

112TH CONGRESS
1ST SESSION

S. 1791

To amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2011

Mr. BROWN of Massachusetts introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Democratizing Access
5 to Capital Act of 2011”.

6 **SEC. 2. CROWDFUNDING EXEMPTION.**

7 Section 4 of the Securities Act of 1933 (15 U.S.C.
8 77d) is amended—

1 (1) in paragraph (2), by inserting before the pe-
2 riod at the end “, other than as provided in para-
3 graph (6)”;

4 (2) by striking “The provisions” and inserting
5 the following:

6 “(a) IN GENERAL.—The provisions”; and

7 (3) by adding at the end the following:

8 “(6) subject to subsection (b), transactions in-
9 volving the issuance of securities through a
10 crowdfunding intermediary, whether or not the
11 transaction involves a public offering, for which—

12 “(A) the aggregate annual amount raised
13 through the issue of the securities is
14 \$1,000,000 or less during any 12-month period,
15 by any incorporated entity formed under and
16 subject to the law of any State; and

17 “(B) individual investments in the securi-
18 ties are limited to an aggregate annual amount
19 of not more than \$1,000.

20 “(b) CERTAIN CROWDFUNDING EXEMPTION CRI-
21 TERIA.—

22 “(1) IN GENERAL.—In order to qualify for the
23 exemption under subsection (a)(6), the issuer
24 shall—

1 “(A) disclose to investors all rights of in-
2 vestors, including complete information about
3 the risks, obligations, benefits, history, and
4 costs of offering;

5 “(B) be an incorporated entity formed
6 under and subject to the law of a State; and

7 “(C) file such notice with the Commission
8 as the Commission shall prescribe.

9 “(2) DISQUALIFICATION.—Not later than 90
10 days after the date of enactment of this Act, the
11 Commission shall, by rule or regulation, establish
12 disqualification provisions under which a person
13 shall not be eligible to utilize the exemption under
14 subsection (a)(6), or to participate in the affairs of
15 a crowdfunding intermediary facilitating the use of
16 that exemption. Such provisions shall be substan-
17 tially similar to the disqualification provisions con-
18 tained in the regulations adopted in accordance with
19 section 926 of the Dodd-Frank Wall Street Reform
20 and Consumer Protection Act (1512 U.S.C. 77d
21 note).

22 “(3) RESTRICTED SECURITIES.—Securities
23 issued under a transaction described in subsection
24 (a)(6) shall be considered restricted securities, sub-
25 ject to a one-year holding period.”.

1 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**
2 **SHAREHOLDER CAP.**

3 Section 12(g)(5) of the Securities Exchange Act of
4 1934 (15 U.S.C. 78l(g)(5)) is amended—

5 (1) by striking “For the purposes” and insert-
6 ing:

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

9 (2) by adding at the end the following:

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

16 **SEC. 4. PREEMPTION OF STATE LAW.**

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

19 (1) by redesignating subparagraph (C) as sub-
20 paragraph (D); and

21 (2) by inserting after subparagraph (B) the fol-
22 lowing:

23 “(C) section 4(a)(6);”.

1 **SEC. 5. STATE FRAUD AUTHORITY.**

2 Section 18(c)(1) of the Securities Act of 1933 (15
3 U.S.C. 77r(c)(1)) is amended by striking “or dealer” and
4 inserting “, dealer, or crowdfunding intermediaries”.

5 **SEC. 6. NOTICE FILINGS PERMITTED.**

6 Section 18(c)(2) of the Securities Act of 1933 (15
7 U.S.C. 77r(c)(2)) is amended by inserting after subsection
8 (D) the following:

9 “(E) FEES NOT PERMITTED ON
10 CROWDFUNDED SECURITIES.—Notwithstanding
11 subparagraphs (A), (B), and (C), no filing or
12 fee may be required with respect to any security
13 that is a covered security pursuant to sub-
14 section (b)(4)(C), or will be such a covered se-
15 curity upon completion of the transaction, ex-
16 cept for the securities commission (or any agen-
17 cy or office performing like functions) of the
18 State of the issuer’s State of organization, or
19 any State in which purchasers of 50 percent or
20 greater of the aggregate amount of the issue
21 are a residents.”.

