

112TH CONGRESS  
2D SESSION

# S. 2190

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

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IN THE SENATE OF THE UNITED STATES

MARCH 13, 2012

Mr. MERKLEY (for himself, Mr. BENNET, Mr. BROWN of Massachusetts, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the securities laws to provide for registration exemptions for certain crowd-funded 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 “Capital Raising Online  
5 While Deterring Fraud and Unethical Non-Disclosure Act  
6 of 2012” or the “CROWDFUND Act”.

1 **SEC. 2. CROWDFUNDING EXEMPTION.**

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

5 “(6) transactions involving the offer or sale of  
6 securities by an issuer (including all entities con-  
7 trolled by or under common control with the issuer),  
8 provided that—

9 “(A) the aggregate amount sold to all in-  
10 vestors by the issuer, including any amount sold  
11 in reliance on the exemption provided under  
12 this paragraph during the 12-month period pre-  
13 ceeding the date of such transaction, is not more  
14 than \$1,000,000;

15 “(B) the aggregate amount sold to any in-  
16 vestor by an issuer, including any amount sold  
17 in reliance on the exemption provided under  
18 this paragraph during the 12-month period pre-  
19 ceeding the date of such transaction, does not  
20 exceed—

21 “(i) the greater of \$2,000 or 5 per-  
22 cent of the annual income or net worth of  
23 such investor, as applicable, if either the  
24 annual income or the net worth of the in-  
25 vestor is less than \$100,000; and

1           “(ii) 10 percent of the annual income  
2           or net worth of such investor, as applica-  
3           ble, not to exceed a maximum aggregate  
4           amount sold of \$100,000, if either the an-  
5           nual income or net worth of the investor is  
6           equal to or more than \$100,000;

7           “(C) the transaction is conducted through  
8           a broker or funding portal that complies with  
9           the requirements of section 4A(a); and

10           “(D) the issuer complies with the require-  
11           ments of section 4A(b).”.

12           (b)     REQUIREMENTS     TO     QUALIFY     FOR  
13     CROWDFUNDING     EXEMPTION.—The Securities Act of  
14     1933 (15 U.S.C. 77a et seq.) is amended by inserting after  
15     section 4 the following:

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

18           “(a) REQUIREMENTS ON INTERMEDIARIES.—A per-  
19     son engaged in the business of effecting transactions in  
20     securities for the account of others pursuant to section  
21     4(6) shall—

22           “(1) register with the Commission as—

23           “(A) a broker; or

1           “(B) a funding portal (as defined in sec-  
2           tion 3(a)(80) of the Securities Exchange Act of  
3           1934);

4           “(2) register with any applicable self-regulatory  
5           organization (as defined in section 3(a)(26) of the  
6           Securities Exchange Act of 1934);

7           “(3) provide such disclosures, including disclo-  
8           sures related to risks and other investor education  
9           materials, as the Commission shall, by rule, deter-  
10          mine appropriate;

11          “(4) ensure that each investor—

12           “(A) reviews investor-education informa-  
13           tion, in accordance with standards established  
14           by the Commission, by rule;

15           “(B) positively affirms that the investor  
16           understands that the investor is risking the loss  
17           of the entire investment, and that the investor  
18           could bear such a loss; and

19           “(C) answers questions demonstrating—

20           “(i) an understanding of the level of  
21           risk generally applicable to investments in  
22           startups, emerging businesses, and small  
23           issuers;

24           “(ii) an understanding of the risk of  
25           illiquidity; and

1                   “(iii) an understanding of such other  
2                   matters as the Commission determines ap-  
3                   propriate, by rule;

4                   “(5) take such measures to reduce the risk of  
5                   fraud with respect to such transactions, as estab-  
6                   lished by the Commission, by rule, including obtain-  
7                   ing a background and securities enforcement regu-  
8                   latory history check on each officer, director, and  
9                   person holding more than 20 percent of the out-  
10                  standing equity of every issuer whose securities are  
11                  offered by such person;

12                  “(6) not later than 21 days prior to the first  
13                  day on which securities are sold to any investor (or  
14                  such other period as the Commission may establish),  
15                  make available to the Commission and to potential  
16                  investors any information provided by the issuer  
17                  pursuant to subsection (b);

