

SEC SMALL BUSINESS ADVOCATE ACT OF 2015

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FEBRUARY 1, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HENSARLING, from the Committee on Financial Services,  
submitted the following

R E P O R T

[To accompany H.R. 3784]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3784) to amend the Securities Exchange Act of 1934 to establish an Office of the Advocate for Small Business Capital Formation and a Small Business Capital Formation Advisory Committee, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “SEC Small Business Advocate Act of 2015”.

**SEC. 2. ESTABLISHMENT OF OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION AND SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.**

(a) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

“(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the ‘Office’).

“(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

“(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

“(i) report directly to the Commission; and

“(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

“(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

“(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

“(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

“(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

“(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

“(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

“(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned and women-owned small businesses;

“(D) analyze the potential impact on small businesses and small business investors of—

“(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

“(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

“(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

“(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

“(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

“(H) advise the Investor Advocate on issues related to small businesses and small business investors.

“(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

“(6) ANNUAL REPORT ON ACTIVITIES.—

“(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

“(B) CONTENTS.—Each report required under subparagraph (A) shall include—

“(i) appropriate statistical information and full and substantive analysis;

“(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

“(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned and women-owned small businesses and their investors, during the reporting period;

“(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

“(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

“(II) the length of time that each item has remained on such inventory; and

“(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

“(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

“(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

“(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

“(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

“(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

“(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1).

“(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.”.

(b) SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

**“SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.**

“(a) ESTABLISHMENT AND PURPOSE.—

“(1) ESTABLISHMENT.—There is established within the Commission the Small Business Capital Formation Advisory Committee (hereafter in this section referred to as the ‘Committee’).

“(2) FUNCTIONS.—

“(A) IN GENERAL.—The Committee shall provide the Commission with advice on the Commission’s rules, regulations, and policies with regard to the Commission’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to—

“(i) capital raising by emerging, privately held small businesses (‘emerging companies’) and publicly traded companies with less than \$250,000,000 in public market capitalization (‘smaller public companies’) through securities offerings, including private and limited offerings and initial and other public offerings;

“(ii) trading in the securities of emerging companies and smaller public companies; and

“(iii) public reporting and corporate governance requirements of emerging companies and smaller public companies.

“(B) LIMITATION.—The Committee shall not provide any advice with respect to any policies, practices, actions, or decisions concerning the Commission’s enforcement program.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

“(A) the Advocate for Small Business Capital Formation;

“(B) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals—

“(i) who represent—

“(I) emerging companies engaging in private and limited securities offerings or considering initial public offerings (‘IPO’) (including the companies’ officers and directors);

“(II) the professional advisors of such companies (including attorneys, accountants, investment bankers, and financial advisors); and  
 “(III) the investors in such companies (including angel investors, venture capital funds, and family offices);  
 “(ii) who are officers or directors of minority-owned small businesses and women-owned small businesses;

“(iii) who represent—

“(I) smaller public companies (including the companies’ officers and directors);

“(II) the professional advisors of such companies (including attorneys, auditors, underwriters, and financial advisors); and

“(III) the pre-IPO and post-IPO investors in such companies (both institutional, such as venture capital funds, and individual, such as angel investors); and

“(iv) who represent participants in the marketplace for the securities of emerging companies and smaller public companies, such as securities exchanges, alternative trading systems, analysts, information processors, and transfer agents; and

“(C) 3 non-voting members—

“(i) 1 of whom shall be appointed by the Investor Advocate;

“(ii) 1 of whom shall be appointed by the North American Securities Administrators Association; and

“(iii) 1 of whom shall be appointed by the Administrator of the Small Business Administration.

“(2) TERM.—Each member of the Committee appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall serve for a term of 4 years.

“(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall not be treated as employees or agents of the Commission solely because of membership on the Committee.

“(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

“(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman;

“(B) a vice chairman;

“(C) a secretary; and

“(D) an assistant secretary.

“(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) MEETINGS.—

“(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

“(A) not less frequently than four times annually, at the call of the chairman of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

“(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

“(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

“(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission shall—

“(1) review the findings and recommendations of the Committee; and

“(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.”.

