

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2930) TO AMEND THE SECURITIES LAWS TO PROVIDE FOR REGISTRATION EXEMPTIONS FOR CERTAIN CROWDFUNDED SECURITIES, AND FOR OTHER PURPOSES, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2940) TO DIRECT THE SECURITIES AND EXCHANGE COMMISSION TO ELIMINATE THE PROHIBITION AGAINST GENERAL SOLICITATION AS A REQUIREMENT FOR A CERTAIN EXEMPTION UNDER REGULATION D

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NOVEMBER 2, 2011.—Referred to the House Calendar and ordered to be printed

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Mr. SESSIONS, from the Committee on Rules,  
submitted the following

## R E P O R T

[To accompany H. Res. 453]

The Committee on Rules, having had under consideration House Resolution 453, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

### SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2930, the Entrepreneur Access to Capital Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as original text for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The resolution makes in order only those further amendments to H.R. 2930 printed in part A of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in part A of this report. The reso-

lution provides one motion to recommit H.R. 2930 with or without instructions.

The resolution further provides for consideration of H.R. 2940, the Access to Capital for Job Creators Act, under a structured rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services now printed in the bill shall be considered as adopted, and the bill, as amended, shall be considered as read. The resolution waives all points of order against the provisions in the bill, as amended. The resolution makes in order the further amendment to H.R. 2940 printed in part B of this report, if offered by Representative Miller of North Carolina or his designee, which shall be considered as read and shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent. The resolution waives all points of order against the amendment printed in part B of this report. Finally, the resolution provides one motion to recommit H.R. 2940 with or without instructions.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 2930 includes a technical waiver of clause 2(h) of rule XI, which prohibits a committee from improperly reporting a measure without a quorum present. The Committee on Financial Services did not formally order the measure reported because the chair did not properly put the question on reporting the measure to the committee.

Although the rule waives all points of order against the committee amendment in the nature of a substitute, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the rule waives all points of order against the amendments printed in part A of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the rule waives all points of order against consideration of H.R. 2940, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the rule waives all points of order against provisions in the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the rule waives all points of order against the amendment printed in part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee record vote No. 145*

Motion by Mr. McGovern to report an open rule for both H.R. 2930 and H.R. 2940. Defeated: 3-7.

Majority Members	Vote	Minority Members	Vote
Mr. Sessions .....	Nay	Mr. McGovern .....	Yea
Ms. Foxx .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Bishop of Utah .....	Nay	Mr. Polis .....	Yea
Mr. Nugent .....	Nay		
Mr. Scott of South Carolina .....	Nay		
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

## SUMMARY OF AMENDMENTS IN PART A MADE IN ORDER

1. McHenry (NC): Would make technical corrections. Would also require the issuer to state a target offering amount and a deadline to reach the target offering amount. Would require that the Securities and Exchange Commission is provided a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers. Would clarify the disqualification provision to ensure that both issuers and intermediaries, as well as their predecessors, affiliates, officers, directors, or persons fulfilling similar roles, are disqualified from the exemption established in this bill should they have a history of committing securities fraud. (10 minutes)

2. Fincher (TN), Sherman (CA): Would index to inflation the \$1 million and \$2 million aggregate annual amounts raised through the issue of the securities as authorized in the bill. The index for inflation would be measured by the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. (10 minutes)

3. Quayle (AZ): Would index the \$10,000 individual investment cap to inflation. (10 minutes)

4. Velázquez (NY): Would require crowdfunding intermediaries to disclose their method of compensation to potential investors. (10 minutes)

5. Barrow (GA): Would require the Commission to establish a website that provides the public with crowdfunding website safety tips for investing in securities described under section 4(6). (10 minutes)

6. Perlmutter (CO), McHenry (NC): Would preserve a state's right to enforce securities laws with respect to fraud, deceit or unlawful conduct. (10 minutes)

## SUMMARY OF AMENDMENT IN PART B MADE IN ORDER

Miller, Brad (NC): Would require disclosure of bonus compensation structures and "golden parachute" arrangements in advertising materials associated with an exempted offering. (10 minutes)

## PART A—TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCHENRY OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, line 5, strike "issuance" and insert "offer or sale".

Page 5, line 6, strike "for which" and insert "by an issuer, provided that".

Page 5, beginning on line 7, strike “annual amount raised through the issue of the securities” and insert “amount sold within the previous 12-month period in reliance upon this exemption”.

Page 5, beginning on line 13, strike “individual investments in the securities are limited to an aggregate annual amount equal to” and insert “the aggregate amount sold to any investor in reliance on this exemption within the previous 12-month period does not exceed”.

Page 5, line 17, strike “the” and insert “such”.

Page 6, line 8, strike “issuance” and insert “offer or sale”.

Page 6, line 12, after “website” insert “used for the offer and sale of such securities”.

