

117TH CONGRESS
2D SESSION

S. 3967

To amend the Securities Act of 1933 to preempt State securities law requiring registration for secondary transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2022

Mr. MORAN 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 Act of 1933 to preempt State securities law requiring registration for secondary transactions, 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 “Improving
5 Crowdfunding Opportunities Act”.

6 **SEC. 2. CROWDFUNDING REVISIONS.**

7 (a) EXEMPTION FROM STATE REGULATION.—Sec-
8 tion 18(b)(4)(A) of the Securities Act of 1933 (15 U.S.C.
9 77r(b)(4)(A)) is amended by striking “pursuant to sec-

tion” and all that follows through the semicolon at the
end and inserting the following: “pursuant to—

“(i) section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

“(ii) section 4A(b) or any regulation issued under that section;”.

(b) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—Section 4A(c) of the Securities Act of 1933 (15 U.S.C. 77d–1(c)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

“(3) LIABILITY OF FUNDING PORTALS.—For the purposes of this subsection, a funding portal, as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), shall not be considered to be an issuer unless, in connection with the offer or sale of a security, the funding portal knowingly—

“(A) makes any untrue statement of a material fact or omits to state a material fact in order to make the statements made, in light of

1 the circumstances under which they are made,
 2 not misleading; or

3 “(B) engages in any act, practice, or
 4 course of business which operates or would op-
 5 erate as a fraud or deceit upon any person.”.

6 (c) APPLICABILITY OF BANK SECRECY ACT RE-
 7 QUIREMENTS.—

8 (1) SECURITIES ACT OF 1933.—Section 4A(a) of
 9 the Securities Act of 1933 (15 U.S.C. 77d–1(a)) is
 10 amended—

11 (A) in paragraph (11), by striking “and”
 12 at the end;

13 (B) in paragraph (12), by striking the pe-
 14 riod at the end and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(13) not be subject to the recordkeeping and
 17 reporting requirements relating to monetary instru-
 18 ments under subchapter II of chapter 53 of title 31,
 19 United States Code.”.

20 (2) TITLE 31, UNITED STATES CODE.—Section
 21 5312 of title 31, United States Code, is amended by
 22 striking subsection (c) and inserting the following:

23 “(c) ADDITIONAL CLARIFICATION.—The term ‘finan-
 24 cial institution’ (as defined in subsection (a))—

1 “(1) includes any futures commission merchant,
 2 commodity trading advisor, or commodity pool oper-
 3 ator registered, or required to register, under the
 4 Commodity Exchange Act (7 U.S.C. 1 et seq.); and

5 “(2) does not include a funding portal, as that
 6 term is defined in section 3(a) of the Securities Ex-
 7 change Act of 1934 (15 U.S.C. 78c(a)).”.

8 (d) PROVISION OF IMPERSONAL INVESTMENT AD-
 9 VICE AND RECOMMENDATIONS.—Section 3(a) of the Secu-
 10 rities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amend-
 11 ed—

12 (1) by redesignating the second paragraph (80)
 13 (relating to funding portals) as paragraph (81); and

14 (2) in paragraph (81)(A), as so redesignated,
 15 by inserting after “recommendations” the following:
 16 “(other than by providing impersonal investment ad-
 17 vice by means of written material, or an oral state-
 18 ment, that does not purport to meet the objectives
 19 or needs of a specific individual or account)”.

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