

## ENTREPRENEUR ACCESS TO CAPITAL ACT

OCTOBER 31, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

### R E P O R T

[To accompany H.R. 2930]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2930) to amend the securities laws to provide for registration exemptions for certain crowdfunded securities, 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 “Entrepreneur Access to Capital Act”.

#### SEC. 2. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:

“(6) transactions involving the issuance of securities for which—

“(A) the aggregate annual amount raised through the issue of the securities is—

“(i) \$1,000,000 or less; or

“(ii) if the issuer provides potential investors with audited financial statements, \$2,000,000 or less;

“(B) individual investments in the securities are limited to an aggregate annual amount equal to the lesser of—

“(i) \$10,000; and

“(ii) 10 percent of the investor’s annual income;

“(C) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and

“(D) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).”.

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 is amended by inserting after section 4 the following:

**“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.**

“(a) **REQUIREMENTS ON INTERMEDIARIES.**—For purposes of section 4(6), a person acting as an intermediary in a transaction involving the issuance of securities shall comply with the requirements of this subsection if the intermediary—

“(1) warns investors, including on the intermediary’s website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

“(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the intermediary’s physical address, website address, and the names of the intermediary and employees of the person, and keep such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the intermediary’s website;

“(6) requires each potential investor to answer questions demonstrating competency in—

“(A) recognition of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) risk of illiquidity; and

“(C) such other areas as the Commission may determine appropriate;

“(7) requires the issuer to state a target offering amount and withhold capital formation proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

“(8) carries out a background check on the issuer’s principals;

“(9) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—

“(A) the issuer’s name, legal status, physical address, and website address;

“(B) the names of the issuer’s principals;

“(C) the stated purpose and intended use of the capital formation funds sought by the issuer; and

“(D) the target offering amount;

“(10) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;

“(11) maintains such books and records as the Commission determines appropriate;

“(12) makes available on the intermediary’s website a method of communication that permits the issuer and investors to communicate with one another; and

“(13) does not offer investment advice.

“(b) **REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.**—For purposes of section 4(6), an issuer who offers securities without an intermediary shall comply with the requirements of this subsection if the issuer—

“(1) warns investors, including on the issuer’s website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

“(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

“(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

“(4) provides the Commission with the issuer’s physical address, website address, and the names of the principals and employees of the issuers, and keeps such information up-to-date;

“(5) provides the Commission with continuous investor-level access to the issuer’s website;

“(6) requires each potential investor to answer questions demonstrating competency in—

“(A) recognition of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

“(B) risk of illiquidity; and

“(C) such other areas as the Commission may determine appropriate;

“(7) states a target offering amount and withholds capital formation proceeds until the aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

“(8) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—

“(A) the stated purpose and intended use of the capital formation funds sought by the issuer; and

“(B) the target offering amount;

“(9) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;

“(10) maintains such books and records as the Commission determines appropriate;

“(11) makes available on the issuer’s website a method of communication that permits the issuer and investors to communicate with one another;

“(12) does not offer investment advice; and

“(13) discloses to potential investors, on the issuer’s website, that the issuer has an interest in the issuance.

“(c) VERIFICATION OF INCOME.—For purposes of section 4(6), an issuer or intermediary may rely on certifications provided by an investor to verify the investor’s income.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9) and (b)(8) and the information described under subsections (a)(4) and (b)(4) available to the States.

“(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(6), an investor may not sell such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

“(1) the issuer of such securities; or

“(2) an accredited investor.

“(f) CONSTRUCTION.—

“(1) NO TREATMENT AS BROKER.—With respect to a transaction described under section 4(6) involving an intermediary, such intermediary shall not be treated as a broker under the securities laws solely by reason of participation in such transaction.

“(2) NO PRECLUSION OF OTHER CAPITAL RAISING.—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).”.

(c) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue such rules as may be necessary to carry out section 4A of the Securities Act of 1933. In issuing such rules, the Commission shall carry out the cost-benefit analysis required under section 2(b) of such Act.

(d) DISQUALIFICATION.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall by rule or regulation establish disqualification provisions under which a person shall not be eligible to utilize the exemption under section 4(6) of the Securities Act of 1933 or to participate in the affairs of an intermediary facilitating the use of that exemption. Such provisions shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

#### SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended—

(1) by striking “(5) For the purposes” and inserting:

“(5) DEFINITIONS.—

“(A) IN GENERAL.—For the purposes”; and

(2) by adding at the end the following:

“(B) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—For purposes of this subsection, the term ‘held of record’ shall not include holders of securities issued pursuant to transactions described under section 4(6) of the Securities Act of 1933.”.

