113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
113–342

SMALL CAP LIQUIDITY REFORM ACT OF 2013

FEBRUARY 5, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3448]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3448) to amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks, 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 "Small Cap Liquidity Reform Act of 2013".

SEC. 2. LIQUIDITY PILOT PROGRAM FOR SECURITIES OF CERTAIN EMERGING GROWTH COMPANIES.

(a) IN GENERAL.—Section 11A(c)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is amended to read as follows:

"(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES OF CERTAIN EMERGING GROWTH COMPANIES.—

"(A) QUOTING INCREMENT.—Beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of a covered emerging growth company shall be quoted using—

"(i) a minimum increment of $0.05; or

"(ii) if, not later than 60 days after such date of enactment, the company so elects in the manner described in subparagraph (D)—

"(I) a minimum increment of $0.10; or

"(II) the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(B) TRADING INCREMENT.—In the case of a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph, the Commission shall determine the increment at which the securities of such company are traded.

"(C) FUTURE RIGHT TO OPT OUT OR CHANGE MINIMUM INCREMENT.—

"(i) IN GENERAL.—At any time beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph may elect in the manner described in subparagraph (D)—

"(I) for the securities of such company to be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph; or

"(II) to change the minimum increment at which the securities of such company are quoted from $0.05 to $0.10 or from $0.10 to $0.05.

"(ii) WHEN ELECTION EFFECTIVE.—An election under this subparagraph shall take effect on the date that is 30 days after such election is made.

"(iii) SINGLE ELECTION TO CHANGE MINIMUM INCREMENT.—A covered emerging growth company may not make more than one election under clause (i)(II).

"(D) MANNER OF ELECTION.—

"(i) IN GENERAL.—An election is made in the manner described in this subparagraph by informing the Commission of such election.

"(ii) NOTIFICATION OF EXCHANGES AND OTHER TRADING VENUES.—Upon being informed of an election under clause (i), the Commission shall notify each exchange or other trading venue where the securities of the covered emerging growth company are quoted or traded.

"(E) ISSUERS CEASING TO BE COVERED EMERGING GROWTH COMPANIES.—

"(i) IN GENERAL.—If an issuer the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph ceases to be a covered emerging growth company, the securities of such issuer shall be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(ii) EXCEPTIONS.—The Commission may by regulation, as the Commission considers appropriate, specify any circumstances under which an issuer shall continue to be considered a covered emerging growth company for purposes of this paragraph after the issuer ceases to meet the requirements of subparagraph (L)(i).

"(F) SECURITIES TRADING BELOW $1.—

"(i) INITIAL PRICE.—

"(I) AT EFFECTIVE DATE.—If the trading price of the securities of a covered emerging growth company is below $1 at the close of the last trading day before the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(II) AT IPO.—If a covered emerging growth company makes an initial public offering after the day described in subclause (I) and the first share of the securities of such company is offered to the public at a price below $1, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(ii) AVERAGE TRADING PRICE.—If the average trading price of the securities of a covered emerging growth company falls below $1 for any 90-day period beginning on or after the day before the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall, after the end of such period, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(G) FRAUD OR MANIPULATION.—If the Commission determines that a covered emerging growth company has violated any provision of the securities laws prohibiting fraudulent, manipulative, or deceptive acts or practices, the securities of such company shall, after the date of the determination, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(H) INELIGIBILITY FOR INCREASED MINIMUM INCREMENT PERMANENT.—The securities of an issuer may not be quoted at a minimum increment of $0.05 or $0.10 under this paragraph at any time after—

"(i) such issuer makes an election under subparagraph (A)(ii)(II);

"(ii) such issuer makes an election under subparagraph (C)(i)(I), except during the period before such election takes effect; or

"(iii) the securities of such issuer are required by this paragraph to be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

"(I) ADDITIONAL REPORTS AND DISCLOSURES.—The Commission shall require a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph to make such reports and disclosures as the Commission considers necessary or appropriate in the public interest or for the protection of investors.