Page 6, line 24, strike “person” and insert “intermediary”.

Page 7, line 4, strike “competency in”.

Page 7, line 5, strike “recognition” and insert “an understanding”.

Page 7, line 8, before “risk” insert “an understanding of the”.

Page 7, line 10, before the semicolon insert “by rule or regulation”.

Page 7, strike lines 11 through 15 and insert the following:

“(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;”.

Page 7, line 18, strike “with basic” and insert “and potential investors with”.

Page 7, beginning on line 19, strike “funds are solicited from” and insert “securities are offered to”.

Page 8, line 2, strike “capital formation funds” and insert “proceeds of the offering”.

Page 8, line 4, before the semicolon insert “and the deadline to reach the target offering amount”.

Page 8, beginning on line 6, strike “traditional broker or dealer or” and insert “broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 or an”.

Page 8, line 13, strike “and” and insert after such line the following:

“(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”.

Page 8, line 14, strike “(13)” and insert “(14)”.

Page 8, line 17, before “securities” insert “or sells”.

Page 9, line 13, strike “competency in”.

Page 9, line 14, strike “recognition” and insert “an understanding”.

Page 9, line 17, before “risk” insert “an understanding of the”.

Page 9, line 19, before the semicolon insert “by rule or regulation”.

Page 9, beginning on line 20, strike “withholds capital formation” and insert “ensures that the third party custodian described under paragraph (9) withholds offering”.

Page 10, line 1, strike “basic”.

Page 10, beginning on line 2, strike “funds are solicited from” and insert “securities are offered to”.

Page 10, line 5, strike “capital formation funds” and insert “proceeds of the offering”.

Page 10, line 7, before the semicolon insert “and the deadline to reach the target offering amount”.

Page 10, beginning on line 9, strike “traditional broker or dealer or” and insert “broker or dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 or an”.

Page 10, line 16, strike “and” and insert after such line the following:

“(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”.

Page 10, line 17, strike “(13)” and insert “(14)”.

Page 10, line 22, strike “provided by an investor” and insert “as to annual income provided by the person to whom the securities are sold”.

Page 11, line 1, strike “(a)(9) and (b)(8)” and insert “(a)(9), (a)(13), (b)(8), and (b)(13)”.

Page 11, line 5, strike “an investor may not sell” and insert “a purchaser may not transfer”.

Page 11, strike lines 11 through 15 and insert the following:

“(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.”.

Page 11, line 21, strike “90” and insert “180”.

Page 12, beginning on line 1, strike “carry out the cost-benefit analysis required under section 2(b) of such Act” and insert “consider the costs and benefits of the action”.

Page 12, line 3, strike “90” and insert “180”.

Page 12, line 6, strike “a person” and insert “an issuer”.

Page 12, beginning on line 8, strike “or to participate in the affairs of an intermediary facilitating the use of that exemption.” and insert “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, affiliates, officers, directors, or persons fulfilling similar roles.”.

Page 13, beginning on line 1, strike “the term ‘held of record’ shall not include holders of securities issued pursuant to transactions described under section 4(6) of the Securities Act of 1933.” and insert “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’.”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FINCHER OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, line 9, insert after "\$1,000,000" the following: ", 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,".

Page 5, line 12, insert after "\$2,000,000" the following: ", 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,".

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE QUAYLE OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, line 16, insert before the semicolon the following: ", 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".

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, line 13, strike "and".

Page 8, line 14, strike the period and insert "; and".

Page 8, after line 14, insert the following:

"(14) discloses to potential investors the intermediary's compensation structure for participation in the security offering."

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARROW OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, after line 9, insert the following:

"(f) WEBSITE FOR CROWDFUNDING INVESTMENT SAFETY TIPS.—

"(1) IN GENERAL.—The Commission shall establish a website that provides the public with safety tips for investing in securities described under section 4(6).

"(2) LINKS TO WEBSITE.—The intermediary in a transaction involving the issuance of securities described under section 4(6) or, in the case of such transaction not involving an intermediary, the issuer, shall place a link to the website described under paragraph (1) in a prominent location on the main page of the website of such intermediary or issuer that is used to facilitate such transaction."

Page 11, line 10, strike "(f)" and insert "(g)".

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PERLMUTER OF COLORADO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 4, strike "Section" and insert the following:

(a) IN GENERAL.—Section

In section 4, add at the end the following:

(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.”.

PART B—TEXT OF AMENDMENT MADE IN ORDER

AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MILLER OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 4, line 9, insert before the period the following: “and the person offering or selling such securities utilizing the general advertising or general solicitation permitted by such rules discloses in any advertising materials connected with such offering or selling any bonus compensation structures and ‘golden parachute’ severance packages that the person has provided to executive officers, directors, or other principals of the person”.