TITLE VIII—SMALL BUSINESS**  
4 **CREDIT AVAILABILITY ACT**

5 **SEC. 801. SHORT TITLE.**

6 This title may be cited as the “Small Business Credit  
7 Availability Act”.

8 **SEC. 802. EXPANDING ACCESS TO CAPITAL FOR BUSINESS**  
9 **DEVELOPMENT COMPANIES.**

10 (a) IN GENERAL.—Section 61(a) of the Investment  
11 Company Act of 1940 (15 U.S.C. 80a–60(a)) is amend-  
12 ed—

13 (1) by redesignating paragraphs (2) through  
14 (4) as paragraphs (3) through (5), respectively; and

15 (2) by striking paragraph (1) and inserting the  
16 following:

17 “(1) Except as provided in paragraph (2), the  
18 asset coverage requirements of subparagraphs (A)  
19 and (B) of section 18(a)(1) (and any related rule  
20 promulgated under this Act) applicable to business  
21 development companies shall be 200 percent.

22 “(2) The asset coverage requirements of sub-  
23 paragraphs (A) and (B) of section 18(a)(1) and of  
24 subparagraphs (A) and (B) of section 18(a)(2) (and  
25 any related rule promulgated under this Act) appli-

1 cable to a business development company shall be  
2 150 percent if—

3 “(A) not later than 5 business days after  
4 the date on which those asset coverage require-  
5 ments are approved under subparagraph (D) of  
6 this paragraph, the business development com-  
7 pany discloses that the requirements were ap-  
8 proved, and the effective date of the approval,  
9 in—

10 “(i) any filing submitted to the Com-  
11 mission under section 13(a) or 15(d) of the  
12 Securities Exchange Act of 1934 (15  
13 U.S.C. 78m(a); 78o(d)); and

14 “(ii) a notice on the website of the  
15 business development company;

16 “(B) the business development company  
17 discloses, in each periodic filing required under  
18 section 13(a) of the Securities Exchange Act of  
19 1934 (15 U.S.C. 78m(a))—

20 “(i) the aggregate outstanding prin-  
21 cipal amount or liquidation preference, as  
22 applicable, of the senior securities issued  
23 by the business development company and  
24 the asset coverage percentage as of the  
25 date of the business development com-

2001

1           pany’s most recent financial statements in-  
2           cluded in that filing;

3           “(ii) that the business development  
4           company, under subparagraph (D), has ap-  
5           proved the asset coverage requirements  
6           under this paragraph; and

7           “(iii) the effective date of the approval  
8           described in clause (ii);

9           “(C) with respect to a business develop-  
10          ment company that is an issuer of common eq-  
11          uity securities, each periodic filing of the com-  
12          pany required under section 13(a) of the Secu-  
13          rities Exchange Act of 1934 (15 U.S.C.  
14          78m(a)) includes disclosures that are reason-  
15          ably designed to ensure that shareholders are  
16          informed of—

17               “(i) the amount of senior securities  
18               (and the associated asset coverage ratios)  
19               of the company, determined as of the date  
20               of the most recent financial statements of  
21               the company included in that filing; and

22               “(ii) the principal risk factors associ-  
23               ated with the senior securities described in  
24               clause (i), to the extent that risk is in-  
25               curred by the company; and

2002

1 “(D) the company—

2 “(i)(I) through a vote of the required  
3 majority (as defined in section 57(o)), ap-  
4 proves the application of this paragraph to  
5 the company, to become effective on the  
6 date that is 1 year after the date of the  
7 approval; or

8 “(II) obtains, at a special or annual  
9 meeting of shareholders or partners at  
10 which a quorum is present, the approval of  
11 more than 50 percent of the votes cast for  
12 the application of this paragraph to the  
13 company, to become effective on the first  
14 day after the date of the approval; and

15 “(ii) if the company is not an issuer  
16 of common equity securities that are listed  
17 on a national securities exchange, extends,  
18 to each person that is a shareholder as of  
19 the date of an approval described in sub-  
20 clause (I) or (II) of clause (i), as applica-  
21 ble, the opportunity (which may include a  
22 tender offer) to sell the securities held by  
23 that shareholder as of that applicable ap-  
24 proval date, with 25 percent of those secu-  
25 rities to be repurchased in each of the 4

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1           calendar quarters following the calendar  
2           quarter in which that applicable approval  
3           date takes place.”.