22 **SEC. 7. BROKER AND DEALER EXEMPTIONS.**

23 (a) BROKERS.—Section 3(a)(4) of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 780c(a)(4)) is amended
25 by adding at the end the following:

1 “(G) EXEMPTION FOR CROWDFUNDING
2 INTERMEDIARIES.—

3 “(i) IN GENERAL.—The term ‘broker’
4 does not include any crowdfunding inter-
5 mediary.

6 “(ii) DEFINITION.—For purposes of
7 this paragraph, the term ‘crowdfunding
8 intermediary’ means any intermediary
9 that—

10 “(I) is open to and accessible by
11 the general public;

12 “(II) provides public communica-
13 tion portals for investors and potential
14 investors;

15 “(III) warns investors of the
16 speculative nature generally applicable
17 to investments in startups, emerging
18 businesses, and small issuers, includ-
19 ing risks in the secondary market re-
20 lated to illiquidity;

21 “(IV) warns investors that they
22 are subject to a 1-year restriction on
23 sales of securities issued;

1 “(V) takes reasonable measures
2 to reduce the risk of fraud with re-
3 spect to such transaction;

4 “(VI) prohibits its employees
5 from investing in the offerings made
6 through the crowdfunding inter-
7 mediary, or to have any financial in-
8 terest in the companies posting offer-
9 ings through the crowdfunding inter-
10 mediary;

11 “(VII) does not offer investment
12 advice or recommendations;

13 “(VIII) provides to the Commis-
14 sion—

15 “(aa) the crowdfunding in-
16 termediary’s physical address,
17 website address, and the names
18 of the crowdfunding intermediary
19 and employees of the crowdfund-
20 ing intermediary, keeping such
21 information up-to-date; and

22 “(bb) continuous investor-
23 level access to the intermediary’s
24 website;

1 “(IX) requires each potential in-
2 vestor to answer questions dem-
3 onstrating competency in—

4 “(aa) recognition of the level
5 of risk generally applicable to in-
6 vestments in startups, emerging
7 businesses, and small issuers;

8 “(bb) risk of illiquidity; and

9 “(cc) such other areas as
10 the Commission may determine
11 appropriate;

12 “(X) requires the issuer to state
13 a target offering amount and withhold
14 capital formation proceeds until ag-
15 gregate capital raised from investors
16 other than the issuer is not less than
17 60 percent of the target offering
18 amount;

19 “(XI) carries out a background
20 check on the issuer’s principals;

21 “(XII) provides the Commission
22 with basic notice of the offering, not
23 later than the first day on which
24 funds are solicited from potential in-
25 vestors, including—

1 “(aa) the issuer’s name,
2 legal status, physical address,
3 and website address;

4 “(bb) the names of the
5 issuer’s principals;

6 “(cc) the stated purpose and
7 intended use of the capital for-
8 mation funds sought by the
9 issuer; and

10 “(dd) the target offering
11 amount;

12 “(XIII) outsources cash-manage-
13 ment functions to a qualified third-
14 party custodian, such as a traditional
15 broker or dealer or insured depository
16 institution;

17 “(XIV) maintains such books
18 and records as the Commission deter-
19 mines appropriate; and

20 “(XV) defines and makes avail-
21 able the process for raising and re-
22 solving a complaint, including alter-
23 natives available to investors if the
24 crowdfunding intermediary is unable

1 to resolve a dispute to the satisfaction
2 of the investor.”.

3 (b) DEALERS.—Section 3(a)(5) of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 780c(a)(4)) is amended
5 by adding at the end the following:

6 “(D) EXEMPTION FOR CROWDFUNDING
7 INTERMEDIARIES.—The term ‘dealer’ does not
8 include any crowdfunding intermediary de-
9 scribed in paragraph (4)(G).”.

10 **SEC. 8. CONFORMING AMENDMENTS.**

11 (a) SECURITIES ACT OF 1933.—The Securities Act
12 of 1933 (15 U.S.C. 77a et seq.) is amended by striking
13 “section 4” each place that term appears (other than in
14 the amendments made by sections 1 through 4 of this Act)
15 and inserting “section 4(a)”.

16 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
17 28(f)(5)(E) of the Securities Exchange Act of 1934 (15
18 U.S.C. 78bb(f)(5)(E)) is amended by striking “section
19 4(2)” and inserting “section 4(a)(2)”.

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