"(J) LIMITATION OF LIABILITY.—An issuer (or any officer, director, manager, or other agent of such issuer) shall not be liable to any person (other than such issuer) under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or any contract or other legally enforceable agreement (including any arbitration agreement) for any losses caused solely by the quoting of the securities of such issuer at a minimum increment of $0.05 or $0.10, by the trading of such securities at the increment determined by the Commission under subparagraph (B), or by both such quoting and trading, as provided in this paragraph.

"(K) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, and every 6 months thereafter, the Commission, in coordination with each exchange on which the securities of covered emerging growth companies are quoted or traded, shall submit to Congress a report on the quoting and trading of securities in increments permitted by this paragraph and the extent to which such quoting and trading are increasing liquidity and active trading by incentivizing capital commitment, research coverage, and brokerage support, together with any legislative recommendations the Commission may have.

"(L) DEFINITIONS.—In this paragraph:

"(i) COVERED EMERGING GROWTH COMPANY.—The term 'covered emerging growth company' means an emerging growth company, as defined in the first paragraph (80) of section 3(a), except that—

"(I) such paragraph shall be applied by substituting '$750,000,000' for '$1,000,000,000' each place it appears; and

"(II) subparagraphs (B), (C), and (D) of such paragraph do not apply.

"(ii) SECURITY.—The term 'security' means an equity security.

"(M) SAVINGS PROVISION.—Notwithstanding any other provision of this paragraph, the Commission may—

"(i) make such adjustments to the pilot program specified in this paragraph as the Commission considers necessary or appropriate to ensure that such program can provide statistically meaningful or reliable results, including adjustments to eliminate selection bias among participants, expand the number of participants eligible to participate in such program, and change the duration of such program for one or more participants; and

"(ii) conduct any other study or pilot program, in conjunction with or separate from the pilot program specified in this paragraph (as such program may be adjusted pursuant to clause (i)), to evaluate quoting or trading in various minimum increments.".

(b) SUNSET.—Effective on the date that is 5 years after the date of the enactment of this Act, section 11A(c)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is repealed.

PURPOSE AND SUMMARY

In 2000, the Securities and Exchange Commission (SEC) ordered U.S. securities exchanges to change their quotations in equity securities and options from fractions to decimals.[1] This process, known as "decimalization," was completed in April 2001.[2] In 2005, the SEC adopted Rule 612 of Regulation National Market System (Reg. NMS)—also known as the Sub-Penny Rule—to establish a minimum price variation, or "tick size," of one penny ($.01) for all stocks listed on U.S. securities exchanges.[3]

Recently, some equity market participants have argued that the move to decimal pricing and penny tick sizes has significantly re-

[1] *See* Securities and Exchange Commission, Regulation NMS, Rel. No. 34–51808 (June 9, 2005).

[2] *See id.*

[3] *See* Securities and Exchange Commission, Report to Congress on Decimalization (July 2012).

duced liquidity in publicly-traded small-cap stocks, thereby hindering the ability of these companies to grow and create jobs. H.R. 3448, the Small Cap Liquidity Reform Act of 2013, would amend Section 11A(c)(6) of the Securities Exchange Act of 1934 (Exchange Act) to provide for a pilot program administered by the SEC allowing certain Emerging Growth Companies (EGCs), a category of issuers recently established in Title I of the Jumpstart Our Business Startups (JOBS) Act (P.L. 112–106), with a stock price above $1.00 to increase the tick size at which their stocks would be quoted from $.01 to $.05, or, if the EGC's board of directors so elects, $.10. Under H.R. 3448, the SEC would determine in its discretion the minimum tick size at which a participating EGC's stock would be traded.

BACKGROUND AND NEED FOR LEGISLATION

As noted above, some equity market participants have argued that decimalization and penny tick sizes have significantly harmed liquidity in publicly-traded small-cap stocks. For example, according to Jeff Solomon, Chief Executive Officer of Cowen and Company:

> One of the principal reasons for the lack of liquidity in small cap stocks can be directly attributed to the advent of decimalization, meaning trading in penny increments. As a direct result of reduced trading spreads, professional market makers and specialists, whose job was to provide liquidity for their clientele, were forced to overhaul, sell or dissolve their businesses to contend with much lower revenues. This, in turn, gave rise to two market forces affecting market structure—electronic trading and reduced research coverage of small cap stocks.

