

115TH CONGRESS  
2D SESSION

# S. 3213

To amend the Securities Act of 1933 to subject crowdfunding vehicles to the jurisdiction of the Securities and Exchange Commission, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 16, 2018

Mr. BENNET (for himself and Mr. HELLER) 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 Act of 1933 to subject crowdfunding vehicles to the jurisdiction of the Securities and Exchange Commission, 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 “Crowdfunding Amend-  
5 ments Act”.

6 **SEC. 2. CROWDFUNDING VEHICLES.**

7 (a) AMENDMENTS TO THE SECURITIES ACT OF  
8 1933.—The Securities Act of 1933 (15 U.S.C. 77a et  
9 seq.) is amended—

1           (1) in section 2(a) (15 U.S.C. 77b(a)), by add-  
2           ing at the end the following:

3           “(20) The term ‘crowdfunding vehicle’ has the  
4           meaning given the term in section 3(c)(15)(B) of the  
5           Investment Company Act of 1940 (15 U.S.C. 80a-  
6           3(c)(15)(B)).”;

7           (2) in section 4(a)(6) (15 U.S.C. 77d(a)(6))—

8           (A) in subparagraph (A)—

9           (i) by inserting “, other than a  
10           crowdfunding vehicle,” after “sold to all  
11           investors”; and

12           (ii) by inserting “other than a  
13           crowdfunding vehicle,” after “the issuer,”;  
14           and

15           (B) in subparagraph (B), in the matter  
16           preceding clause (i), by inserting “, other than  
17           a crowdfunding vehicle,” after “any investor”;  
18           and

19           (3) in section 4A(f) (15 U.S.C. 77d-1(f))—

20           (A) in the matter preceding paragraph (1),  
21           by striking “Section 4(6)” and inserting “Sec-  
22           tion 4(a)(6)”; and

23           (B) in paragraph (3), by inserting “by any  
24           of paragraphs (1) through (14) of” before “sec-  
25           tion 3(c)”.

1 (b) AMENDMENTS TO THE INVESTMENT COMPANY  
2 ACT OF 1940.—Section 3(c) of the Investment Company  
3 Act of 1940 (15 U.S.C. 80a-3(c)) is amended by adding  
4 at the end the following:

5 “(15)(A) Any crowdfunding vehicle.

6 “(B) For purposes of this paragraph, the term  
7 ‘crowdfunding vehicle’ means a company—

8 “(i) the purpose of which (as set forth in  
9 the organizational documents of the company)  
10 is limited to acquiring, holding, and disposing  
11 of securities issued by a single company in 1 or  
12 more transactions made under section 4(a)(6)  
13 of the Securities Act of 1933 (15 U.S.C.  
14 77d(a)(6));

15 “(ii) that issues only 1 class of securities;

16 “(iii) that receives no compensation in con-  
17 nection with the acquisition, holding, or disposi-  
18 tion of securities described in clause (i);

19 “(iv) no investment adviser or associated  
20 person of which receives any compensation on  
21 the basis of a share of capital gains upon, or  
22 capital appreciation of, any portion of the funds  
23 of an investor of the company;

24 “(v) the securities of which have been  
25 issued in a transaction made under section

1 4(a)(6) of the Securities Act of 1933 (15  
2 U.S.C. 77d(a)(6)), where both the  
3 crowdfunding vehicle and the company whose  
4 securities the crowdfunding vehicle holds are co-  
5 issuers;

6 “(vi) that is current with respect to ongo-  
7 ing reporting requirements under section  
8 227.202 of title 17, Code of Federal Regula-  
9 tions, or any successor regulation;

10 “(vii) that holds securities of a company  
11 that is subject to ongoing reporting require-  
12 ments under section 227.202 of title 17, Code  
13 of Federal Regulations, or any successor regula-  
14 tion; and

15 “(viii) that is advised by an investment ad-  
16 viser that is—

17 “(I) registered under the Investment  
18 Advisers Act of 1940 (15 U.S.C. 80b-1 et  
19 seq.); and

20 “(II) required to—

21 “(aa) disclose to the investors of  
22 the company any fees charged by the  
23 investment adviser; and

24 “(bb) obtain approval from a ma-  
25 jority of the investors of the company

1 with respect to any increase in the  
2 fees described in item (aa).”.

