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

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

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

“(ii) if the issuer provides potential investors with audited financial statements, $2,000,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, or less;

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

“(i) $10,000, as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index...
for All Urban Consumers published by the Bureau of Labor Statistics; and

“(ii) 10 percent of such investor’s annual income;

“(C) in the case of a transaction involving an intermediary between the issuer and the investor, such intermediary complies with the requirements under section 4A(a); and

“(D) in the case of a transaction not involving an intermediary between the issuer and the investor, the issuer complies with the requirements under section 4A(b).”.

(b) Requirements to Qualify for Crowdfunding Exemption.—The Securities Act of 1933 is amended by inserting after section 4 the following:

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

“(a) Requirements on Intermediaries.—For purposes of section 4(6), a person acting as an intermediary in a transaction involving the offer or sale of securities shall comply with the requirements of this subsection if the intermediary—

“(1) warns investors, including on the intermediary’s website used for the offer and sale of such securities, of the speculative nature generally
applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

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

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

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

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

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

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

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

“(C) such other areas as the Commission may determine appropriate by rule or regulation;
“(7) requires the issuer to state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian described under paragraph (10) withholds offering proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

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

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

“(A) the issuer’s name, legal status, physical address, and website address;

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

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

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

“(10) outsources cash-management functions to a qualified third party custodian, such as a broker or dealer registered under section 15(b)(1) of the
Securities Exchange Act of 1934 or an insured de-

pository institution;

“(11) maintains such books and records as the

Commission determines appropriate;

“(12) makes available on the intermediary’s

website a method of communication that permits the

issuer and investors to communicate with one an-

other;

“(13) provides the Commission with a notice

upon completion of the offering, which shall include

the aggregate offering amount and the number of

purchasers; and

“(14) does not offer investment advice.

“(b) REQUIREMENTS ON ISSUERS IF NO INTER-

MEDIARY.—For purposes of section 4(6), an issuer who

offers or sells securities without an intermediary shall

comply with the requirements of this subsection if the

issuer—

“(1) warns investors, including on the issuer’s

website, of the speculative nature generally applica-

ble to investments in startups, emerging businesses,

and small issuers, including risks in the secondary

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

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

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

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

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

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

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

“(C) such other areas as the Commission may determine appropriate by rule or regulation;

“(7) states a target offering amount and ensures that the third party custodian described under paragraph (9) withholds offering proceeds until the aggregate capital raised from investors other than
the issuer is no less than 60 percent of the target offering amount;

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

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

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

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

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

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

“(12) does not offer investment advice;

“(13) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and
“(14) discloses to potential investors, on the issuer’s website, that the issuer has an interest in the issuance.

“(c) Verification of Income.—For purposes of section 4(6), an issuer or intermediary may rely on certifications as to annual income provided by the person to whom the securities are sold to verify the investor’s income.

“(d) Information Available to States.—The Commission shall make the notices described under subsections (a)(9), (a)(13), (b)(8), and (b)(13) and the information described under subsections (a)(4) and (b)(4) available to the States.

“(e) Restriction on Sales.—With respect to a transaction involving the issuance of securities described under section 4(6), a purchaser may not transfer such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

“(1) the issuer of such securities; or

“(2) an accredited investor.

“(f) Construction.—

“(1) No registration as broker.—With respect to a transaction described under section 4(6) involving an intermediary, such intermediary shall not be required to register as a broker under section
15(a)(1) of the Securities Exchange Act of 1934 solely by reason of participation in such transaction.

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

(c) RULEMAKING.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue such rules as may be necessary to carry out section 4A of the Securities Act of 1933. In issuing such rules, the Commission shall consider the costs and benefits of the action.

(d) DISQUALIFICATION.—Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall by rule or regulation establish disqualification provisions under which an issuer shall not be eligible to utilize the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. The Commission shall also establish disqualification provisions under which an intermediary shall not be eligible to act as an intermediary in connection with an offering utilizing the exemption under section 4(6) of the Securities Act of
1933 based on the disciplinary history of the intermediary or its predecessors, affiates, officers, directors, or persons fulfilling similar roles. Such provisions shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

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

(1) by striking “(5) For the purposes” and inserting:

“(5) DEFINITIONS.—

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

(2) by adding at the end the following:

“(B) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—For purposes of this subsection, securities held by persons who purchase such securities in transactions described under section 4(6) of the Securities Act of 1933 shall not be deemed to be ‘held of record’.”.
SEC. 4. PREEMPTION OF STATE LAW.

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

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

(2) by inserting after subparagraph (B) the following:

“(C) section 4(6);”.

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

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

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

“(A) fraud or deceit;

“(B) unlawful conduct by a broker or dealer; and

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

Passed the House of Representatives November 3, 2011.

Attest: KAREN L. HAAS,

Clerk.
AN ACT

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

November 8, 2011

Read the second time and placed on the calendar.