

117TH CONGRESS  
2D SESSION

# H. R. 9478

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2022

Mr. MCHENRY introduced the following bill; which was referred to the Committee on Financial Services

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## 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-

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

3 “(i) section 13 or 15(d) of the Securi-  
4 ties Exchange Act of 1934 (15 U.S.C.  
5 78m, 78o(d)); or

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

8 (b) LIABILITY FOR MATERIAL MISSTATEMENTS AND  
9 OMISSIONS.—Section 4A(c) of the Securities Act of 1933  
10 (15 U.S.C. 77d–1(c)) is amended—

11 (1) by redesignating paragraph (3) as para-  
12 graph (4); and

13 (2) by inserting after paragraph (2) the fol-  
14 lowing:

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

22 “(A) makes any untrue statement of a ma-  
23 terial fact or omits to state a material fact in  
24 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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