(c) ANNUAL GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—Section 503(a) of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1(a)) is amended by inserting “(acting through the Office of the Advocate for Small Business Capital Formation and in consultation with the Small Business Capital Formation Advisory Committee)” after “Securities and Exchange Commission”.

#### PURPOSE AND SUMMARY

Introduced by Representative Carney on October 21, 2015, H.R. 3784, the SEC Small Business Advocate Act of 2015, establishes the Office for Small Business Capital Formation (OSBCF) and the Small Business Capital Formation Advisory Committee (Advisory Committee) within the Securities and Exchange Commission (SEC). The OSBCF is led by the Advocate for Small Business Capital Formation (Advocate), who is appointed by and reports to the Commission, with the responsibility to, among other things:

- Help small businesses resolve problems with the SEC;
- Analyze the potential impact of proposed rules and regulations that are likely to have a significant effect on small businesses; and
- Reach out to small businesses to understand issues related to capital formation.

The Advisory Committee provides advice to the Commission on rules and policies related to capital formulation, securities trading, and reporting and governance requirements for emerging and smaller public companies.

#### BACKGROUND AND NEED FOR LEGISLATION

Small businesses create more jobs than any other business sector in the United States. In 2010, the Kauffman Foundation found that startups create an average of 3 million jobs annually, noting that “without startups, there would be no net job growth in the U.S. economy.” In the Jumpstart Our Business Startups (JOBS) Act, Congress recognized the importance of these companies in creating jobs and fostering economic growth. To help these companies access the capital markets, the JOBS Act expanded the use of private securities offerings under Regulation A and Regulation D and created a category of issuers known as “Emerging Growth Companies,” or EGCs, which are companies that have annual gross revenue of less than \$1 billion. The JOBS Act exempted EGCs from some of the most onerous securities regulations.

Although small companies are at the forefront of technological innovation and job creation, they often face significant obstacles to obtaining funding in the capital markets. These obstacles are often attributable to the proportionately larger burden that securities regulations—written for large public companies—place on small companies when they seek to go public. Although no one disputes that smart regulation is needed to maintain fair, orderly and efficient markets, to protect investors, and to facilitate capital formation, almost everyone agrees that excessive and unnecessary regulation imposes costs on individual businesses and the economy that far outweigh its benefits. But excessive and unnecessary regulation imposes even greater costs on startups. By passing the JOBS Act, Congress took an important step toward easing the regulatory bur-

den on small businesses and startups seeking access to capital markets. H.R. 3784 facilitates the elimination and streamlining of regulations that make it difficult for small businesses to grow their businesses and create jobs.

The SEC has a three-part mission: to protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation. The SEC acknowledges that promoting capital formation “is necessary to sustain economic growth.” Although the SEC’s budget is now almost four times the size it was in 2000, the SEC has given short shrift to the capital formation component of its statutory mandate—to the detriment of entrepreneurs and start-up ventures.

Many small companies still cannot access the capital they need to grow their businesses and create jobs. According to one survey, 58% of respondents believe the current business financing environment is restricting growth opportunities while 48% of respondents believe it is restricting their ability to hire new employees. While the JOBS Act has made it easier for these companies to go public, the JOBS Act alone was not enough to entirely overcome the obstacles these companies face in trying to go public. The tightening of credit, which has resulted from both the financial crisis and the effects of implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, has made equity financing all the more important as a means for small companies to obtain the capital they need to grow and create jobs.

Currently, the responsibility to facilitate and promote capital formation resides within the SEC’s Office of Small Business Policy (OSBP), which is housed within the SEC’s Division of Corporation Finance. OSBP answers questions on disclosure and other issues relating to smaller public companies, including those classified as “smaller reporting companies,” and on limited, private, and intrastate offerings of securities. OSBP also processes requests for waivers of disqualification arising under Rule 262 of Regulation A and Rule 505(b)(2)(iii) and Rule 506(d)(2)(ii) of Regulation D. In addition, OSBP reaches out to smaller companies to facilitate capital formation. These efforts include coordinating the annual SEC Government-Business Forum on Small Business Capital Formation, which focuses on the current status of issues and programs related to small business capital formation.

