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112TH CONGRESS
1ST SESSION**H. R. 2930**

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2011

Received; read the first time

NOVEMBER 8, 2011

Read the second time and placed on the calendar

AN ACT

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 “Entrepreneur Access
5 to Capital Act”.

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

7 (a) SECURITIES ACT OF 1933.—Section 4 of the Se-
8 curities Act of 1933 (15 U.S.C. 77d) is amended by add-
9 ing at the end the following:

1 “(6) transactions involving the offer or sale of
2 securities by an issuer, provided that—

3 “(A) the aggregate amount sold within the
4 previous 12-month period in reliance upon this
5 exemption is—

6 “(i) \$1,000,000, as such amount is
7 adjusted by the Commission to reflect the
8 annual change in the Consumer Price
9 Index for All Urban Consumers published
10 by the Bureau of Labor Statistics, or less;
11 or

12 “(ii) if the issuer provides potential
13 investors with audited financial statements,
14 \$2,000,000, as such amount is adjusted by
15 the Commission to reflect the annual
16 change in the Consumer Price Index for
17 All Urban Consumers published by the Bu-
18 reau of Labor Statistics, or less;

19 “(B) the aggregate amount sold to any in-
20 vestor in reliance on this exemption within the
21 previous 12-month period does not exceed the
22 lesser of—

23 “(i) \$10,000, as such amount is ad-
24 justed by the Commission to reflect the an-
25 nual change in the Consumer Price Index

1 for All Urban Consumers published by the
2 Bureau of Labor Statistics; and

3 “(ii) 10 percent of such investor’s an-
4 nual income;

5 “(C) in the case of a transaction involving
6 an intermediary between the issuer and the in-
7 vestor, such intermediary complies with the re-
8 quirements under section 4A(a); and

9 “(D) in the case of a transaction not in-
10 volving an intermediary between the issuer and
11 the investor, the issuer complies with the re-
12 quirements under section 4A(b).”.

13 (b) REQUIREMENTS TO QUALIFY FOR
14 CROWDFUNDING EXEMPTION.—The Securities Act of
15 1933 is amended by inserting after section 4 the following:

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

18 “(a) REQUIREMENTS ON INTERMEDIARIES.—For
19 purposes of section 4(6), a person acting as an inter-
20 mediary in a transaction involving the offer or sale of secu-
21 rities shall comply with the requirements of this subsection
22 if the intermediary—

23 “(1) warns investors, including on the
24 intermediary’s website used for the offer and sale of
25 such securities, of the speculative nature generally

1 applicable to investments in startups, emerging busi-
2 nesses, and small issuers, including risks in the sec-
3 ondary market related to illiquidity;

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

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

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

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

16 “(6) requires each potential investor to answer
17 questions demonstrating—

18 “(A) an understanding of the level of risk
19 generally applicable to investments in startups,
20 emerging businesses, and small issuers;

21 “(B) an understanding of the risk of
22 illiquidity; and

23 “(C) such other areas as the Commission
24 may determine appropriate by rule or regula-
25 tion;

1 “(7) requires the issuer to state a target offer-
2 ing amount and a deadline to reach the target offer-
3 ing amount and ensure the third party custodian de-
4 scribed under paragraph (10) withholds offering pro-
5 ceeds until aggregate capital raised from investors
6 other than the issuer is no less than 60 percent of
7 the target offering amount;

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

10 “(9) provides the Commission and potential in-
11 vestors with notice of the offering, not later than the
12 first day securities are offered to potential investors,
13 including—

14 “(A) the issuer’s name, legal status, phys-
15 ical address, and website address;

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

17 “(C) the stated purpose and intended use
18 of the proceeds of the offering sought by the
19 issuer; and

20 “(D) the target offering amount and the
21 deadline to reach the target offering amount;

22 “(10) outsources cash-management functions to
23 a qualified third party custodian, such as a broker
24 or dealer registered under section 15(b)(1) of the

1 Securities Exchange Act of 1934 or an insured de-
2 pository institution;

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

5 “(12) makes available on the intermediary’s
6 website a method of communication that permits the
7 issuer and investors to communicate with one an-
8 other;

9 “(13) provides the Commission with a notice
10 upon completion of the offering, which shall include
11 the aggregate offering amount and the number of
12 purchasers; and

13 “(14) does not offer investment advice.

14 “(b) REQUIREMENTS ON ISSUERS IF NO INTER-
15 MEDIARY.—For purposes of section 4(6), an issuer who
16 offers or sells securities without an intermediary shall
17 comply with the requirements of this subsection if the
18 issuer—

19 “(1) warns investors, including on the issuer’s
20 website, of the speculative nature generally applica-
21 ble to investments in startups, emerging businesses,
22 and small issuers, including risks in the secondary
23 market related to illiquidity;

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

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

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

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

12 “(6) requires each potential investor to answer
13 questions demonstrating—

14 “(A) an understanding of the level of risk
15 generally applicable to investments in startups,
16 emerging businesses, and small issuers;

17 “(B) an understanding of the risk of
18 illiquidity; and

19 “(C) such other areas as the Commission
20 may determine appropriate by rule or regula-
21 tion;

22 “(7) states a target offering amount and en-
23 sures that the third party custodian described under
24 paragraph (9) withholds offering proceeds until the
25 aggregate capital raised from investors other than

1 the issuer is no less than 60 percent of the target
2 offering amount;