4       (b) CONFORMING AMENDMENTS.—

5           (1) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
6       tion 205(b)(3) of the Investment Advisers Act of  
7       1940 (15 U.S.C. 80b–5(b)(3)) is amended—

8           (A) by striking “section 61(a)(3)(B)(iii)”  
9           and inserting “section 61(a)(4)(B)(iii)”; and

10          (B) by striking “section 61(a)(3)(B)” and  
11          inserting “section 61(a)(4)(B)”.

12          (2) INVESTMENT COMPANY ACT OF 1940.—The  
13       Investment Company Act of 1940 (15 U.S.C. 80a–  
14       1 et seq.) is amended—

15          (A) in section 57 (15 U.S.C. 80a–56)—

16           (i) in subsection (j)(1), by striking  
17           “section 61(a)(3)(B)” and inserting “sec-  
18           tion 61(a)(4)(B)”; and

19           (ii) in subsection (n)(2), by striking  
20           “section 61(a)(3)(B)” and inserting “sec-  
21           tion 61(a)(4)(B)”; and

22          (B) in section 63(3) (15 U.S.C. 80a–  
23       62(3)), by striking “section 61(a)(3)” and in-  
24       serting “section 61(a)(4)”.

2004

1 **SEC. 803. PARITY FOR BUSINESS DEVELOPMENT COMPA-**  
2 **NIES REGARDING OFFERING AND PROXY**  
3 **RULES.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “business development company”  
6 has the meaning given the term in section 2(a) of  
7 the Investment Company Act of 1940 (15 U.S.C.  
8 80a–2(a));

9 (2) the term “Commission” means the Securi-  
10 ties and Exchange Commission;

11 (3) the term “Form N–2” means the form de-  
12 scribed in section 239.14 of title 17, Code of Federal  
13 Regulations;

14 (4) the term “Form S–3” means the form de-  
15 scribed in section 239.13 of title 17, Code of Federal  
16 Regulations; and

17 (5) the term “Schedule 14A” means the infor-  
18 mation required under section 240.14a–101 of title  
19 17, Code of Federal Regulations.

20 (b) REVISION TO RULES.—

21 (1) IN GENERAL.—Not later than 1 year after  
22 the date of enactment of this Act, the Commission  
23 shall make the revisions described in paragraph (2)  
24 to allow a business development company that has  
25 filed an election under section 54 of the Investment  
26 Company Act of 1940 (15 U.S.C. 80a–53) to use

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1 the securities offering and proxy rules that are avail-  
2 able to other issuers that are required to file reports  
3 under section 13(a) or section 15(d) of the Securi-  
4 ties Exchange Act of 1934 (15 U.S.C. 78m(a);  
5 78o(d)).

6 (2) REQUIRED REVISIONS.—The revisions de-  
7 scribed in this paragraph are revisions to—

8 (A) section 230.405 of title 17, Code of  
9 Federal Regulations—

10 (i) to remove the exclusion of a busi-  
11 ness development company from the defini-  
12 tion of the term “well-known seasoned  
13 issuer” under that section; and

14 (ii) to add a registration statement  
15 filed on Form N-2 to the definition of the  
16 term “automatic shelf registration state-  
17 ment” under that section;

18 (B) sections 230.168 and 230.169 of title  
19 17, Code of Federal Regulations, to remove the  
20 exclusion of a business development company  
21 from an issuer that is eligible for the exemp-  
22 tions under those sections;

23 (C) section 230.163 of title 17, Code of  
24 Federal Regulations, to remove a business de-  
25 velopment company from the list of issuers that

1           are ineligible for the exemption under that sec-  
2           tion;

3           (D) section 230.163A of title 17, Code of  
4           Federal Regulations, to remove the communica-  
5           tions made by a business development company  
6           from the list of communications that are ineli-  
7           gible for the exemption under that section;

8           (E) section 230.134 of title 17, Code of  
9           Federal Regulations, to remove the exclusion of  
10          a communication relating to a business develop-  
11          ment company from the application of that sec-  
12          tion;

13          (F) sections 230.138 and 230.139 of title  
14          17, Code of Federal Regulations, to specifically  
15          include a business development company as an  
16          issuer to which those sections apply;

17          (G) section 230.156 of title 17, Code of  
18          Federal Regulations, to provide that nothing in  
19          that section may be construed to prevent a  
20          business development company from qualifying  
21          for an exemption under section 230.168 or  
22          230.169 of title 17, Code of Federal Regula-  
23          tions, as amended by the Commission in accord-  
24          ance with the requirements of this section;