Unfortunately, the OSBP is a functional office rather than an advocacy office. The OSBP does not advocate for changes to the securities laws for smaller public companies, small businesses seeking equity capital, or investors in those companies or businesses. The OSBP does not advance initiatives to make equity capital more readily available to smaller issuers. Rather than neglecting the needs of small businesses, a permanent office dedicated to small business capital formation within the SEC is a logical outcome of the JOBS Act since the SEC has taken little to no action to advance the many recommendations the agency has received from its annual Government-Business Forum on Small Business Capital Formation (Forum) to help small businesses and EGCs access the capital markets.

A major purpose of the Forum is to identify unnecessary impediments to small business capital formation and find ways to eliminate or reduce them. Each Forum develops recommendations for

government and private action to improve the environment for small business capital formation. But the SEC rarely, if ever, acts on the recommendations made by the Forum's participants, which include small business executives, venture capitalists, government officials, trade association representatives, lawyers, accountants, academics and small business advocates. For example, the crowdfunding and Regulation A+ provisions of the JOBS Act mirrored the Forum's recommendations to the SEC, which the SEC had previously ignored. Additionally, experts at these Forums have expressed concerns about the declining number of IPOs and burdens in complying with Regulation D. Titles I and II of the JOBS Act directly responded to those concerns.

H.R. 3784 promotes capital formation and creates an office within the SEC to advocate for the job creators and entrepreneurs seeking equity capital as well as their investors. The office will then be able to leverage the recommendations the SEC has collected and prompt the SEC to act on those most likely to help small businesses and EGCs access the capital markets. At a December 2, 2015, Subcommittee on Capital Markets and Government Sponsored Enterprises hearing, Chris Mathieu, Chief Financial Officer of Horizon Technology Finance, testifying on behalf of the Small Business Investor Alliance (SBIA), stated that "the SEC Small Business Advocate Act strengthens the voice of small business at the SEC by making significant changes to the way the SEC hears from small business stakeholders; responds to stakeholder requests; and makes recommendations to Congress and the SEC to improve the ability of small business to access capital." Mr. Mathieu further noted that "[s]maller business investors have a much lower threshold for pain and the SEC needs to understand the challenges of scale when creating policy."

At the same hearing, Brian Hahn, the chief financial officer of GlycoMimetics, testifying on behalf of the Biotechnology Industry Organization (BIO), stated that "[t]he Small Business Advocate would serve as a partner to the existing Investor Advocate, giving small businesses an independent voice at the SEC and helping the SEC to understand the impact of regulatory burdens on growing companies as it considers new compliance requirements."

#### HEARINGS

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 3784 on December 2, 2015.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 8, 2015 and December 9, 2015, and ordered H.R. 3784 to be reported favorably to the House as amended by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC-85), a quorum being present. Two amendments offered by Representative Ellison were not agreed to by recorded votes as described below. An amendment offered by Representative Waters was agreed to by a voice vote.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. An amendment offered by Representative Ellison was not agreed to by a recorded vote of 18 ayes–38 nays (FC–83). A second amendment offered by Representative Ellison was not agreed to by a recorded vote of 21 ayes–35 nays (FC–84). The third and final recorded vote was a motion by Chairman Hensarling to report the bill favorably to the House as amended. That motion was agreed to by a recorded vote of 56 yeas to 0 nays (Record vote no. FC–85), a quorum being present.