3 “(8) provides the Commission with notice of the
4 offering, not later than the first day securities are
5 offered to potential investors, including—

6 “(A) the stated purpose and intended use
7 of the proceeds of the offering sought by the
8 issuer; and

9 “(B) the target offering amount and the
10 deadline to reach the target offering amount;

11 “(9) outsources cash-management functions to
12 a qualified third party custodian, such as a broker
13 or dealer registered under section 15(b)(1) of the
14 Securities Exchange Act of 1934 or an insured de-
15 pository institution;

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

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

21 “(12) does not offer investment advice;

22 “(13) provides the Commission with a notice
23 upon completion of the offering, which shall include
24 the aggregate offering amount and the number of
25 purchasers; and

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

4 “(c) VERIFICATION OF INCOME.—For purposes of
5 section 4(6), an issuer or intermediary may rely on certifi-
6 cations as to annual income provided by the person to
7 whom the securities are sold to verify the investor’s in-
8 come.

9 “(d) INFORMATION AVAILABLE TO STATES.—The
10 Commission shall make the notices described under sub-
11 sections (a)(9), (a)(13), (b)(8), and (b)(13) and the infor-
12 mation described under subsections (a)(4) and (b)(4)
13 available to the States.

14 “(e) RESTRICTION ON SALES.—With respect to a
15 transaction involving the issuance of securities described
16 under section 4(6), a purchaser may not transfer such se-
17 curities during the 1-year period beginning on the date
18 of purchase, unless such securities are sold to—

19 “(1) the issuer of such securities; or

20 “(2) an accredited investor.

21 “(f) CONSTRUCTION.—

22 “(1) NO REGISTRATION AS BROKER.—With re-
23 spect to a transaction described under section 4(6)
24 involving an intermediary, such intermediary shall
25 not be required to register as a broker under section

1 15(a)(1) of the Securities Exchange Act of 1934
2 solely by reason of participation in such transaction.

3 “(2) NO PRECLUSION OF OTHER CAPITAL RAIS-
4 ING.—Nothing in this section or section 4(6) shall
5 be construed as preventing an issuer from raising
6 capital through methods not described under section
7 4(6).”.

8 (c) RULEMAKING.—Not later than 180 days after the
9 date of the enactment of this Act, the Securities and Ex-
10 change Commission shall issue such rules as may be nec-
11 essary to carry out section 4A of the Securities Act of
12 1933. In issuing such rules, the Commission shall consider
13 the costs and benefits of the action.

14 (d) DISQUALIFICATION.—Not later than 180 days
15 after the date of the enactment of this Act, the Securities
16 and Exchange Commission shall by rule or regulation es-
17 tablish disqualification provisions under which an issuer
18 shall not be eligible to utilize the exemption under section
19 4(6) of the Securities Act of 1933 based on the discipli-
20 nary history of the issuer or its predecessors, affiliates,
21 officers, directors, or persons fulfilling similar roles. The
22 Commission shall also establish disqualification provisions
23 under which an intermediary shall not be eligible to act
24 as an intermediary in connection with an offering utilizing
25 the exemption under section 4(6) of the Securities Act of

1 1933 based on the disciplinary history of the intermediary
2 or its predecessors, affiliates, officers, directors, or persons
3 fulfilling similar roles. Such provisions shall be substan-
4 tially similar to the disqualification provisions contained
5 in the regulations adopted in accordance with section 926
6 of the Dodd-Frank Wall Street Reform and Consumer
7 Protection Act (15 U.S.C. 77d note).

8 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**
9 **SHAREHOLDER CAP.**

10 Section 12(g)(5) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78l(g)(5)) is amended—

12 (1) by striking “(5) For the purposes” and in-
13 serting:

14 “(5) DEFINITIONS.—

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

16 and

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

18 “(B) EXCLUSION FOR PERSONS HOLDING
19 CERTAIN SECURITIES.—For purposes of this
20 subsection, securities held by persons who pur-
21 chase such securities in transactions described
22 under section 4(6) of the Securities Act of 1933
23 shall not be deemed to be ‘held of record.’”.

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

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

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

6 (2) by inserting after subparagraph (B) the fol-
7 lowing:

8 “(C) section 4(6);”.

9 (b) CLARIFICATION OF THE PRESERVATION OF
10 STATE ENFORCEMENT AUTHORITY.—

11 (1) IN GENERAL.—The amendments made by
12 subsection (a) relate solely to State registration, doc-
13 umentation, and offering requirements, as described
14 under section 18(a) of Securities Act of 1933 (15
15 U.S.C. 77r(a)), and shall have no impact or limita-
16 tion on other State authority to take enforcement
17 action with regard to an issuer, intermediary, or any
18 other person or entity using the exemption from reg-
19 istration provided by section 4(6) of such Act.

20 (2) CLARIFICATION OF STATE JURISDICTION
21 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,
22 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the
23 Securities Act of 1933 is amended by striking “with
24 respect to fraud or deceit, or unlawful conduct by a
25 broker or dealer, in connection with securities or se-
26 curities transactions.” and inserting the following: “,

1 in connection with securities or securities trans-
2 actions, with respect to—

3 “(A) fraud or deceit;

4 “(B) unlawful conduct by a broker or deal-
5 er; and

6 “(C) with respect to a transaction de-
7 scribed under section 4(6), unlawful conduct by
8 an intermediary, issuer, or custodian.”.

Passed the House of Representatives November 3,
2011.

Attest:

KAREN L. HAAS,

Clerk.

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