18                  “(7) ensure that all offering proceeds are only  
19                  provided to the issuer when the aggregate capital  
20                  raised from all investors is equal to or greater than  
21                  a target offering amount, and allow all investors to  
22                  cancel their commitments to invest, as the Commis-  
23                  sion shall, by rule, determine appropriate;

24                  “(8) make such efforts as the Commission de-  
25                  termines appropriate, by rule, to ensure that no in-

1 investor in a 12-month period has purchased securities  
2 offered pursuant to section 4(6) that, in the aggregate,  
3 from all issuers, exceed the investment limits  
4 set forth in section 4(6)(B);

5 “(9) take such steps to protect the privacy of  
6 information collected from investors as the Commission  
7 shall, by rule, determine appropriate;

8 “(10) not compensate promoters, finders, or  
9 lead generators for providing the broker or funding  
10 portal with the personal identifying information of  
11 any potential investor;

12 “(11) prohibit its directors, officers, or partners  
13 (or any person occupying a similar status or performing  
14 a similar function) from having any financial  
15 interest in an issuer using its services; and

16 “(12) meet such other requirements as the  
17 Commission may, by rule, prescribe, for the protection  
18 of investors and in the public interest.

19 “(b) REQUIREMENTS FOR ISSUERS.—For purposes  
20 of section 4(6), an issuer who offers or sells securities  
21 shall—

22 “(1) be organized under and subject to the laws  
23 of a State or territory of the United States or the  
24 District of Columbia;

25 “(2) not be—

1           “(A) subject to the requirement to file re-  
2           ports pursuant to section 13 or section 15(d) of  
3           the Securities Exchange Act of 1934 (15  
4           U.S.C. 78m, 78p(d)); or

5           “(B) treated as—

6                   “(i) an investment company, as de-  
7                   fined in section 3 of the Investment Com-  
8                   pany Act of 1940 (15 U.S.C. 80a-3);

9                   “(ii) an issuer excluded from the In-  
10                  vestment Company Act of 1940 (15 U.S.C.  
11                  80a et seq.); or

12                  “(iii) such other company as the Com-  
13                  mission, by rule or regulation, determines  
14                  appropriate;

15           “(3) file with the Commission and provide to  
16           investors and the relevant broker or funding portal,  
17           and make available to potential investors—

18                   “(A) the name, legal status, physical ad-  
19                   dress, and website address of the issuer;

20                   “(B) the names of the directors and offi-  
21                   cers (and any persons occupying a similar sta-  
22                   tus or performing a similar function), and each  
23                   person holding more than 20 percent of the  
24                   shares of the issuer;

1           “(C) a description of the business of the  
2 issuer and the anticipated business plan of the  
3 issuer;

4           “(D) a description of the financial condi-  
5 tion of the issuer, including, for offerings that,  
6 together with all other offerings of the issuer  
7 under section 4(6) within the preceding 12-  
8 month period, have, in the aggregate, target of-  
9 fering amounts of—

10                   “(i) \$100,000 or less—

11                           “(I) the income tax returns filed  
12 by the issuer for the most recently  
13 completed year (if any); and

14                           “(II) financial statements of the  
15 issuer, which shall be certified by the  
16 principal executive officer of the issuer  
17 to be true and complete in all material  
18 respects;

19                           “(ii) more than \$100,000, but not  
20 more than \$500,000, financial statements  
21 reviewed by a public accountant who is  
22 independent of the issuer, using profes-  
23 sional standards and procedures for such  
24 review or standards and procedures estab-



1           lished by the Commission, by rule, for such  
2           purpose; and

3           “(iii) more than \$500,000 (or such  
4           other amount as the Commission may es-  
5           tablish, by rule), audited financial state-  
6           ments;

7           “(E) a description of the stated purpose  
8           and intended use of the proceeds of the offering  
9           sought by the issuer with respect to the target  
10          offering amount;

11          “(F) the target offering amount, the dead-  
12          line to reach the target offering amount, and  
13          regular updates regarding the progress of the  
14          issuer in meeting the target offering amount;

15          “(G) the price to the public of the securi-  
16          ties or the method for determining the price,  
17          provided that, prior to sale, each investor shall  
18          be provided in writing the final price and all re-  
19          quired disclosures, with a reasonable oppor-  
20          tunity to rescind the commitment to purchase  
21          the securities;