## Record vote no. FC-83

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....		X		Ms. Waters (CA) .....	X		
Mr. King (NY) .....		X		Mrs. Maloney (NY) .....	X		
Mr. Royce .....		X		Ms. Velázquez .....	X		
Mr. Lucas .....		X		Mr. Sherman .....	X		
Mr. Garrett .....		X		Mr. Meeks .....	X		
Mr. Neugebauer .....		X		Mr. Capuano .....	X		
Mr. McHenry .....				Mr. Hinojosa .....			
Mr. Pearce .....		X		Mr. Clay .....			
Mr. Posey .....		X		Mr. Lynch .....	X		
Mr. Fitzpatrick .....		X		Mr. David Scott (GA) .....		X	
Mr. Westmoreland .....		X		Mr. Al Green (TX) .....	X		
Mr. Luetkemeyer .....		X		Mr. Cleaver .....	X		
Mr. Huizenga (MI) .....		X		Ms. Moore .....	X		
Mr. Duffy .....		X		Mr. Ellison .....	X		
Mr. Hurt (VA) .....		X		Mr. Perlmutter .....			
Mr. Stivers .....		X		Mr. Himes .....	X		
Mr. Fincher .....		X		Mr. Carney .....		X	
Mr. Stutzman .....		X		Ms. Sewell (AL) .....	X		
Mr. Mulvaney .....		X		Mr. Foster .....		X	
Mr. Hultgren .....		X		Mr. Kildee .....	X		
Mr. Ross .....		X		Mr. Murphy (FL) .....	X		
Mr. Pittenger .....		X		Mr. Delaney .....		X	
Mrs. Wagner .....		X		Ms. Sinema .....		X	
Mr. Barr .....		X		Mrs. Beatty .....	X		
Mr. Rothfus .....		X		Mr. Heck (WA) .....	X		
Mr. Messer .....		X		Mr. Vargas .....	X		
Mr. Schweikert .....		X					
Mr. Guinta .....		X					
Mr. Tipton .....		X					
Mr. Williams .....		X					
Mr. Poliquin .....		X					
Mrs. Love .....		X					
Mr. Hill .....		X					
Mr. Emmer .....		X					

## Record vote no. FC-84

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....		X		Ms. Waters (CA) .....	X		
Mr. King (NY) .....		X		Mrs. Maloney (NY) .....	X		
Mr. Royce .....		X		Ms. Velázquez .....	X		
Mr. Lucas .....		X		Mr. Sherman .....	X		
Mr. Garrett .....		X		Mr. Meeks .....	X		
Mr. Neugebauer .....		X		Mr. Capuano .....	X		
Mr. McHenry .....				Mr. Hinojosa .....			
Mr. Pearce .....		X		Mr. Clay .....			
Mr. Posey .....		X		Mr. Lynch .....	X		
Mr. Fitzpatrick .....		X		Mr. David Scott (GA) .....	X		
Mr. Westmoreland .....		X		Mr. Al Green (TX) .....	X		
Mr. Luetkemeyer .....		X		Mr. Cleaver .....	X		
Mr. Huizenga (MI) .....		X		Ms. Moore .....	X		
Mr. Duffy .....		X		Mr. Ellison .....	X		
Mr. Hurt (VA) .....		X		Mr. Perlmutter .....			
Mr. Stivers .....		X		Mr. Himes .....	X		
Mr. Fincher .....		X		Mr. Carney .....		X	
Mr. Stutzman .....		X		Ms. Sewell (AL) .....	X		
Mr. Mulvaney .....		X		Mr. Foster .....	X		
Mr. Hultgren .....		X		Mr. Kildee .....	X		
Mr. Ross .....		X		Mr. Murphy (FL) .....	X		
Mr. Pittenger .....		X		Mr. Delaney .....	X		
Mrs. Wagner .....		X		Ms. Sinema .....		X	
Mr. Barr .....		X		Mrs. Beatty .....	X		
Mr. Rothfus .....		X		Mr. Heck (WA) .....	X		
Mr. Messer .....		X		Mr. Vargas .....	X		
Mr. Schweikert .....		X					
Mr. Guinta .....		X					
Mr. Tipton .....		X					
Mr. Williams .....		X					
Mr. Poliquin .....		X					
Mrs. Love .....		X					
Mr. Hill .....		X					
Mr. Emmer .....		X					