3 (c) AMENDMENTS TO THE INVESTMENT ADVISERS  
4 ACT OF 1940.—The Investment Advisers Act of 1940 (15  
5 U.S.C. 80b–1 et seq.) is amended—

6 (1) in section 202(a) (15 U.S.C. 80b–2(a))—

7 (A) by redesignating the second paragraph  
8 (29) as paragraph (31); and

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

10 “(32) The term ‘crowdfunding vehicle’ has the  
11 meaning given the term in section 3(c)(15)(B) of the  
12 Investment Company Act of 1940 (15 U.S.C. 80a–  
13 3(c)(15)(B)).

14 “(33)(A) The term ‘crowdfunding vehicle ad-  
15 viser’ means an investment adviser that acts as an  
16 investment adviser solely with respect to  
17 crowdfunding vehicles.

18 “(B) A determination, for the purposes of sub-  
19 paragraph (A), regarding whether an investment ad-  
20 viser acts as an investment adviser solely with re-  
21 spect to crowdfunding vehicles shall not include any  
22 consideration of the activity of any affiliate of the  
23 investment adviser.”;

24 (2) in section 203 (15 U.S.C. 80b–3), by add-  
25 ing at the end the following:

1 “(o) CROWDFUNDING VEHICLE ADVISERS.—

2 “(1) IN GENERAL.—A crowdfunding vehicle ad-  
3 viser shall be required to register under this section.

4 “(2) TAILORED REQUIREMENTS.—As necessary  
5 or appropriate in the public interest and for the pro-  
6 tection of investors, and to promote efficiency, com-  
7 petition, and capital formation, the Commission may  
8 tailor the requirements under section 275.206(4)–2  
9 of title 17, Code of Federal Regulations, with re-  
10 spect to the application of those requirements to a  
11 crowdfunding vehicle adviser.”; and

12 (3) in section 203A(a) (15 U.S.C. 80b–3a(a))—

13 (A) in paragraph (1)—

14 (i) in subparagraph (A), by striking  
15 “or” at the end;

16 (ii) in subparagraph (B), by striking  
17 the period at the end and inserting “; or”;  
18 and

19 (iii) by adding at the end the fol-  
20 lowing:

21 “(C) is a crowdfunding vehicle adviser.”;

22 and

23 (B) in paragraph (2)—

1 (i) in subparagraph (A), by inserting  
2 “a crowdfunding vehicle adviser,” after  
3 “unless the investment adviser is”; and

4 (ii) in subparagraph (B)(ii), in the  
5 matter preceding subclause (I), by insert-  
6 ing “except with respect to a crowdfunding  
7 vehicle adviser,” before “has assets”.

8 **SEC. 3. CROWDFUNDING EXEMPTION FROM REGISTRA-**  
9 **TION.**

10 Section 12(g)(6) of the Securities Exchange Act of  
11 1934 (15 U.S.C. 78l(g)(6)) is amended—

12 (1) by striking “The Commission” and insert-  
13 ing the following:

14 “(A) IN GENERAL.—The Commission”;

15 (2) in subparagraph (A), as so designated, by  
16 striking “section 4(6)” and inserting “section  
17 4(a)(6)”; and

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

19 “(B) TREATMENT OF SECURITIES ISSUED  
20 BY CERTAIN ISSUERS.—

21 “(i) IN GENERAL.—An exemption  
22 under subparagraph (A) shall be uncondi-  
23 tional for securities offered by an issuer  
24 that had a public float of less than  
25 \$75,000,000, as of the last business day of

1 the most recently completed semiannual  
2 period of the issuer, which shall be cal-  
3 culated in accordance with clause (ii).

4 “(ii) CALCULATION.—

5 “(I) IN GENERAL.—A public  
6 float described in clause (i) shall be  
7 calculated by multiplying the aggre-  
8 gate worldwide number of shares of  
9 the common equity securities of an  
10 issuer that are held by non-affiliates  
11 by the price at which those securities  
12 were last sold (or the average bid and  
13 asked prices of those securities) in the  
14 principal market for those securities.

15 “(II) CALCULATION OF ZERO.—

16 If a public float calculation under sub-  
17 clause (I) with respect to an issuer is  
18 zero, an exemption under subpara-  
19 graph (A) shall be unconditional for  
20 securities offered by the issuer if the  
21 issuer had annual revenues of less  
22 than \$50,000,000, as of the most re-  
23 cently completed fiscal year of the  
24 issuer.”.

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