

**AMENDMENT TO H.R. 5485, AS REPORTED
OFFERED BY MR. MULVANEY OF SOUTH
CAROLINA**

At the end of the bill (before the short title), insert
the following:

1 **TITLE XIII—SMALL BUSINESS**
2 **CREDIT AVAILABILITY ACT**

3 **SEC. 1301. SHORT TITLE.**

4 This title may be cited as the “Small Business Credit
5 Availability Act”.

6 **SEC. 1302. BUSINESS DEVELOPMENT COMPANY OWNER-**
7 **SHIP OF SECURITIES OF INVESTMENT ADVIS-**
8 **ERS AND CERTAIN FINANCIAL COMPANIES.**

9 (a) IN GENERAL.—

10 (1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of this Act, the Securities and
12 Exchange Commission shall promulgate regulations
13 to codify the order in Investment Company Act Re-
14 lease No. 30024, dated March 30, 2012. If the Com-
15 mission fails to complete the regulations as required
16 by this subsection, a business development company
17 shall be entitled to treat such regulations as having
18 been completed in accordance with the actions re-

1 quired to be taken by the Commission until such
2 time as such regulations are completed by the Com-
3 mission.

4 (2) RULE OF CONSTRUCTION.—Nothing in this
5 subsection shall prevent the Commission from
6 issuing rules to address potential conflicts of interest
7 between business development companies and invest-
8 ment advisers.

9 (b) PERMISSIBLE ASSETS OF AN ELIGIBLE PORT-
10 FOLIO COMPANY.—Section 55 of the Investment Company
11 Act of 1940 (15 U.S.C. 80a–54) is amended by adding
12 at the end the following:

13 “(c) SECURITIES DEEMED TO BE PERMISSIBLE AS-
14 SETS.—Notwithstanding subsection (a), securities that
15 would be described in paragraphs (1) through (6) of such
16 subsection except that the issuer is a company described
17 in paragraph (2), (3), (4), (5), (6), or (9) of section 3(c)
18 may be deemed to be assets described in paragraphs (1)
19 through (6) of subsection (a) to the extent necessary for
20 the sum of the assets to equal 70 percent of the value
21 of a business development company’s total assets (other
22 than assets described in paragraph (7) of subsection (a)),
23 provided that the aggregate value of such securities count-
24 ing toward such 70 percent shall not exceed 20 percent

1 of the value of the business development company's total
2 assets.”.

3 **SEC. 1303. EXPANDING ACCESS TO CAPITAL FOR BUSINESS**
4 **DEVELOPMENT COMPANIES.**

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

8 (1) by redesignating paragraphs (2) through
9 (4) as paragraphs (3) through (5), respectively;

10 (2) by striking paragraph (1) and inserting the
11 following:

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

17 “(2) The asset coverage requirements of sub-
18 paragraphs (A) and (B) of section 18(a)(1) and of
19 subparagraphs (A) and (B) of section 18(a)(2) (and
20 any related rule promulgated under this Act) appli-
21 cable to a business development company shall be
22 150 percent if—

23 “(A) within five business days of the ap-
24 proval of the adoption of the asset coverage re-
25 quirements described in clause (ii), the business

1 development company discloses such approval
2 and the date of its effectiveness in a Form 8-
3 K filed with the Commission and in a notice on
4 its website and discloses in its periodic filings
5 made under section 13 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78m)—

7 “(i) the aggregate value of the senior
8 securities issued by such company and the
9 asset coverage percentage as of the date of
10 such company’s most recent financial
11 statements; and

12 “(ii) that such company has adopted
13 the asset coverage requirements of this
14 subparagraph and the effective date of
15 such requirements;

16 “(B) with respect to a business develop-
17 ment company that issues equity securities that
18 are registered on a national securities exchange,
19 the periodic filings of the company under sec-
20 tion 13(a) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78m) include disclosures rea-
22 sonably designed to ensure that shareholders
23 are informed of—

24 “(i) the amount of indebtedness and
25 asset coverage ratio of the company, deter-

1 mined as of the date of the financial state-
2 ments of the company dated on or most re-
3 cently before the date of such filing; and

4 “(ii) the principal risk factors associ-
5 ated with such indebtedness, to the extent
6 such risk is incurred by the company; and