22          “(H) a description of the ownership and  
23          capital structure of the issuer, including—

24                  “(i) terms of the securities of the  
25                  issuer being offered and each other class of

1 security of the issuer, including how such  
2 terms may be modified, and a summary of  
3 the differences between such securities, in-  
4 cluding how the rights of the securities  
5 being offered may be materially limited, di-  
6 luted, or qualified by the rights of any  
7 other class of security of the issuer;

8 “(ii) a description of how the exercise  
9 of the rights held by the principal share-  
10 holders of the issuer could negatively im-  
11 pact the purchasers of the securities being  
12 offered;

13 “(iii) the name and ownership level of  
14 each existing shareholder who owns more  
15 than 20 percent of any class of the securi-  
16 ties of the issuer;

17 “(iv) how the securities being offered  
18 are being valued, and examples of methods  
19 for how such securities may be valued by  
20 the issuer in the future, including during  
21 subsequent corporate actions; and

22 “(v) the risks to purchasers of the se-  
23 curities relating to minority ownership in  
24 the issuer, the risks associated with cor-  
25 porate actions, including additional issu-

1           ances of shares, a sale of the issuer or of  
2           assets of the issuer, or transactions with  
3           related parties; and

4           “(I) such other information as the Com-  
5           mission may, by rule, prescribe, for the protec-  
6           tion of investors and in the public interest;

7           “(4) not advertise the terms of the offering, ex-  
8           cept for notices which direct investors to the funding  
9           portal or broker;

10          “(5) not compensate or commit to compensate,  
11          directly or indirectly, any person to promote its of-  
12          ferings through communication channels provided by  
13          a broker or funding portal, without taking such  
14          steps as the Commission shall, by rule, require to  
15          ensure that such person clearly discloses the receipt,  
16          past or prospective, of such compensation, upon each  
17          instance of such promotional communication;

18          “(6) not less than annually, file with the Com-  
19          mission and provide to investors reports of the re-  
20          sults of operations and financial statements of the  
21          issuer, as the Commission shall, by rule, determine  
22          appropriate, subject to such exceptions and termi-  
23          nation dates as the Commission may establish, by  
24          rule; and

1           “(7) comply with such other requirements as  
2           the Commission may, by rule, prescribe, for the pro-  
3           tection of investors and in the public interest.

4           “(c) LIABILITY FOR MATERIAL MISSTATEMENTS  
5           AND OMISSIONS.—

6           “(1) ACTIONS AUTHORIZED.—

7                   “(A) IN GENERAL.—Subject to paragraph  
8                   (2), a person who purchases a security in a  
9                   transaction exempted by the provisions of sec-  
10                  tion 4(6) may bring an action against an issuer  
11                  described in paragraph (2), either at law or in  
12                  equity in any court of competent jurisdiction, to  
13                  recover the consideration paid for such security  
14                  with interest thereon, less the amount of any  
15                  income received thereon, upon the tender of  
16                  such security, or for damages if such person no  
17                  longer owns the security.

18                  “(B) LIABILITY.—An action brought under  
19                  this paragraph shall be subject to the provisions  
20                  of section 12(b) and section 13, as if the liabil-  
21                  ity were created under section 12(a)(2).

22           “(2) APPLICABILITY.—An issuer shall be liable  
23           in an action under paragraph (1), if the issuer—

24                   “(A) by the use of any means or instru-  
25                   ments of transportation or communication in

1 interstate commerce or of the mails, by any  
2 means of any written or oral communication, in  
3 the offering or sale of a security in a trans-  
4 action exempted by the provisions of section  
5 4(6), makes an untrue statement of a material  
6 fact or omits to state a material fact required  
7 to be stated or necessary in order to make the  
8 statements, in the light of the circumstances  
9 under which they were made, not misleading,  
10 provided that the purchaser did not know of  
11 such untruth or omission; and

12 “(B) does not sustain the burden of proof  
13 that such issuer did not know, and in the exer-  
14 cise of reasonable care could not have known, of  
15 such untruth or omission.