#### SEC. 4. PREEMPTION OF STATE LAW.

Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following:

“(C) section 4(6);”.

### PURPOSE AND SUMMARY

H.R. 2930, the “Entrepreneur Access to Capital Act,” would create a new registration exemption from the Securities Act of 1933

for securities issued through internet platforms also known as “crowdfunding.” To use this new exemption, the issuer’s offering cannot exceed \$1 million, unless the issuer provides investors with audited financial statements, in which case the offering amount may not exceed \$2 million. An individual’s investment must be equal to or less than the lesser of \$10,000 or 10 percent of the investor’s annual income. By exempting such offerings from registration with the Securities and Exchange Commission (SEC) and preempting state registration laws, H.R. 2930 will enable entrepreneurs to more easily access capital from potential investors across the United States to grow their business and create jobs.

H.R. 2930 requires issuers and intermediaries to fulfill a number of requirements in order to avail themselves of this new exemption. These requirements, which include notices to the SEC about the offerings and parties to the offerings that will be shared with the States, are designed to reduce the risk of fraud in these offerings and thereby protect investors. The legislation also allows for an unlimited number of investors to invest via a crowdfunding offering and preempts state securities registration laws. However, the legislation does not restrict the States’ ability to discover and stop and prosecute fraudulent offerings.

#### BACKGROUND AND NEED FOR LEGISLATION

Capital formation is necessary for job creation and is essential for any lasting economic recovery. Without access to capital, businesses cannot expand. Without regulatory certainty, capital disappears.

Companies obtain capital through borrowing or equity financing. Because banks have tightened their lending standards in the wake of the economic crisis, there is less credit available to fund growth. Accordingly, equity financing, in which investors purchase ownership stakes in a company in exchange for a share of the company’s future profits, is an increasingly essential means of providing small companies with the capital they need to grow and create jobs.

Crowdfunding is an increasingly popular method of capital formation, where, according to SEC Chairman Mary Schapiro, “groups of people pool money, typically comprised of very small individual contributions, to support an effort by others to accomplish a specific goal.” Current SEC regulations impede this innovative and lower-risk form of financing, by prohibiting general solicitation and advertisements for non-registered offerings and capping the number of shareholders for non-registered companies at 500.

At a hearing on H.R. 2930 held by the Subcommittee on Capital Markets and Government Sponsored Enterprises on September 21, 2011, Dana Mauriello, the Founder and President of ProFounder, testified that “[i]t is important that crowdfunding exist because it democratizes access to start-up capital. Capital exists in people’s communities and it just can’t be accessed. Anyone who is bright, driven, and has a great idea can gather a supportive community around himself. Crowdfunding allows that entrepreneur to turn his community into a capital source.” Ms. Mauriello also supported allowing general solicitation in connection with crowdfunding offerings and allowing for an unlimited number of investors. She identified federal preemption of state law as a “necessary pre-condition” for crowdfunding.

## HEARING

On September 21, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled “Legislative Proposals to Facilitate Small Business Capital Formation and Job Creation,” to consider H.R. 2930 and four other bills. The following witnesses testified:

- Ms. Meredith Cross, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission
- Mr. Vincent Molinari, Founder and Chief Executive Officer, GATE Technologies LLC
- Mr. Barry E. Silbert, Founder and Chief Executive Officer, SecondMarket, Inc.
- Mr. Matthew H. Williams, Chairman and President, Gothenburg State Bank, on behalf of the American Bankers Association
- Mr. William D. Waddill, Senior Vice President and Chief Financial Officer, OncoMed Pharmaceuticals, Inc., on behalf of the Biotechnology Industry Organization
- Mr. A. Heath Abshire, Commissioner, Arkansas Securities Department on behalf of the North American Securities Administrators
- Ms. Dana Mauriello, President, ProFounder

## COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on October 5, 2011, and ordered H.R. 2930 favorably reported to the full Committee by a record vote of 18 yeas and 14 nays (Record vote no. CM-37).

The Committee on Financial Services met in open session on October 26, 2011 and ordered H.R. 2930, as amended, favorably reported to the House by 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. There were no record votes taken on amendments or in connection with ordering H.R. 2930, as amended, reported to the House.