7 “(C)(i) the application of this paragraph to
8 the company is approved by the required major-
9 ity (as defined in section 57(o)) of the directors
10 of or general partners of such company who are
11 not interested persons of the business develop-
12 ment company, which application shall become
13 effective on the date that is 1 year after the
14 date of the approval, and, with respect to a
15 business development company that issues eq-
16 uity securities that are not registered on a na-
17 tional securities exchange, the company extends,
18 to each person who is a shareholder as of the
19 date of the approval, an offer to repurchase the
20 equity securities held by such person as of such
21 approval date, with 25 percent of such securi-
22 ties to be repurchased in each of the four quar-
23 ters following such approval date; or

24 “(ii) the company obtains, at a special or
25 annual meeting of shareholders or partners at

1 which a quorum is present, the approval of
2 more than 50 percent of the votes cast of the
3 application of this paragraph to the company,
4 which application shall become effective on the
5 date immediately after the date of the ap-
6 proval.”;

7 (3) in paragraph (3) (as redesignated), by in-
8 serting “or which is a stock, provided that all such
9 stock is issued in accordance with paragraph (6)”
10 after “indebtedness”;

11 (4) in subparagraph (A) of paragraph (4) (as
12 redesignated)—

13 (A) in the matter preceding clause (i), by
14 striking “voting”; and

15 (B) by amending clause (iii) to read as fol-
16 lows:

17 “(iii) the exercise or conversion price
18 at the date of issuance of such warrants,
19 options, or rights is not less than—

20 “(I) the market value of the se-
21 curities issuable upon the exercise of
22 such warrants, options, or rights at
23 the date of issuance of such warrants,
24 options, or rights; or

1 “(II) if no such market value ex-
2 ists, the net asset value of the securi-
3 ties issuable upon the exercise of such
4 warrants, options, or rights at the
5 date of issuance of such warrants, op-
6 tions, or rights; and”;

7 (5) by adding at the end the following:

8 “(6)(A) QUALIFIED INSTITUTIONAL BUYER.—
9 Except as provided in subparagraph (B), the fol-
10 lowing shall not apply to a senior security which is
11 a stock and which is issued to and held by a quali-
12 fied institutional buyer (as defined in section
13 3(a)(64) of the Securities Exchange Act of 1934):

14 “(i) Subparagraphs (C) and (D) of section
15 18(a)(2).

16 “(ii) Subparagraph (E) of section 18(a)(2),
17 to the extent such subparagraph requires any
18 priority over any other class of stock as to dis-
19 tribution of assets upon liquidation.

20 “(iii) With respect to a senior security
21 which is a stock, subsections (c) and (i) of sec-
22 tion 18.

23 “(B) INDIVIDUAL INVESTORS WHO ARE NOT
24 QUALIFIED INSTITUTIONAL BUYERS.—Subparagraph
25 (A) shall not apply with respect to a senior security

1 which is a stock and which is issued to a person who
2 is not known by the business development company
3 to be a qualified institutional buyer (as defined in
4 section 3(a) of the Securities Exchange Act of
5 1934).

6 “(7) RULE OF CONSTRUCTION.—Notwith-
7 standing any other provision of law, any additional
8 class of stock issued pursuant to this section must
9 be issued in accordance with all investor protections
10 contained in all applicable federal securities laws ad-
11 ministered by the Commission.”.

12 (b) CONFORMING AMENDMENTS.—The Investment
13 Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amend-
14 ed—

15 (1) in section 57—

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

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

22 (2) in section 63(3), by striking “section
23 61(a)(3)” and inserting “section 61(a)(4)”.

1 **SEC. 1304. PARITY FOR BUSINESS DEVELOPMENT COMPA-**
2 **NIES REGARDING OFFERING AND PROXY**
3 **RULES.**

4 (a) REVISION TO RULES.—Not later than 1 year
5 after the date of enactment of this Act, the Securities and
6 Exchange Commission shall revise any rules to the extent
7 necessary to allow a business development company that
8 has filed an election pursuant to section 54 of the Invest-
9 ment Company Act of 1940 (15 U.S.C. 80a–53) to use
10 the securities offering and proxy rules that are available
11 to other issuers that are required to file reports under sec-
12 tion 13 or section 15(d) of the Securities Exchange Act
13 of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the
14 Commission takes pursuant to this subsection shall in-
15 clude the following:

16 (1) The Commission shall revise rule 405 under
17 the Securities Act of 1933 (17 C.F.R. 230.405)—

18 (A) to remove the exclusion of a business
19 development company from the definition of a
20 well-known seasoned issuer provided by that
21 rule; and

22 (B) to add registration statements filed on
23 Form N–2 to the definition of automatic shelf
24 registration statement provided by that rule.