16 “(3) DEFINITION.—As used in this subsection,  
17 the term ‘issuer’ includes any person who is a direc-  
18 tor or partner of the issuer, and the principal execu-  
19 tive officer or officers, principal financial officer, and  
20 controller or principal accounting officer of the  
21 issuer (and any person occupying a similar status or  
22 performing a similar function) that offers or sells a  
23 security in a transaction exempted by the provisions  
24 of section 4(6), and any person who offers or sells  
25 the security in such offering.

1       “(d) INFORMATION AVAILABLE TO STATES.—The  
2 Commission shall make, or shall cause to be made by the  
3 relevant broker or funding portal, the information de-  
4 scribed in subsection (b) and such other information as  
5 the Commission, by rule, determines appropriate, available  
6 to the securities commission (or any agency or office per-  
7 forming like functions) of each State and territory of the  
8 United States and the District of Columbia.

9       “(e) RESTRICTIONS ON SALES.—Securities issued  
10 pursuant to a transaction described in section 4(6)—

11               “(1) may not be transferred by the purchaser  
12 of such securities during the 1-year period beginning  
13 on the date of purchase, unless such securities are  
14 transferred—

15                       “(A) to the issuer of the securities;

16                       “(B) to an accredited investor;

17                       “(C) as part of an offering registered with  
18 the Commission; or

19                       “(D) to a member of the family of the pur-  
20 chaser or the equivalent, or in connection with  
21 the death or divorce of the purchaser or other  
22 similar circumstance, in the discretion of the  
23 Commission; and

24               “(2) shall be subject to such other limitations  
25 as the Commission shall, by rule, establish.

1       “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion or section 4(6) shall be construed as preventing an  
3 issuer from raising capital through methods not described  
4 under section 4(6).

5       “(g) CERTAIN CALCULATIONS.—

6           “(1) DOLLAR AMOUNTS.—Dollar amounts in  
7 section 4(6) and subsections (a)(9) and (b)(2) of  
8 this section shall be adjusted by the Commission not  
9 less frequently than once every 5 years, by notice  
10 published in the Federal Register to reflect any  
11 change in the Consumer Price Index for All Urban  
12 Consumers published by the Bureau of Labor Statis-  
13 tics.

14           “(2) INCOME AND NET WORTH.—The income  
15 and net worth of a natural person under section  
16 4(6)(B)(ii) and subsection (a)(9) of this section shall  
17 be calculated in accordance with any rules of the  
18 Commission under this title regarding the calcula-  
19 tion of the income and net worth, respectively, of an  
20 accredited investor.”.

21       “(c) RULEMAKING.—Not later than 270 days after the  
22 date of enactment of this Act, the Securities and Ex-  
23 change Commission (in this Act referred to as the “Com-  
24 mission”) shall issue such rules as the Commission deter-  
25 mines may be necessary or appropriate for the protection

1 of investors to carry out sections 4(6) and section 4A of  
2 the Securities Act of 1933, as added by this Act. In car-  
3 rying out this section, the Commission shall consult with  
4 any securities commission (or any agency or office per-  
5 forming like functions) of the States, any territory of the  
6 United States, and the District of Columbia, which seeks  
7 to consult with the Commission, and with any applicable  
8 national securities association.

9 (d) DISQUALIFICATION.—

10 (1) IN GENERAL.—Not later than 270 days  
11 after the date of enactment of this Act, the Commis-  
12 sion shall, by rule, establish disqualification provi-  
13 sions under which—

14 (A) an issuer shall not be eligible to offer  
15 securities pursuant to section 4(6) of the Secu-  
16 rities Act of 1933, as added by this Act; and

17 (B) a broker or funding portal shall not be  
18 eligible to effect or participate in transactions  
19 pursuant to that section 4(6).

20 (2) INCLUSIONS.—Disqualification provisions  
21 required by this subsection shall—

22 (A) be substantially similar to the provi-  
23 sions of section 230.262 of title 17, Code of  
24 Federal Regulations (or any successor thereto);  
25 and



1 (B) disqualify any offering or sale of secu-  
2 rities by a person that—

3 (i) is subject to a final order of a  
4 State securities commission (or an agency  
5 or officer of a State performing like func-  
6 tions), a State authority that supervises or  
7 examines banks, savings associations, or  
8 credit unions, a State insurance commis-  
9 sion (or an agency or officer of a State  
10 performing like functions), an appropriate  
11 Federal banking agency, or the National  
12 Credit Union Administration, that—