During consideration of H.R. 2930 by the Committee, the following amendments were considered:

1. An amendment in the nature of a substitute offered by Mr. McHenry, no. 1, to establish an exemption from registration under the Securities Act of 1933 for offerings that meet certain criteria; to establish the annual offering threshold and the maximum annual individual investment; to require the issuer to set a target offering amount and restrict disbursements of proceeds until the capital raised from investors other than issuer exceeds sixty percent of the target offering amount; to require the intermediary, or issuer if there is no intermediary, to warn investors of the risks of investing in startups and emerging businesses and to take measures to reduce risk; to provide the SEC with investor-level access to the issuer’s website; to require potential investors to demonstrate competency; to outsource cash-management to a qualified third party; to maintain such records as the SEC deems appropriate; to restrict sales of securities for one year unless the securities are sold to an

accredited investor or to the issuer of the securities, to facilitate investor-issuer communication, to authorize the SEC to issue rules to carry out the provisions of the Act, to exclude crowdfunding investors from shareholder registration thresholds and to preempt state law as amended by an amendment offered by Mrs. Maloney, no 1a; an amendment offered by Mr. Stivers, no 1b; and an amendment offered by Messrs. Green and Grimm, no 1c; was agreed to by voice vote.

2. An amendment offered by Mrs. Maloney, no. 1a, to an amendment in the nature of a substitute offered by Mr. McHenry, no. 1, to require the intermediary, or the issuer, if there is no intermediary, to provide the SEC with basic notice of the offering, not later than the first day funds are solicited from potential investors; and to require the SEC to make notices of offerings and information about issuers and intermediaries available to the States, was agreed to by voice vote.

3. An amendment offered by Mr. Stivers, no. 1b, to an amendment in the nature of a substitute offered by Mr. McHenry, no. 1, to reduce the maximum offering amount to \$1,000,000 from \$5,000,000, while allowing the issuer to raise up to \$2,000,000 if the issuer provides audited financial statements, was agreed to by voice vote.

4. An amendment offered by Mr. Green and Mr. Grimm, no. 1c, to an amendment in the nature of a substitute offered by Mr. McHenry, no. 1, to require the SEC to issue regulations that would disqualify individuals previously convicted of federal or state securities fraud from utilizing the 4(6) exemption, or from participating in the affairs of an intermediary facilitating the use of the exemption, was agreed to by voice vote.

5. An amendment offered by Mr. Perlmutter, no. 1d, to an amendment in the nature of a substitute offered by Mr. McHenry, no. 1, to strike Section 4 of the bill, was offered and withdrawn.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held a hearing 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 establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 2930, the “Entrepreneur Access to Capital Act,” is to create a new registration exemption from the Securities Act of 1933 for securities issued through internet platforms also known as “crowdfunding.” To use this new exemption, the issuer’s offering cannot exceed \$1 million, unless the issuer provides investors with audited financial statements, in which case the offering amount may not exceed \$2 million. An individual’s investment must be equal to or less than the lesser of \$10,000 or 10 percent of the investor’s annual income. By exempting such offerings from registration with the Securities and Exchange Commission (SEC) and preempting state registration laws, H.R. 2930 will enable en-

trepreneurs to more easily access capital from potential investors across the United States to grow their business and create jobs.

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 ESTIMATE

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, October 28, 2011.*

Hon. SPENCER BACHUS,  
*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. 2930, the Entrepreneur Access to Capital Act.

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. 2930—Entrepreneur Access to Capital Act*

H.R. 2930 would establish an exemption from requirements that certain securities be registered with the Securities and Exchange Commission (SEC). Specifically, the bill would exempt securities from registration requirements if:

- The aggregate amount raised through the issuance is \$1 million or less each year (\$2 million or less if the issuer provides investors with certain financial information); and
- Each individual who invests in the securities does not invest, in any year, more than the lesser of \$10,000 or 10 percent of the investor's annual income.

Issuers of such securities or intermediaries acting between the issuer and investors would be required to take certain steps, which include providing certain information to investors and the SEC, in order to be eligible to take advantage of the exemption. The bill would require the SEC to develop regulations to implement this

new authority and to set out actions that would disqualify certain individuals from issuing securities under the exemption.

Based on information from the SEC, CBO estimates that implementing H.R. 2930 would have a negligible impact on the SEC's workload, and any change in agency spending that is subject to appropriation would not be significant. Enacting H.R. 2930 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2930 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting states from requiring issuers of some securities to register the securities with the state, or to pay registration fees, prior to issuance. As defined in UMRA, the direct costs of a mandate include any amounts that state governments would be prohibited from raising in revenues as a result of the mandate. The cost of the mandate would be the amount of fee revenue that states would be precluded from collecting. Based on information from the SEC and industry sources, CBO estimates that forgone revenues would be small and would not exceed the threshold established in UMRA for intergovernmental mandates (\$71 million in 2011, adjusted annually for inflation). H.R. 2930 contains no new private-sector mandates as defined in UMRA.