## Record vote no. FC-85

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters (CA) .....	X		
Mr. King (NY) .....	X			Mrs. Maloney (NY) .....	X		
Mr. Royce .....	X			Ms. Velázquez .....	X		
Mr. Lucas .....	X			Mr. Sherman .....	X		
Mr. Garrett .....	X			Mr. Meeks .....	X		
Mr. Neugebauer .....	X			Mr. Capuano .....	X		
Mr. McHenry .....				Mr. Hinojosa .....			
Mr. Pearce .....	X			Mr. Clay .....			
Mr. Posey .....	X			Mr. Lynch .....	X		
Mr. Fitzpatrick .....	X			Mr. David Scott (GA) .....	X		
Mr. Westmoreland .....	X			Mr. Al Green (TX) .....	X		
Mr. Luetkemeyer .....	X			Mr. Cleaver .....	X		
Mr. Huizenga (MI) .....	X			Ms. Moore .....	X		
Mr. Duffy .....	X			Mr. Ellison .....	X		
Mr. Hurt (VA) .....	X			Mr. Perlmutter .....			
Mr. Stivers .....	X			Mr. Himes .....	X		
Mr. Fincher .....	X			Mr. Carney .....	X		
Mr. Stutzman .....	X			Ms. Sewell (AL) .....	X		
Mr. Mulvaney .....	X			Mr. Foster .....	X		
Mr. Hultgren .....	X			Mr. Kildee .....	X		
Mr. Ross .....	X			Mr. Murphy (FL) .....	X		
Mr. Pittenger .....	X			Mr. Delaney .....	X		
Mrs. Wagner .....	X			Ms. Sinema .....	X		
Mr. Barr .....	X			Mrs. Beatty .....	X		
Mr. Rothfus .....	X			Mr. Heck (WA) .....	X		
Mr. Messer .....	X			Mr. Vargas .....	X		
Mr. Schweikert .....	X						
Mr. Guinta .....	X						
Mr. Tipton .....	X						
Mr. Williams .....	X						
Mr. Poliquin .....	X						
Mrs. Love .....	X						
Mr. Hill .....	X						
Mr. Emmer .....	X						

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3784 will ensure that the issues related to small business capital formation are a priority at the SEC. Additionally, H.R. 3784 will provide an independent voice for small business capital formation, on par with the SEC's Investor Advocate, to support the interests of small businesses and provide guidance to the Commission on advancing a post-JOBS Act capital formation agenda.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 15, 2016.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3784, the SEC Small Business Advocate Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

ROBERT A. SUNSHINE,  
(For Keith Hall, *Director*).

Enclosure.

*H.R. 3784—SEC Small Business Advocate Act of 2015*

H.R. 3784 would establish the Office for Small Business Capital Formation and the Small Business Capital Formation Advisory Committee within the Securities and Exchange Commission (SEC).

The office would be led by the Advocate for Small Business Capital Formation, who would be appointed by and report to the commission, with the responsibility to, among other things:

- Help small businesses resolve problems with the SEC;
- Analyze the potential impact of proposed rules and regulations that are likely to have a significant effect on small businesses; and
- Reach out to small businesses to understand issues related to capital formation.

The advisory committee would provide advice to the commission on rules and policies related to capital formulation, securities trading, and reporting and governance requirements for emerging and smaller public companies.

Based on information from the SEC, CBO estimates that implementing H.R. 3784 would cost about \$2 million per year for personnel and administrative costs of the new office and for administrative support for the advisory committee. Over the 2016–2020 period, CBO estimates that implementing the bill would cost \$7 million. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that implementing H.R. 3784 would have a negligible effect on net discretionary costs, assuming appropriation actions consistent with that authority.

Enacting H.R. 3784 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 3784 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

H.R. 3784 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees to offset the costs of implementing the bill, H.R. 3784 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the aggregate cost of the mandate would amount to about \$2 million per year over the 2016–2020 period and would fall below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Logan Smith (for private-sector mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

H.R. 3784 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 3784 establishes or re-authorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 3784 contains no directed rulemaking.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section cites H.R. 3784 as the “SEC Small Business Advocate Act of 2015.”