2007

1 (H) section 230.164 of title 17, Code of  
2 Federal Regulations, to remove a business de-  
3 velopment company from the list of issuers that  
4 are excluded under that section;

5 (I) section 230.433 of title 17, Code of  
6 Federal Regulations, to specifically include a  
7 business development company that is a well-  
8 known seasoned issuer as an issuer to which  
9 that section applies;

10 (J) section 230.415 of title 17, Code of  
11 Federal Regulations to state that the registra-  
12 tion for securities under section  
13 230.415(a)(1)(x) of title 17, Code of Federal  
14 Regulations, includes securities registered on  
15 Form N-2 by a business development company  
16 that would otherwise meet the eligibility re-  
17 quirements of Form S-3;

18 (K) section 230.497 of title 17, Code of  
19 Federal Regulations, to include a process for a  
20 business development company to file a form of  
21 prospectus in the same manner as the process  
22 for filing a form of prospectus under section  
23 230.424(b) of title 17, Code of Federal Regula-  
24 tions;

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1 (L) sections 230.172 and 230.173 of title  
2 17, Code of Federal Regulations, to remove the  
3 exclusion of an offering of a business develop-  
4 ment company from the application of those  
5 sections;

6 (M) section 230.418 of title 17, Code of  
7 Federal Regulations, to provide that a business  
8 development company that would otherwise  
9 meet the eligibility requirements of Form S-3  
10 shall be exempt from paragraph (a)(3) of that  
11 section;

12 (N) Schedule 14A to revise item 13(b)(1)  
13 of that Schedule to include a business develop-  
14 ment company that would otherwise meet the  
15 requirements of note E of that Schedule as an  
16 issuer to which that item applies;

17 (O) section 243.103 of title 17, Code of  
18 Federal Regulations, to provide that paragraph  
19 (a) of that section applies for the purposes of  
20 Form N-2; and

21 (P) item 34 on Form N-2 to require a  
22 business development company to provide un-  
23 dertakings that are no more restrictive than the  
24 undertakings that are required of a registrant

2009

1           under section 229.512 of title 17, Code of Fed-  
2           eral Regulations.

3           (c) REVISION TO FORM N-2.—Not later than 1 year  
4 after the date of enactment of this Act, the Commission  
5 shall revise Form N-2—

6           (1) to include an item or instruction that is  
7           similar to item 12 on Form S-3 to provide that a  
8           business development company that would otherwise  
9           meet the requirements of Form S-3 shall incor-  
10          porate by reference the reports and documents filed  
11          by the business development company under the Se-  
12          curities Exchange Act of 1934 (15 U.S.C. 78a et  
13          seq.) into the registration statement of the business  
14          development company filed on Form N-2; and

15          (2) to include an item or instruction that is  
16          similar to the instruction regarding automatic shelf  
17          offerings by well-known seasoned issuers on Form  
18          S-3 to provide that a business development company  
19          that is a well-known seasoned issuer may file auto-  
20          matic shelf offerings on Form N-2.

21          (d) TREATMENT IF REVISIONS NOT COMPLETED IN  
22 TIMELY MANNER.—If the Commission fails to complete  
23 the revisions required under subsections (b) and (c) by the  
24 dates described in those subsections, a business develop-  
25 ment company, during the period beginning on the date

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1 that is 1 day after 1 year after the date of enactment of  
2 this Act and ending on the date that the Commission com-  
3 pletes those revisions, may deem those revisions to have  
4 been completed in accordance with the actions required to  
5 be taken by the Commission under those subsections.

6 (e) RULES OF CONSTRUCTION.—

7 (1) TREATMENT OF SUCCESSOR REGULATIONS  
8 AND FORMS.—Any reference in this section to a reg-  
9 ulation or form shall be construed as a reference  
10 to—

11 (A) that regulation or form, as in effect on  
12 the day before the date of enactment of this  
13 Act; or

14 (B) any successor to that regulation or  
15 form.

16 (2) DISTRIBUTION OF SALES MATERIAL.—  
17 Nothing in this section, or in the amendments made  
18 pursuant to the requirements of this section, may be  
19 construed to prevent a business development com-  
20 pany from distributing sales material under section  
21 230.482 of title 17, Code of Federal Regulations.