13 (I) bars the person from—

14 (aa) association with an en-  
15 tity regulated by such commis-  
16 sion, authority, agency, or officer;

17 (bb) engaging in the busi-  
18 ness of securities, insurance, or  
19 banking; or

20 (cc) engaging in savings as-  
21 sociation or credit union activi-  
22 ties; or

23 (II) constitutes a final order  
24 based on a violation of any law or reg-  
25 ulation that prohibits fraudulent, ma-

1 manipulative, or deceptive conduct within  
2 the 10-year period ending on the date  
3 of the filing of the offer or sale; or  
4 (ii) has been convicted of any felony  
5 or misdemeanor in connection with the  
6 purchase or sale of any security or involv-  
7 ing the making of any false filing with the  
8 Commission.

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

11 (a) EXEMPTION.—Section 12(g) of the Securities Ex-  
12 change Act of 1934 (15 U.S.C. 78l(g)) is amended by add-  
13 ing at the end the following:

14 “(6) EXCLUSION FOR PERSONS HOLDING CER-  
15 TAIN SECURITIES.—The Commission shall, by rule,  
16 exempt, conditionally or unconditionally, securities  
17 acquired pursuant to an offering made under section  
18 4(6) of the Securities Act of 1933 from the provi-  
19 sions of this subsection.”.

20 (b) RULEMAKING.—The Commission shall issue a  
21 rule to carry out section 12(g)(6) of the Securities Ex-  
22 change Act of 1934 (15 U.S.C. 78c), as added by this  
23 section, not later than 270 days after the date of enact-  
24 ment of this Act.

1 **SEC. 4. FUNDING PORTAL REGULATION.**

2 (a) EXEMPTION.—

3 (1) IN GENERAL.—Section 3 of the Securities  
4 Exchange Act of 1934 (15 U.S.C. 78c) is amended  
5 by adding at the end the following:

6 “(h) LIMITED EXEMPTION FOR FUNDING POR-  
7 TALS.—

8 “(1) IN GENERAL.—The Commission shall, by  
9 rule, exempt, conditionally or unconditionally, a reg-  
10 istered funding portal from the requirement to reg-  
11 ister as a broker or dealer under section 15(a)(1),  
12 provided that such funding portal—

13 “(A) remains subject to the examination,  
14 enforcement, and other rulemaking authority of  
15 the Commission;

16 “(B) is a member of a national securities  
17 association registered under section 15A; and

18 “(C) is subject to such other requirements  
19 under this title as the Commission determines  
20 appropriate under such rule.

21 “(2) NATIONAL SECURITIES ASSOCIATION MEM-  
22 BERSHIP.—For purposes of sections 15(b)(8) and  
23 15A, the term ‘broker or dealer’ includes a funding  
24 portal and the term ‘registered broker or dealer’ in-  
25 cludes a registered funding portal, except to the ex-  
26 tent that the Commission, by rule, determines other-

1 wise, provided that a national securities association  
2 shall only examine for and enforce against a reg-  
3 istered funding portal rules of such national securi-  
4 ties association written specifically for registered  
5 funding portals.”.

6 (2) RULEMAKING.—The Commission shall issue  
7 a rule to carry out section 3(h) of the Securities Ex-  
8 change Act of 1934 (15 U.S.C. 78c), as added by  
9 this subsection, not later than 270 days after the  
10 date of enactment of this Act.

11 (b) DEFINITION.—Section 3(a) of the Securities Ex-  
12 change Act of 1934 (15 U.S.C. 78c(a)), as amended by  
13 title II of this Act, is amended by adding at the end the  
14 following:

15 “(80) FUNDING PORTAL.—The term ‘funding  
16 portal’ means any person engaged in the business of  
17 effecting transactions in securities for the account of  
18 others, solely pursuant to section 4(6) of the Securi-  
19 ties Act of 1933 (15 U.S.C. 77d(6)), that does not—

20 “(A) offer investment advice or rec-  
21 ommendations;

22 “(B) solicit purchases, sales, or offers to  
23 buy the securities offered or displayed on its  
24 website or portal;

1           “(C) compensate employees, agents, or  
2           other persons for such solicitation or based on  
3           the sale of securities displayed or referenced on  
4           its website or portal;

5           “(D) hold, manage, possess, or otherwise  
6           handle investor funds or securities; or

7           “(E) engage in such other activities as the  
8           Commission, by rule, determines appropriate.”.