*Section 2. Establishment of Office of the Advocate for Small Business Capital Formation and Small Business Capital Formation Advisory Committee*

This section amends Section 4 of the Securities Exchange Act of 1934 to establish the Office of the Advocate for Small Business Capital Formation. The Small Business Advocate (Advocate) would direct and manage the Office and would report directly to the five Commissioners. Generally, the Advocate will assist small businesses and their investors to resolve significant problems with the SEC or self-regulatory organizations and identify issues and propose changes to statutes, regulations, and rules to benefit small businesses and their investors and facilitate capital formation. The Advocate is tasked with a number of duties, including the requirement to identify problems related to access to capital; to analyze the potential impact on small businesses and small business investors of proposed SEC and SRO rules that will have a significant economic impact on them.

The SEC is required to issue a formal response to all recommendations submitted by the Office. Additionally, the Office must issue an annual report to Committees on Financial Services and Banking and would be responsible for the annual Government-Business Forum on Small Business Capital Formation.

H.R. 3784 also establishes the SEC Small Business Advisory Committee (Committee). The Committee will provide the SEC with advice on capital formation, securities trading, public reporting, and corporate governance for “emerging, privately held businesses” (“emerging companies”) and “smaller public companies” (companies with less than \$250 million in market capitalization). Committee members include, but not limited to, the Advocate and between 10–20 members appointed by the SEC including (1) representatives of “emerging companies” and “smaller public companies,” (2) professional advisors to such companies, (3) pre- and post-IPO investors in such companies, (4) representatives of exchanges, Alternative Trading Systems research analysts, and transfer agents; and (5) officers or directors of minority or women-owned small businesses.

The Committee will also have non-voting members to include the SEC Investor Advocate, a North American Securities Administrators Association representative, and a representative of the Small Business Administration. Finally, the SEC is required to review the Committee’s recommendations and promptly issue a public statement assessing them and disclosing the action, if any, the SEC intends to take.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

### SECURITIES EXCHANGE ACT OF 1934

#### TITLE I—REGULATION OF SECURITIES EXCHANGES

\* \* \* \* \*

#### SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the “Commission”) to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Con-

gress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may pro-

vide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the “Office”).

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

- (i) during the 2-year period ending on the date of appointment as Investor Advocate; or
- (ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

- (A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;
- (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;
- (C) identify problems that investors have with financial service providers and investment products;
- (D) analyze the potential impact on investors of—

- (i) proposed regulations of the Commission; and
  - (ii) proposed rules of self-regulatory organizations registered under this title; and
- (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.
- (5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.
- (6) ANNUAL REPORTS.—
  - (A) REPORT ON OBJECTIVES.—
    - (i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.
    - (ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.
  - (B) REPORT ON ACTIVITIES.—
    - (i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.
    - (ii) CONTENTS.—Each report required under clause (i) shall include—
      - (I) appropriate statistical information and full and substantive analysis;
      - (II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;
      - (III) a summary of the most serious problems encountered by investors during the reporting period;
      - (IV) an inventory of the items described in subclause (III) that includes—
        - (aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;
        - (bb) the length of time that each item has remained on such inventory; and
        - (cc) for items on which no action has been taken, the reasons for inaction, and an identi-

fication of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed \$50,000,000; and

(ii) the balance in the Fund may not exceed \$100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—*There is established within the Commission the Office of the Advocate for Small Business Cap-*

*ital Formation (hereafter in this subsection referred to as the "Office").*

*(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—*

*(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—*

*(i) report directly to the Commission; and*

*(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.*

*(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.*

*(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.*

*(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.*

*(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—*

*(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;*

*(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;*

*(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned and women-owned small businesses;*

*(D) analyze the potential impact on small businesses and small business investors of—*

*(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and*

*(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;*

*(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;*

*(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;*

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) ACCESS TO DOCUMENTS.—*The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.*

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—*Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.*

(B) CONTENTS.—*Each report required under subparagraph (A) shall include—*

*(i) appropriate statistical information and full and substantive analysis;*

*(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;*

*(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned and women-owned small businesses and their investors, during the reporting period;*

*(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—*

*(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;*

*(II) the length of time that each item has remained on such inventory; and*

*(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;*

*(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses*

and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) *CONFIDENTIALITY*.—No report required by subparagraph (A) may contain confidential information.