In written testimony before the Subcommittee on Capital Markets and Government Sponsored Enterprises, Tom Quaadman, Vice President of the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce, expressed a similar view, stating that "trading in pennies has impacted the available liquidity in some thinly traded stocks, including many small-cap stocks."

Market participants have claimed that the reduction in liquidity caused by the move to penny tick sizes for small-cap stocks has made trading these stocks more difficult and disincentivized other small companies from accessing the capital markets through initial public offerings (IPOs). This, in turn, has hindered small business capital formation and job creation. In written testimony before the Subcommittee on Capital Markets and Government Sponsored Enterprises, David Wield, Chairman and CEO of IssuWorks Holdings LLC, stated:

> Inadequate tick sizes (the smallest increment by which a stock can be bought or sold) have eroded the economic infrastructure required to support small cap stocks. Inadequate tick sizes leave insufficient revenue to pay for needed visibility (research and sales) and liquidity (capital commitment) that support investment in small capitalization stocks once they are public. Fewer IPOs means fewer U.S. jobs.

As a result, market participants have argued that an SEC-administered pilot program to widen tick sizes for certain EGCs will enhance liquidity in small cap stocks, leading to improvements in small business capital formation and job creation. In his written testimony before the Subcommittee, Mr. Wield stated that H.R. 3448 "will lead to more liquidity . . . which will bring more institutional investment . . . which will raise stock prices in smaller stocks . . . leading to more IPOs and more job creation that will grow the economy." The Securities and Financial Markets Association (SIFMA) also offered its support for H.R. 3448 before the Subcommittee, stating:

> [SIFMA] generally believe[s] that a pilot program which widens quote increments for small and mid-cap securities could increase trading liquidity in those securities. Increased liquidity in the small and mid-cap market will create a more fertile environment for small and emerging growth companies to tap the public markets, with broader market participation in the sector and the potential for increased research coverage to better inform and educate investors on both the opportunities and risks. We know that these companies can be an engine for economic growth, and the sponsors of these proposals are right to consider additional ways to ensure entrepreneurs have access to the capital they need.

Mr. Quaadman of the U.S. Chamber of Commerce added that H.R. 3448 will "ensure that we have a market structure that supports capital formation for all public companies. This legislation would permit scientific evidence-based rulemaking, which, in our opinion, is the best kind."

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on legislative text that later became H.R. 3448 on October 24, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2013, and ordered H.R. 3448 to be reported favorably to the House without amendment by a recorded vote of 57 yeas to 0 nays (recorded vote no. FC–39), a quorum being present.

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.

1. A motion by Chairman Hensarling to report the bill (H.R. 3448) with an amendment to the House with a favorable recommendation was agreed to by a record vote of 57 yeas to 0 nays (recorded vote no. FC–39).

RECORD VOTE NO. FC–39

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters	X		
Mr. Gary G. Miller (CA)	X			Mrs. Maloney (NY)	X		
Mr. Bachus	X			Ms. Velázquez	X		
Mr. King (NY)	X			Mr. Watt	X		
Mr. Royce	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mrs. Capito	X			Mr. Capuano	X		
Mr. Garrett	X			Mr. Hinojosa	X		
Mr. Neugebauer	X			Mr. Clay	X		
Mr. McHenry	X			Mrs. McCarthy (NY)			
Mr. Campbell				Mr. Lynch			
Mrs. Bachmann				Mr. David Scott (GA)	X		
Mr. McCarthy (CA)	X			Mr. Al Green (TX)	X		
Mr. Pearce	X			Mr. Cleaver	X		
Mr. Posey	X			Ms. Moore	X		
Mr. Fitzpatrick	X			Mr. Ellison	X		
Mr. Westmoreland	X			Mr. Perlmutter	X		
Mr. Luetkemeyer	X			Mr. Himes	X		
Mr. Huizenga (MI)	X			Mr. Peters (MI)	X		
Mr. Duffy	X			Mr. Carney	X		
Mr. Hurt	X			Ms. Sewell (AL)	X		
Mr. Grimm	X			Mr. Foster	X		
Mr. Stivers	X			Mr. Kildee	X		
Mr. Fincher	X			Mr. Murphy (FL)	X		
Mr. Stutzman	X			Mr. Delaney	X		
Mr. Mulvaney	X			Ms. Sinema	X		
Mr. Hultgren	X			Mrs. Beatty	X		
Mr. Ross	X			Mr. Heck (WA)	X		
Mr. Pittenger	X						
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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. 3448 amends Section 11A(c)(6) of the Exchange Act to provide for a pilot program administered by the SEC allowing certain EGCs with a stock price above $1.00 to increase the tick size at which their stocks would be quoted from $.01 to $.05, or, if the EGC's board of directors so elects, $.10.

