

MARCH 14, 2018

**RULES COMMITTEE PRINT 115–66**  
**TEXT OF H.R. 4267, SMALL BUSINESS CREDIT**  
**AVAILABILITY ACT**

**[Showing the text of H.R. 4267 as ordered reported by the  
Committee on Financial Services.]**

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. EXPANDING ACCESS TO CAPITAL FOR BUSINESS DE-**  
5 **VELOPMENT COMPANIES.**

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

9           (1) by redesignating paragraphs (2) through  
10       (4) as paragraphs (3) through (5), respectively; and  
11       (2) by striking paragraph (1) and inserting the  
12       following:

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

1           “(2) The asset coverage requirements of sub-  
2       paragraphs (A) and (B) of section 18(a)(1) and of  
3       subparagraphs (A) and (B) of section 18(a)(2) (and  
4       any related rule promulgated under this Act) appli-  
5       cable to a business development company shall be  
6       150 percent if—

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

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

21           “(ii) that such company has adopted  
22      the asset coverage requirements of this  
23      paragraph and the effective date of such  
24      requirements;

1 “(B) with respect to a business develop-  
2 ment company that issues equity securities that  
3 are registered on a national securities exchange,  
4 the periodic filings of the company under sec-  
5 tion 13(a) of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78m(a)) include disclosures  
7 reasonably designed to ensure that shareholders  
8 are informed of—

9 “(i) the amount of indebtedness and  
10 asset coverage ratio of the company, deter-  
11 mined as of the date of the financial state-  
12 ments of the company dated on or most re-  
13 cently before the date of such filing; and

14 “(ii) the principal risk factors associ-  
15 ated with such indebtedness, to the extent  
16 such risk is incurred by the company; and

17 “(C)(i) the application of this paragraph to  
18 the company is approved by the required major-  
19 ity (as defined in section 57(o)) of the directors  
20 of or general partners of such company who are  
21 not interested persons of the business develop-  
22 ment company, which application shall become  
23 effective on the date that is 1 year after the  
24 date of the approval, and, with respect to a  
25 business development company that issues eq-

1           uity securities that are not registered on a na-  
2           tional securities exchange, the company extends,  
3           to each person who is a shareholder as of the  
4           date of the approval, an offer to repurchase the  
5           equity securities held by such person as of such  
6           approval date, with 25 percent of such securi-  
7           ties to be repurchased in each of the four quar-  
8           ters following such approval date; or

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

17       (b) CONFORMING AMENDMENTS.—

18           (1) INVESTMENT COMPANY ACT OF 1940.—The  
19       Investment Company Act of 1940 (15 U.S.C. 80a–  
20       1 et seq.) is amended—

21           (A) in section 57—

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

1 (ii) in subsection (n)(2), by striking  
2 “section 61(a)(3)(B)” and inserting “sec-  
3 tion 61(a)(4)(B)”;  
4 (B) in section 63(3), by striking “section  
5 61(a)(3)” and inserting “section 61(a)(4)”.

6 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
7 tion 205(b)(3) of the Investment Advisers Act of  
8 1940 (15 U.S.C. 80b–5(b)(3)) is amended—  
9 (A) by striking “section 61(a)(3)(B)(iii)”  
10 and inserting “section 61(a)(4)(B)(iii)”;  
11 (B) by striking “section 61(a)(3)(B)” and  
12 inserting “section 61(a)(4)(B)”.

13 **SEC. 3. PARITY FOR BUSINESS DEVELOPMENT COMPANIES**  
14 **REGARDING OFFERING AND PROXY RULES.**

15 (a) REVISION TO RULES.—Not later than 1 year  
16 after the date of enactment of this Act, the Securities and  
17 Exchange Commission shall revise any rules to the extent  
18 necessary to allow a business development company that  
19 has filed an election pursuant to section 54 of the Invest-  
20 ment Company Act of 1940 (15 U.S.C. 80a–53) to use  
21 the securities offering and proxy rules that are available  
22 to other issuers that are required to file reports under sec-  
23 tion 13(a) or section 15(d) of the Securities Exchange Act  
24 of 1934 (15 U.S.C. 78m(a); 78o(d)). Any action that the

1 Commission takes pursuant to this subsection shall in-  
2 clude the following:

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

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

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

12 (2) The Commission shall revise rules 168 and  
13 169 under the Securities Act of 1933 (17 C.F.R.  
14 230.168 and 230.169) to remove the exclusion of a  
15 business development company from an issuer that  
16 can use the exemptions provided by those rules.

17 (3) The Commission shall revise rules 163 and  
18 163A under the Securities Act of 1933 (17 C.F.R.  
19 230.163 and 230.163A) to remove a business devel-  
20 opment company from the list of issuers that are in-  
21 eligible to use the exemptions provided by those  
22 rules.

23 (4) The Commission shall revise rule 134 under  
24 the Securities Act of 1933 (17 C.F.R. 230.134) to

1       remove the exclusion of a business development com-  
2       pany from that rule.

3           (5) The Commission shall revise rules 138 and  
4       139 under the Securities Act of 1933 (17 C.F.R.  
5       230.138 and 230.139) to specifically include a busi-  
6       ness development company as an issuer to which  
7       those rules apply.

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

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

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

19           (A) to state that the registration for secu-  
20      rities provided by that rule includes securities  
21      registered by a business development company  
22      on Form N-2; and

23           (B) to provide an exception for a business  
24      development company from the requirement  
25      that a Form N-2 registrant must furnish the

1 undertakings required by item 34.4 of Form N-

2 2.

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

9 (10) The Commission shall revise rules 172 and  
10 173 under the Securities Act of 1933 (17 C.F.R.  
11 230.172 and 230.173) to remove the exclusion of an  
12 offering of a business development company from  
13 those rules.

14 (11) The Commission shall revise rule 418  
15 under the Securities Act of 1933 (17 C.F.R.  
16 230.418) to provide that a business development  
17 company that would otherwise meet the eligibility re-  
18 quirements of General Instruction I.A of Form S-3  
19 shall be exempt from paragraph (a)(3) of that rule.

20 (12) The Commission shall revise rule 14a-101  
21 under the Securities Exchange Act of 1934 (17  
22 C.F.R. 240.14a-101) to provide that a business de-  
23 velopment company that would otherwise meet the  
24 requirements of General Instruction I.A of Form S-



1        3 shall be deemed to meet the requirements of Form  
2        S-3 for purposes of Schedule 14A.

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

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

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

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

23        (c) TREATMENT IF REVISIONS NOT COMPLETED IN  
24        TIMELY MANNER.—If the Commission fails to complete  
25        the revisions required by subsections (a) and (b) by the

1 time required by such subsections, a business development  
2 company shall be entitled to treat such revisions as having  
3 been completed in accordance with the actions required to  
4 be taken by the Commission by such subsections until such  
5 time as such revisions are completed by the Commission.

6 (d) RULE OF CONSTRUCTION.—Any reference in this  
7 section to a rule or form means such rule or form or any  
8 successor rule or form.