25 (2) The Commission shall revise rules 168 and
26 169 under the Securities Act of 1933 (17 C.F.R.

1 230.168 and 230.169) to remove the exclusion of a
2 business development company from an issuer that
3 can use the exemptions provided by those rules.

4 (3) The Commission shall revise rules 163 and
5 163A under the Securities Act of 1933 (17 C.F.R.
6 230.163 and 230.163A) to remove a business devel-
7 opment company from the list of issuers that are in-
8 eligible to use the exemptions provided by those
9 rules.

10 (4) The Commission shall revise rule 134 under
11 the Securities Act of 1933 (17 C.F.R. 230.134) to
12 remove the exclusion of a business development com-
13 pany from that rule.

14 (5) The Commission shall revise rules 138 and
15 139 under the Securities Act of 1933 (17 C.F.R.
16 230.138 and 230.139) to specifically include a busi-
17 ness development company as an issuer to which
18 those rules apply.

19 (6) The Commission shall revise rule 164 under
20 the Securities Act of 1933 (17 C.F.R. 230.164) to
21 remove a business development company from the
22 list of issuers that are excluded from that rule.

23 (7) The Commission shall revise rule 433 under
24 the Securities Act of 1933 (17 C.F.R. 230.433) to
25 specifically include a business development company

1 that is a well-known seasoned issuer as an issuer to
2 which that rule applies.

3 (8) The Commission shall revise rule 415 under
4 the Securities Act of 1933 (17 C.F.R. 230.415)—

5 (A) to state that the registration for secu-
6 rities provided by that rule includes securities
7 registered by a business development company
8 on Form N-2; and

9 (B) to provide an exception for a business
10 development company from the requirement
11 that a Form N-2 registrant must furnish the
12 undertakings required by item 34.4 of Form N-
13 2.

14 (9) The Commission shall revise rule 497 under
15 the Securities Act of 1933 (17 C.F.R. 230.497) to
16 include a process for a business development com-
17 pany to file a form of prospectus that is parallel to
18 the process for filing a form of prospectus under
19 rule 424(b).

20 (10) The Commission shall revise rules 172 and
21 173 under the Securities Act of 1933 (17 C.F.R.
22 230.172 and 230.173) to remove the exclusion of an
23 offering of a business development company from
24 those rules.

1 (11) The Commission shall revise rule 418
2 under the Securities Act of 1933 (17 C.F.R.
3 230.418) to provide that a business development
4 company that would otherwise meet the eligibility re-
5 quirements of General Instruction I.A of Form S-3
6 shall be exempt from paragraph (a)(3) of that rule.

7 (12) The Commission shall revise rule 14a-101
8 under the Securities Exchange Act of 1934 (17
9 C.F.R. 240.14a-101) to provide that a business de-
10 velopment company that would otherwise meet the
11 requirements of General Instruction I.A of Form S-
12 3 shall be deemed to meet the requirements of Form
13 S-3 for purposes of Schedule 14A.

14 (13) The Commission shall revise rule 103
15 under Regulation FD (17 C.F.R. 243.103) to pro-
16 vide that paragraph (a) of that rule applies for pur-
17 poses of Form N-2.

18 (b) REVISION TO FORM N-2.—Not later than 1 year
19 after the date of enactment of this Act, the Commission
20 shall revise Form N-2—

21 (1) to include an item or instruction that is
22 similar to item 12 on Form S-3 to provide that a
23 business development company that would otherwise
24 meet the requirements of Form S-3 shall incor-
25 porate by reference its reports and documents filed

1 under the Securities Exchange Act of 1934 into its
2 registration statement filed on Form N-2; and

3 (2) to include an item or instruction that is
4 similar to the instruction regarding automatic shelf
5 offerings by well-known seasoned issuers on Form
6 S-3 to provide that a business development company
7 that is a well-known seasoned issuer may file auto-
8 matic shelf offerings on Form N-2.

9 (c) TREATMENT IF REVISIONS NOT COMPLETED IN
10 TIMELY MANNER.—If the Commission fails to complete
11 the revisions required by subsections (a) and (b) by the
12 time required by such subsections, a business development
13 company shall be entitled to treat such revisions as having
14 been completed in accordance with the actions required to
15 be taken by the Commission by such subsections until such
16 time as such revisions are completed by the Commission.

17 (d) RULE OF CONSTRUCTION.—Any reference in this
18 section to a rule or form means such rule or form or any
19 successor rule or form.