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 14, 2014.

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. 3448, the Small Cap Liquidity Reform Act of 2013.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3448—Small Cap Liquidity Reform Act of 2013

CBO estimates that implementing H.R. 3448 would have an insignificant effect on gross spending by the Securities and Exchange Commission (SEC) to establish a pilot program that would change the minimum increment that the price of a stock could change (the tick size) for certain securities. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 3448 would establish a five-year program that would allow the price of securities issued by smaller companies to change in increments of 5 or 10 cents, rather than the penny increments that are currently the standard for most stocks traded on U.S. exchanges. Under the pilot program the SEC would set the tick size for certain small companies at 5 cents; however, those companies would have the option to select a 10-cent increment. Further, the program would allow a one-time option to change the tick size from 5 cents to 10 cents or vice versa. H.R. 3448 also would require the SEC to submit biannual reports to the Congress showing the extent to which different tick sizes are affecting liquidity and trading activity. CBO expects that changes in the workload of the SEC to implement the pilot program would not be significant because the agency has already begun efforts to develop such a program.

H.R. 3448 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by providing liability protection to issuers of securities of companies participating in the pilot program. Such issuers would not be liable for any losses caused by the quoting or trading of their securities at increments established under the program. Pro-

viding such protection would impose a mandate on both public and private investors that would otherwise be able to sue the issuers to recover losses related to tick size. The protection also would impose an intergovernmental mandate by preempting state and local liability laws.

The cost of the mandate would be the forgone value of awards and settlements in such claims. Because the securities of companies covered by the liability protection are more risky than other securities, few public entities invest in them, and those that do limit the size of such investments. Consequently, CBO estimates that any potential losses tied to the mandate would be small. In addition, the costs, if any, of the preemption would be small because it would impose no duty that would result in additional spending or a loss of revenues. Therefore, CBO estimates the cost to public entities of complying with the mandates in the bill would fall below the annual threshold for intergovernmental mandates established in UMRA ($76 million in 2014, adjusted annually for inflation).

Because of uncertainty about both the value of awards in such cases and the number of claims that would be filed in the absence of this provision, CBO cannot estimate the level of potential awards or settlements that would otherwise accrue to private investors. Therefore, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates ($152 million in 2014, adjusted annually for inflation).

In addition to those mandates, the bill would impose a private-sector mandate on companies in the pilot program established in the bill by requiring them to notify the SEC if they elect to not participate. Based on information from the SEC, CBO estimates that the cost to comply with that mandate would be minimal.

The CBO staff contacts for this estimate are Susan Willie (for federal costs), Melissa Merrell (for the state and local impact), and Paige Piper/Bach (for the impact on the private sector). The estimate was approved by Theresa Gullo, 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. 3448 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(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 3448 establishes or reauthorizes 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(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 3448 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 3448 as the "Small Cap Liquidity Reform Act of 2013."

Section 2. Liquidity Pilot Program for securities of certain emerging growth companies

This section: creates a pilot program under which the securities of covered EGCs may be quoted using small increments; permits covered EGCs to opt out of the pilot program; gives the SEC attendant authorities to carry out the program and detect fraud or manipulation; requires semiannual reports to Congress on the effect of the pilot program on liquidity; sets out definitions for the Act; sets forth certain savings provisions; and sunsets the pilot program after five years.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

NATIONAL MARKET SYSTEM FOR SECURITIES; SECURITIES INFORMATION PROCESSORS

SEC. 11A. (a) * * *

* * * * * * *

(c)(1) * * *

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[(6) TICK SIZE.—

[(A) STUDY AND REPORT.—The Commission shall conduct a study examining the transition to trading and quoting securities in one penny increments, also known as decimalization. The study shall examine the impact that decimalization has had on the number of initial public offerings since its implementation relative to the period before its implementation. The study shall also examine the impact that this change has had on liquidity for small and middle capitalization company securities and whether there is sufficient economic incentive to support trading operations in these securities in penny increments. Not later than 90 days after the date of enactment of this paragraph, the Commission shall submit to Congress a report on the findings of the study.