9   **SEC. 5. RELATIONSHIP WITH STATE LAW.**

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

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

14           (2) by inserting after subparagraph (B) the fol-  
15           lowing:

16           “(C) section 4(6);”.

17       (b) **CLARIFICATION OF THE PRESERVATION OF**  
18 **STATE ENFORCEMENT AUTHORITY.**—

19           (1) **IN GENERAL.**—The amendments made by  
20           subsection (a) relate solely to State registration, doc-  
21           umentation, and offering requirements, as described  
22           under section 18(a) of Securities Act of 1933 (15  
23           U.S.C. 77r(a)), and shall have no impact or limita-  
24           tion on other State authority to take enforcement  
25           action with regard to an issuer, funding portal, or

1 any other person or entity using the exemption from  
2 registration provided by section 4(6) of that Act.

3 (2) CLARIFICATION OF STATE JURISDICTION  
4 OVER UNLAWFUL CONDUCT OF FUNDING PORTALS  
5 AND ISSUERS.—Section 18(c)(1) of the Securities  
6 Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by  
7 striking “with respect to fraud or deceit, or unlawful  
8 conduct by a broker or dealer, in connection with se-  
9 curities or securities transactions.” and inserting the  
10 following: “, in connection with securities or securi-  
11 ties transactions

12 “(A) with respect to—

13 “(i) fraud or deceit; or

14 “(ii) unlawful conduct by a broker or  
15 dealer; and

16 “(B) in connection to a transaction de-  
17 scribed under section 4(6), with respect to—

18 “(i) fraud or deceit; or

19 “(ii) unlawful conduct by a broker,  
20 dealer, funding portal, or issuer.”.

21 (c) NOTICE FILINGS PERMITTED.—Section 18(c)(2)  
22 of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is  
23 amended by adding at the end the following:

24 “(F) FEES NOT PERMITTED ON  
25 CROWDFUNDED SECURITIES.—Notwithstanding

1           subparagraphs (A), (B), and (C), no filing or  
 2           fee may be required with respect to any security  
 3           that is a covered security pursuant to sub-  
 4           section (b)(4)(B), or will be such a covered se-  
 5           curity upon completion of the transaction, ex-  
 6           cept for the securities commission (or any agen-  
 7           cy or office performing like functions) of the  
 8           State of the principal place of business of the  
 9           issuer, or any State in which purchasers of 50  
 10          percent or greater of the aggregate amount of  
 11          the issue are residents, provided that for pur-  
 12          poses of this subparagraph, the term ‘State’ in-  
 13          cludes the District of Columbia and the terri-  
 14          tories of the United States.”.

15          (d) FUNDING PORTALS.—

16               (1) STATE EXEMPTIONS AND OVERSIGHT.—Sec-  
 17          tion 15(i) of the Securities Exchange Act of 1934  
 18          (15 U.S.C. 78o(i)) is amended—

19                       (A) by redesignating paragraphs (2) and  
 20                       (3) as paragraphs (3) and (4), respectively; and

21                       (B) by inserting after paragraph (1) the  
 22          following:

23                       “(2) FUNDING PORTALS.—

24                               “(A) LIMITATION ON STATE LAWS.—Ex-  
 25          cept as provided in subparagraph (B), no State

1 or political subdivision thereof may enforce any  
2 law, rule, regulation, or other administrative ac-  
3 tion against a registered funding portal with re-  
4 spect to its business as such.

5 “(B) EXAMINATION AND ENFORCEMENT  
6 AUTHORITY.—Subparagraph (A) does not apply  
7 with respect to the examination and enforce-  
8 ment of any law, rule, regulation, or adminis-  
9 trative action of a State or political subdivision  
10 thereof in which the principal place of business  
11 of a registered funding portal is located, pro-  
12 vided that such law, rule, regulation, or admin-  
13 istrative action is not in addition to or different  
14 from the requirements for registered funding  
15 portals established by the Commission.

16 “(C) DEFINITION.—For purposes of this  
17 paragraph, the term ‘State’ includes the Dis-  
18 trict of Columbia and the territories of the  
19 United States.”.