(D) *INDEPENDENCE*.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) *REGULATIONS*.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) *GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION*.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1).

(9) *RULE OF CONSTRUCTION*.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

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#### **SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.**

(a) *ESTABLISHMENT AND PURPOSE*.—

(1) *ESTABLISHMENT*.—There is established within the Commission the Small Business Capital Formation Advisory Committee (hereafter in this section referred to as the “Committee”).

(2) *FUNCTIONS*.—

(A) *IN GENERAL*.—The Committee shall provide the Commission with advice on the Commission’s rules, regulations, and policies with regard to the Commission’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to—

(i) capital raising by emerging, privately held small businesses (“emerging companies”) and publicly traded companies with less than \$250,000,000 in public market capitalization (“smaller public companies”) through securities offerings, including private and limited offerings and initial and other public offerings;

(ii) trading in the securities of emerging companies and smaller public companies; and

(iii) public reporting and corporate governance requirements of emerging companies and smaller public companies.

(B) *LIMITATION.*—The Committee shall not provide any advice with respect to any policies, practices, actions, or decisions concerning the Commission’s enforcement program.

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—The members of the Committee shall be—

(A) the Advocate for Small Business Capital Formation;

(B) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals—

(i) who represent—

(I) emerging companies engaging in private and limited securities offerings or considering initial public offerings (“IPO”) (including the companies’ officers and directors);

(II) the professional advisors of such companies (including attorneys, accountants, investment bankers, and financial advisors); and

(III) the investors in such companies (including angel investors, venture capital funds, and family offices);

(ii) who are officers or directors of minority-owned small businesses and women-owned small businesses;

(iii) who represent—

(I) smaller public companies (including the companies’ officers and directors);

(II) the professional advisors of such companies (including attorneys, auditors, underwriters, and financial advisors); and

(III) the pre-IPO and post-IPO investors in such companies (both institutional, such as venture capital funds, and individual, such as angel investors); and

(iv) who represent participants in the marketplace for the securities of emerging companies and smaller public companies, such as securities exchanges, alternative trading systems, analysts, information processors, and transfer agents; and

(C) 3 non-voting members—

(i) 1 of whom shall be appointed by the Investor Advocate;

(ii) 1 of whom shall be appointed by the North American Securities Administrators Association; and

(iii) 1 of whom shall be appointed by the Administrator of the Small Business Administration.

(2) *TERM.*—Each member of the Committee appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall serve for a term of 4 years.

(3) *MEMBERS NOT COMMISSION EMPLOYEES.*—Members appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall not be treated as employees or agents of the Commission solely because of membership on the Committee.

(c) *CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.*—

(1) *IN GENERAL.*—The members of the Committee shall elect, from among the members of the Committee—

(A) a chairman;

- (B) a vice chairman;
- (C) a secretary; and
- (D) an assistant secretary.

(2) *TERM.*—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

(d) *MEETINGS.*—

(1) *FREQUENCY OF MEETINGS.*—The Committee shall meet—

(A) not less frequently than four times annually, at the call of the chairman of the Committee; and

(B) from time to time, at the call of the Commission.

(2) *NOTICE.*—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.

(e) *COMPENSATION AND TRAVEL EXPENSES.*—Each member of the Committee who is not a full-time employee of the United States shall—

(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(f) *STAFF.*—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

(g) *REVIEW BY COMMISSION.*—The Commission shall—

(1) review the findings and recommendations of the Committee; and

(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

(A) assessing the finding or recommendation of the Committee; and

(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

(h) *FEDERAL ADVISORY COMMITTEE ACT.*—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

\* \* \* \* \*

## SECTION 503 OF THE SMALL BUSINESS INVESTMENT INCENTIVE ACT OF 1980

ANNUAL GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION

SEC. 503. (a) Pursuant to the consultation called for in section 502, the Securities and Exchange Commission (*acting through the*

*Office of the Advocate for Small Business Capital Formation and in consultation with the Small Business Capital Formation Advisory Committee*) shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

(b) The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration, organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b), or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

(d) A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