[(B) DESIGNATION.—If the Commission determines that the securities of emerging growth companies should be quoted and traded using a minimum increment of greater than $0.01, the Commission may, by rule not later than 180 days after the date of enactment of this paragraph, designate a minimum increment for the securities of emerging growth companies that is greater than $0.01 but less than $0.10 for use in all quoting and trading of securities in any exchange or other execution venue.]

(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES OF CERTAIN EMERGING GROWTH COMPANIES.—

(A) QUOTING INCREMENT.—Beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of a covered emerging growth company shall be quoted using—

(i) a minimum increment of $0.05; or

(ii) if, not later than 60 days after such date of enactment, the company so elects in the manner described in subparagraph (D)—

(I) a minimum increment of $0.10; or

(II) the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(B) TRADING INCREMENT.—In the case of a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph, the Commission shall determine the increment at which the securities of such company are traded.

(C) FUTURE RIGHT TO OPT OUT OR CHANGE MINIMUM INCREMENT.—

(i) IN GENERAL.—At any time beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph may elect in the manner described in subparagraph (D)—

(I) for the securities of such company to be quoted at the increment at which such securities would be quoted

without regard to the minimum increments established under this paragraph; or

(II) to change the minimum increment at which the securities of such company are quoted from $0.05 to $0.10 or from $0.10 to $0.05.

(ii) WHEN ELECTION EFFECTIVE.—An election under this subparagraph shall take effect on the date that is 30 days after such election is made.

(iii) SINGLE ELECTION TO CHANGE MINIMUM INCREMENT.—A covered emerging growth company may not make more than one election under clause (i)(II).

(D) MANNER OF ELECTION.—

(i) IN GENERAL.—An election is made in the manner described in this subparagraph by informing the Commission of such election.

(ii) NOTIFICATION OF EXCHANGES AND OTHER TRADING VENUES.—Upon being informed of an election under clause (i), the Commission shall notify each exchange or other trading venue where the securities of the covered emerging growth company are quoted or traded.

(E) ISSUERS CEASING TO BE COVERED EMERGING GROWTH COMPANIES.—

(i) IN GENERAL.—If an issuer the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph ceases to be a covered emerging growth company, the securities of such issuer shall be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(ii) EXCEPTIONS.—The Commission may by regulation, as the Commission considers appropriate, specify any circumstances under which an issuer shall continue to be considered a covered emerging growth company for purposes of this paragraph after the issuer ceases to meet the requirements of subparagraph (L)(i).

(F) SECURITIES TRADING BELOW $1.—

(i) INITIAL PRICE.—

(I) AT EFFECTIVE DATE.—If the trading price of the securities of a covered emerging growth company is below $1 at the close of the last trading day before the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(II) AT IPO.—If a covered emerging growth company makes an initial public offering after the day described in subclause (I) and the first share of the securities of such company is offered to the public at a price below $1, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(ii) AVERAGE TRADING PRICE.—If the average trading price of the securities of a covered emerging growth company falls below $1 for any 90-day period beginning on or after the day before the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall, after the end of such period, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(G) FRAUD OR MANIPULATION.—If the Commission determines that a covered emerging growth company has violated any provision of the securities laws prohibiting fraudulent, manipulative, or deceptive acts or practices, the securities of such company shall, after the date of the determination, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(H) INELIGIBILITY FOR INCREASED MINIMUM INCREMENT PERMANENT.—The securities of an issuer may not be quoted at a minimum increment of $0.05 or $0.10 under this paragraph at any time after—

(i) such issuer makes an election under subparagraph (A)(ii)(II);

(ii) such issuer makes an election under subparagraph (C)(i)(I), except during the period before such election takes effect; or

(iii) the securities of such issuer are required by this paragraph to be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

(I) ADDITIONAL REPORTS AND DISCLOSURES.—The Commission shall require a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph to make such reports and disclosures as the Commission considers necessary or appropriate in the public interest or for the protection of investors.