20 (2) STATE FRAUD AUTHORITY.—Section  
21 18(c)(1) of the Securities Act of 1933 (15 U.S.C.  
22 77r(c)(1)) is amended by striking “or dealer” and  
23 inserting “, dealer, or funding portal”.



1 **SEC. 6. REPORTS TO CONGRESS.**

2 (a) IN GENERAL.—The Commission, after consulta-  
3 tion with the securities commission (or any agency or of-  
4 fice performing like functions) of the States and State at-  
5 torneys general, shall submit a report to the Committee  
6 on Banking, Housing, and Urban Affairs of the Senate  
7 and the Committee on Financial Services of the House of  
8 Representatives, not later than 1 year after the date on  
9 which the Commission issues final rules under section  
10 2(c), and every 2 years thereafter through the date that  
11 is 7 years after that date of issuance.

12 (b) REPORTS.—Each report provided pursuant to  
13 subsection (a) shall include—

14 (1) a description of the material risks posed to  
15 investors in securities issued pursuant to section  
16 4(6) of the Securities Act of 1933, as added by this  
17 Act, including risks related to valuations, subsequent  
18 corporate actions by the issuer, dilution of ownership  
19 interests or rights, and any other risks to investors  
20 that the Commission shall determine;

21 (2) a description of the performance of invest-  
22 ments made in securities issued pursuant to that  
23 section 4(6), to the extent that such information is  
24 available to the Commission;

25 (3) a description of fraud or misconduct allega-  
26 tions related to issuances made pursuant to that sec-

1       tion 4(6), including a description of actions by and  
2       complaints to the Commission involving material  
3       misstatements, material omissions, or other material  
4       problems associated with offerings in reliance on  
5       such exemption, provided that the description shall  
6       be limited to concluded enforcement actions or infor-  
7       mation that is otherwise publicly available;

8               (4) the approximate number of offerings made  
9       pursuant to that section 4(6);

10              (5) a summary of information relating to pur-  
11       chasers of securities offered pursuant to that section  
12       4(6), including investor income and net worth levels,  
13       the number of investments in such offerings made  
14       by such investors, and the average sizes of such in-  
15       vestments, to the extent that such information is  
16       available to the Commission;

17              (6) a summary of information relating to  
18       issuers of securities relying on that section 4(6), in-  
19       cluding their asset sizes, revenues, numbers of inves-  
20       tors, and the amounts raised, to the extent that such  
21       information is available to the Commission;

22              (7) a description of any emerging trends in of-  
23       ferings or issuances made pursuant to that section  
24       4(6);

1           (8) recommendations regarding enhancements,  
2 including additional issuer, broker, dealer, or fund-  
3 ing portal requirements, regulatory oversight, or dis-  
4 closures, that may improve protections for investors  
5 purchasing securities issued pursuant to that section  
6 4(6); and

7           (9) any other information that the Commission  
8 deems necessary or appropriate.

9           (c) STATE REPORTS.—

10           (1) IN GENERAL.—If the securities commission  
11 (or any agency or office performing like functions)  
12 of a State or State attorney general issues a report  
13 in writing to the Commission identifying any emerg-  
14 ing trends that have undermined investor protec-  
15 tions, or other risks pertaining to investor protec-  
16 tion, in offerings or issuances relying upon section  
17 4(6) of the Securities Act of 1933, as added by this  
18 Act, other than in connection with a review con-  
19 ducted by the Commission pursuant to this section,  
20 the Commission shall—

21                   (A) conduct a preliminary review of such  
22 report; and

23                   (B) respond in writing to such report, not  
24 later than 120 days after the date of receipt of

1           such report, with the results of its preliminary  
2           review.

3           (2) COPIES OF REPORT.—The Commission shall  
4           provide a copy of any report of the securities com-  
5           mission (or any agency or office performing like  
6           functions) of a State or State attorney general de-  
7           scribed in paragraph (1) and the response of the  
8           Commission to the Committee on Banking, Housing,  
9           and Urban Affairs of the Senate and the Committee  
10          on Financial Services of the House of Representa-  
11          tives, not later than 90 days after the date on which  
12          such response is provided.

13          (d) DEFINITION OF STATE.—For purposes of this  
14          section, the term “State” includes any territory of the  
15          United States and the District of Columbia.

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