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:

TITLE XIII—SMALL BUSINESS CREDIT AVAILABILITY ACT

SEC. 1301. SHORT TITLE.

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

SEC. 1302. BUSINESS DEVELOPMENT COMPANY OWNERSHIP OF SECURITIES OF INVESTMENT ADVISERS AND CERTAIN FINANCIAL COMPANIES.

(a) IN GENERAL.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall promulgate regulations to codify the order in Investment Company Act Release No. 30024, dated March 30, 2012. If the Commission fails to complete the regulations as required by this subsection, a business development company shall be entitled to treat such regulations as having been completed in accordance with the actions re-
quired to be taken by the Commission until such
time as such regulations are completed by the Com-
mission.

(2) Rule of Construction.—Nothing in this
subsection shall prevent the Commission from
issuing rules to address potential conflicts of interest
between business development companies and invest-
ment advisers.

(b) Permissible Assets of an Eligible Port-
folio Company.—Section 55 of the Investment Company
Act of 1940 (15 U.S.C. 80a–54) is amended by adding
at the end the following:

“(c) Securities Deemed to Be Permissible As-
sets.—Notwithstanding subsection (a), securities that
would be described in paragraphs (1) through (6) of such
subsection except that the issuer is a company described
in paragraph (2), (3), (4), (5), (6), or (9) of section 3(c)
may be deemed to be assets described in paragraphs (1)
through (6) of subsection (a) to the extent necessary for
the sum of the assets to equal 70 percent of the value
of a business development company’s total assets (other
than assets described in paragraph (7) of subsection (a)),
provided that the aggregate value of such securities count-
ing toward such 70 percent shall not exceed 20 percent
of the value of the business development company’s total
assets.”.

SEC. 1303. EXPANDING ACCESS TO CAPITAL FOR BUSINESS
DEVELOPMENT COMPANIES.

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

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

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

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

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

“(A) within five business days of the ap-
proval of the adoption of the asset coverage re-
quirements described in clause (ii), the business
development company discloses such approval
and the date of its effectiveness in a Form 8–
K filed with the Commission and in a notice on
its website and discloses in its periodic filings
made under section 13 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78m)—

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

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

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

“(i) the amount of indebtedness and
asset coverage ratio of the company, deter-
mined as of the date of the financial statements of the company dated on or most recently before the date of such filing; and

“(ii) the principal risk factors associated with such indebtedness, to the extent such risk is incurred by the company; and

“(C)(i) the application of this paragraph to the company is approved by the required majority (as defined in section 57(o)) of the directors of or general partners of such company who are not interested persons of the business development company, which application shall become effective on the date that is 1 year after the date of the approval, and, with respect to a business development company that issues equity securities that are not registered on a national securities exchange, the company extends, to each person who is a shareholder as of the date of the approval, an offer to repurchase the equity securities held by such person as of such approval date, with 25 percent of such securities to be repurchased in each of the four quarters following such approval date; or

“(ii) the company obtains, at a special or annual meeting of shareholders or partners at
which a quorum is present, the approval of
more than 50 percent of the votes cast of the
application of this paragraph to the company,
which application shall become effective on the
date immediately after the date of the ap-
proval.”;

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

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

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

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

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

“(I) the market value of the se-
curities issuable upon the exercise of
such warrants, options, or rights at
the date of issuance of such warrants,
options, or rights; or
“(II) if no such market value exists, the net asset value of the securities issuable upon the exercise of such warrants, options, or rights at the date of issuance of such warrants, options, or rights; and”;

(5) by adding at the end the following:

“(6)(A) QUALIFIED INSTITUTIONAL BUYER.—Except as provided in subparagraph (B), the following shall not apply to a senior security which is a stock and which is issued to and held by a qualified institutional buyer (as defined in section 3(a)(64) of the Securities Exchange Act of 1934):

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

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

“(iii) With respect to a senior security which is a stock, subsections (c) and (i) of section 18.

“(B) INDIVIDUAL INVESTORS WHO ARE NOT QUALIFIED INSTITUTIONAL BUYERS.—Subparagraph (A) shall not apply with respect to a senior security
which is a stock and which is issued to a person who
is not known by the business development company
to be a qualified institutional buyer (as defined in
section 3(a) of the Securities Exchange Act of
1934).

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

(b) Conforming Amendments.—The Investment
Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amend-
ed—

(1) in section 57—

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

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

(2) in section 63(3), by striking “section
61(a)(3)” and inserting “section 61(a)(4)”. 
SEC. 1304. PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING AND PROXY RULES.

(a) Revision to Rules.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall revise any rules to the extent necessary to allow a business development company that has filed an election pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53) to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)). Any action that the Commission takes pursuant to this subsection shall include the following:

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

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

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

(2) The Commission shall revise rules 168 and 169 under the Securities Act of 1933 (17 C.F.R.
230.168 and 230.169) to remove the exclusion of a business development company from an issuer that can use the exemptions provided by those rules.

(3) The Commission shall revise rules 163 and 163A under the Securities Act of 1933 (17 C.F.R. 230.163 and 230.163A) to remove a business development company from the list of issuers that are ineligible to use the exemptions provided by those rules.

(4) The Commission shall revise rule 134 under the Securities Act of 1933 (17 C.F.R. 230.134) to remove the exclusion of a business development company from that rule.

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

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

(7) The Commission shall revise rule 433 under the Securities Act of 1933 (17 C.F.R. 230.433) to specifically include a business development company
that is a well-known seasoned issuer as an issuer to
which that rule applies.

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

(A) to state that the registration for secur-
ities provided by that rule includes securities
registered by a business development company
on Form N–2; and

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

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

(10) The Commission shall revise rules 172 and
173 under the Securities Act of 1933 (17 C.F.R.
230.172 and 230.173) to remove the exclusion of an
offering of a business development company from
those rules.
(11) The Commission shall revise rule 418 under the Securities Act of 1933 (17 C.F.R. 230.418) to provide that a business development company that would otherwise meet the eligibility requirements of General Instruction I.A of Form S–3 shall be exempt from paragraph (a)(3) of that rule.

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

(13) The Commission shall revise rule 103 under Regulation FD (17 C.F.R. 243.103) to provide that paragraph (a) of that rule applies for purposes of Form N–2.

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

(1) to include an item or instruction that is similar to item 12 on Form S–3 to provide that a business development company that would otherwise meet the requirements of Form S–3 shall incorporate by reference its reports and documents filed
under the Securities Exchange Act of 1934 into its registration statement filed on Form N–2; and

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

(e) Treatment if Revisions Not Completed in Timely Manner.—If the Commission fails to complete the revisions required by subsections (a) and (b) by the time required by such subsections, a business development company shall be entitled to treat such revisions as having been completed in accordance with the actions required to be taken by the Commission by such subsections until such time as such revisions are completed by the Commission.

(d) Rule of Construction.—Any reference in this section to a rule or form means such rule or form or any successor rule or form.