(J) LIMITATION OF LIABILITY.—An issuer (or any officer, director, manager, or other agent of such issuer) shall not be liable to any person (other than such issuer) under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or any contract or other legally enforceable agreement (including any arbitration agreement) for any losses caused solely by the quoting of the securities of such issuer at a minimum increment of $0.05 or $0.10, by the trading of such securities at the increment determined by the Commission under subparagraph (B), or by both such quoting and trading, as provided in this paragraph.

(K) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, and every 6 months thereafter, the Commission, in coordination with each exchange on which the securities of covered emerging growth companies are quoted or traded, shall submit to Congress a report on the quoting and trading of securities in increments permitted by this paragraph and the extent to which such quoting and trading are increasing liquidity and

active trading by incentivizing capital commitment, research coverage, and brokerage support, together with any legislative recommendations the Commission may have.

(L) DEFINITIONS.—In this paragraph:

(i) COVERED EMERGING GROWTH COMPANY.—The term "covered emerging growth company" means an emerging growth company, as defined in the first paragraph (80) of section 3(a), except that—

(I) such paragraph shall be applied by substituting "$750,000,000" for "$1,000,000,000" each place it appears; and

(II) subparagraphs (B), (C), and (D) of such paragraph do not apply.

(ii) SECURITY.—The term "security" means an equity security.

(M) SAVINGS PROVISION.—Notwithstanding any other provision of this paragraph, the Commission may—

(i) make such adjustments to the pilot program specified in this paragraph as the Commission considers necessary or appropriate to ensure that such program can provide statistically meaningful or reliable results, including adjustments to eliminate selection bias among participants, expand the number of participants eligible to participate in such program, and change the duration of such program for one or more participants; and

(ii) conduct any other study or pilot program, in conjunction with or separate from the pilot program specified in this paragraph (as such program may be adjusted pursuant to clause (i)), to evaluate quoting or trading in various minimum increments.

[Effective on the date that is five years after the date of enactment of H.R. 3448, paragragh (6), as amended by section 2 of such bill, is repealed.]

[(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES OF CERTAIN EMERGING GROWTH COMPANIES.—

[(A) QUOTING INCREMENT.—Beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of a covered emerging growth company shall be quoted using—

[(i) a minimum increment of $0.05; or

[(ii) if, not later than 60 days after such date of enactment, the company so elects in the manner described in subparagraph (D)—

[(I) a minimum increment of $0.10; or

[(II) the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(B) TRADING INCREMENT.—In the case of a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph, the Commission shall determine the increment at which the securities of such company are traded.

[(C) FUTURE RIGHT TO OPT OUT OR CHANGE MINIMUM INCREMENT.—

[(i) IN GENERAL.—At any time beginning on the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph may elect in the manner described in subparagraph (D)—

[(I) for the securities of such company to be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph; or

[(II) to change the minimum increment at which the securities of such company are quoted from $0.05 to $0.10 or from $0.10 to $0.05.

[(ii) WHEN ELECTION EFFECTIVE.—An election under this subparagraph shall take effect on the date that is 30 days after such election is made.

[(iii) SINGLE ELECTION TO CHANGE MINIMUM INCREMENT.—A covered emerging growth company may not make more than one election under clause (i)(II).

[(D) MANNER OF ELECTION.—

[(i) IN GENERAL.—An election is made in the manner described in this subparagraph by informing the Commission of such election.

[(ii) NOTIFICATION OF EXCHANGES AND OTHER TRADING VENUES.—Upon being informed of an election under clause (i), the Commission shall notify each exchange or other trading venue where the securities of the covered emerging growth company are quoted or traded.