The CBO staff contact for this estimate is Susan Willie. This 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. 2930 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section provides a short title to the bill by citing it as the "Entrepreneur Access to Capital Act."



*Section 2. Crowdfunding exemption*

This section amends Section 4 of the Securities Act of 1933 to create a new registration exemption for securities issued through internet platforms also known as “crowdfunding.” To use this new exemption, the issuer’s offering cannot exceed \$1 million, unless the issuer provides investors with audited financial statements, in which case the offering amount may not exceed \$2 million. An individual’s investment must be equal to or less than the lesser of \$10,000 or 10 percent of the investor’s annual income.

This section also states that the intermediary (or the issuer if there is no intermediary) must comply with certain delineated requirements.

The intermediary must (1) warn investors of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers; (2) warn investors that there are restrictions on the re-sale of the securities; (3) take reasonable measures to reduce the risk of fraud with respect to the transaction; (4) provide the Securities and Exchange Commission (SEC) with information about the intermediary; (5) provide the SEC with continuous investor-level access to the intermediary’s website; (6) require each investor to answer questions demonstrating a basic understanding of the nature of the securities offered; (7) require the issuer to state a target offering amount and withhold capital formation proceeds until the aggregate capital raised from investors other than the issuer is greater than or equal to 60 percent of the target offering amount; (8) carry out background checks on the issuer’s principals; (9) provide the SEC with information about the issuer and offering; (10) outsource cash-management functions to a qualified third party custodian; (11) maintain such books and records as the SEC deems appropriate; (12) allow for communication between the issuer and investors; and (13) not offer investment advice.

This section also requires that, if there is no intermediary, the issuer must (1) warn investors of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers; (2) warn investors that there are restrictions on the re-sale of the securities; (3) take reasonable measures to reduce the risk of fraud with respect to the transaction; (4) provide SEC with information about the issuer and offering; (5) provide the SEC with continuous investor-level access to the issuer’s website; (6) require each investor to answer questions demonstrating a basic understanding of the nature of the securities offered; (7) state a target offering amount and withhold capital formation proceeds until the aggregate capital raised from investors other than the issuer is greater than or equal to 60 percent of the target offering amount; (8) outsource cash-management functions to a qualified third party custodian; (9) maintain such books and records as the SEC deems appropriate; (10) allow for communication between the issuer and investors; (11) not offer investment advice; and (12) disclose their interest in the issuance to investors.

This section also provides that an issuer or intermediary may rely on certifications provided by the investor to verify the investor’s income.

This section also requires that the SEC make the information about the information it receives about the intermediary, issuer, and offering available to the States.

This section also restricts investors from re-selling the securities for one year unless the securities are sold to the issuer or an accredited investor.

This section also provides that an intermediary shall not be treated as a broker solely by reason of participation in a crowdfunding offering.

This section also clarifies that an issuer's engaging in a crowdfunding offering does not restrict the issuer's ability to raise capital through other means.

This section requires the SEC to issue rules to implement the requirements on intermediaries and issuers and to establish disqualification provisions under which the exemption shall not be available.

*Section 3. Exclusion of crowdfunding investors from shareholder cap*

This section provides that persons who hold securities issued pursuant to the crowdfunding exemption shall not count against the shareholder threshold cap in Section 12(g) of the Securities Exchange Act of 1934.

*Section 4. Preemption of state law*

This section exempts securities issued through the crowdfunding exemption from state securities laws.

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 ACT OF 1933**

TITLE I—SHORT TITLE

\* \* \* \* \*

EXEMPTED TRANSACTIONS

SEC. 4. The provisions of section 5 shall not apply to—

(1) \* \* \*

\* \* \* \* \*

(6) *transactions involving the issuance of securities for which—*

(A) *the aggregate annual amount raised through the issue of the securities is—*

*(i) \$1,000,000 or less; or*

*(ii) if the issuer provides potential investors with audited financial statements, \$2,000,000 or less;*

(B) *individual investments in the securities are limited to an aggregate annual amount equal to the lesser of—*

*(i) \$10,000; and*

- (ii) 10 percent of the investor's annual income;
- (C) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and
- (D) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).

**SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.**

(a) *REQUIREMENTS ON INTERMEDIARIES.*—For purposes of section 4(6), a person acting as an intermediary in a transaction involving the issuance of securities shall comply with the requirements of this subsection if the intermediary—

- (1) warns investors, including on the intermediary's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;
- (2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);
- (3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;
- (4) provides the Commission with the intermediary's physical address, website address, and the names of the intermediary and employees of the person, and keep such information up-to-date;
- (5) provides the Commission with continuous investor-level access to the intermediary's website;
- (6) requires each potential investor to answer questions demonstrating competency in—
  - (A) recognition of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;
  - (B) risk of illiquidity; and
  - (C) such other areas as the Commission may determine appropriate;
- (7) requires the issuer to state a target offering amount and withhold capital formation proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;
- (8) carries out a background check on the issuer's principals;
- (9) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—
  - (A) the issuer's name, legal status, physical address, and website address;
  - (B) the names of the issuer's principals;
  - (C) the stated purpose and intended use of the capital formation funds sought by the issuer; and
  - (D) the target offering amount;
- (10) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;
- (11) maintains such books and records as the Commission determines appropriate;

(12) makes available on the intermediary's website a method of communication that permits the issuer and investors to communicate with one another; and

(13) does not offer investment advice.

(b) **REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.**—For purposes of section 4(6), an issuer who offers securities without an intermediary shall comply with the requirements of this subsection if the issuer—

(1) warns investors, including on the issuer's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

(2) warns investors that they are subject to the restriction on sales requirement described under subsection (e);

(3) takes reasonable measures to reduce the risk of fraud with respect to such transaction;

(4) provides the Commission with the issuer's physical address, website address, and the names of the principals and employees of the issuers, and keeps such information up-to-date;

(5) provides the Commission with continuous investor-level access to the issuer's website;

(6) requires each potential investor to answer questions demonstrating competency in—

(A) recognition of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers;

(B) risk of illiquidity; and

(C) such other areas as the Commission may determine appropriate;

(7) states a target offering amount and withholds capital formation proceeds until the aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

(8) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—

(A) the stated purpose and intended use of the capital formation funds sought by the issuer; and

(B) the target offering amount;

(9) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;

(10) maintains such books and records as the Commission determines appropriate;

(11) makes available on the issuer's website a method of communication that permits the issuer and investors to communicate with one another;

(12) does not offer investment advice; and

(13) discloses to potential investors, on the issuer's website, that the issuer has an interest in the issuance.

(c) **VERIFICATION OF INCOME.**—For purposes of section 4(6), an issuer or intermediary may rely on certifications provided by an investor to verify the investor's income.

(d) **INFORMATION AVAILABLE TO STATES.**—The Commission shall make the notices described under subsections (a)(9) and (b)(8) and

the information described under subsections (a)(4) and (b)(4) available to the States.

(e) **RESTRICTION ON SALES.**—With respect to a transaction involving the issuance of securities described under section 4(6), an investor may not sell such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

- (1) the issuer of such securities; or
- (2) an accredited investor.

(f) **CONSTRUCTION.**—

(1) **NO TREATMENT AS BROKER.**—With respect to a transaction described under section 4(6) involving an intermediary, such intermediary shall not be treated as a broker under the securities laws solely by reason of participation in such transaction.

(2) **NO PRECLUSION OF OTHER CAPITAL RAISING.**—Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).

\* \* \* \* \*

**SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.**

(a) \* \* \*

(b) **COVERED SECURITIES.**—For purposes of this section, the following are covered securities:

(1) \* \* \*

\* \* \* \* \*

(4) **EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.**—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) \* \* \*

\* \* \* \* \*

(C) section 4(6);

[(C)] (D) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

[(D)] (E) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996.

\* \* \* \* \*

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**SECURITIES EXCHANGE ACT OF 1934**

**TITLE I—REGULATION OF SECURITIES EXCHANGES**

\* \* \* \* \*

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) \* \* \*

\* \* \* \* \*

(g)(1) \* \* \*

\* \* \* \* \*

[(5) For the purposes]

(5) DEFINITIONS.—

(A) *IN GENERAL.*—For the purposes of this subsection the term “class” shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms “total assets” and “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product.

(B) *EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.*—For purposes of this subsection, the term “held of record” shall not include holders of securities issued pursuant to transactions described under section 4(6) of the Securities Act of 1933.

\* \* \* \* \*