[(E) ISSUERS CEASING TO BE COVERED EMERGING GROWTH COMPANIES.—

[(i) IN GENERAL.—If an issuer the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph ceases to be a covered emerging growth company, the securities of such issuer shall be quoted at the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(ii) EXCEPTIONS.—The Commission may by regulation, as the Commission considers appropriate, specify any circumstances under which an issuer shall continue to be considered a covered emerging growth company for purposes of this paragraph after the issuer ceases to meet the requirements of subparagraph (L)(i).

[(F) SECURITIES TRADING BELOW $1.—

[(i) INITIAL PRICE.—

[(I) AT EFFECTIVE DATE.—If the trading price of the securities of a covered emerging growth company is below $1 at the close of the last trading day before the date that is 90 days after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(II) AT IPO.—If a covered emerging growth company makes an initial public offering after the day described in subclause (I) and the first share of the securities of such company is offered to the public at a price below $1, the securities of such company shall be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(ii) AVERAGE TRADING PRICE.—If the average trading price of the securities of a covered emerging growth company falls below $1 for any 90-day period beginning on or after the day before the date of the enactment of the Small Cap Liquidity Reform Act of 2013, the securities of such company shall, after the end of such period, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(G) FRAUD OR MANIPULATION.—If the Commission determines that a covered emerging growth company has violated any provision of the securities laws prohibiting fraudulent, manipulative, or deceptive acts or practices, the securities of such company shall, after the date of the determination, be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(H) INELIGIBILITY FOR INCREASED MINIMUM INCREMENT PERMANENT.—The securities of an issuer may not be quoted at a minimum increment of $0.05 or $0.10 under this paragraph at any time after—

[(i) such issuer makes an election under subparagraph (A)(ii)(II);

[(ii) such issuer makes an election under subparagraph (C)(i)(I), except during the period before such election takes effect; or

[(iii) the securities of such issuer are required by this paragraph to be quoted using the increment at which such securities would be quoted without regard to the minimum increments established under this paragraph.

[(I) ADDITIONAL REPORTS AND DISCLOSURES.—The Commission shall require a covered emerging growth company the securities of which are quoted at a minimum increment of $0.05 or $0.10 under this paragraph to make such reports and disclosures as the Commission considers necessary or appropriate in the public interest or for the protection of investors.

[(J) LIMITATION OF LIABILITY.—An issuer (or any officer, director, manager, or other agent of such issuer) shall not be liable to any person (other than such issuer) under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or any contract or other legally enforceable agreement (including any arbitration agreement) for any losses caused solely by the quoting of the securities of such issuer at a minimum increment of $0.05 or $0.10, by the trading of such securities at the increment determined by the Commission under subparagraph

(B), or by both such quoting and trading, as provided in this paragraph.

[(K) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of the Small Cap Liquidity Reform Act of 2013, and every 6 months thereafter, the Commission, in coordination with each exchange on which the securities of covered emerging growth companies are quoted or traded, shall submit to Congress a report on the quoting and trading of securities in increments permitted by this paragraph and the extent to which such quoting and trading are increasing liquidity and active trading by incentivizing capital commitment, research coverage, and brokerage support, together with any legislative recommendations the Commission may have.

[(L) DEFINITIONS.—In this paragraph:

[(i) COVERED EMERGING GROWTH COMPANY.—The term "covered emerging growth company" means an emerging growth company, as defined in the first paragraph (80) of section 3(a), except that—

[(I) such paragraph shall be applied by substituting "$750,000,000" for "$1,000,000,000" each place it appears; and

[(II) subparagraphs (B), (C), and (D) of such paragraph do not apply.

[(ii) SECURITY.—The term "security" means an equity security.

[(M) SAVINGS PROVISION.—Notwithstanding any other provision of this paragraph, the Commission may—

[(i) make such adjustments to the pilot program specified in this paragraph as the Commission considers necessary or appropriate to ensure that such program can provide statistically meaningful or reliable results, including adjustments to eliminate selection bias among participants, expand the number of participants eligible to participate in such program, and change the duration of such program for one or more participants; and

[(ii) conduct any other study or pilot program, in conjunction with or separate from the pilot program specified in this paragraph (as such program may be adjusted pursuant to clause (i)), to evaluate quoting or trading in various minimum increments.]

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