

REFORMING ACCESS FOR INVESTMENTS IN STARTUP ENTERPRISES ACT OF 2015

OCTOBER 6, 2015.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1839]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1839) to amend the Securities Act of 1933 to exempt certain transactions involving purchases by accredited investors, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Reforming Access for Investments in Startup Enterprises Act of 2015” or the “RAISE Act of 2015”.

SEC. 2. EXEMPTED TRANSACTIONS.

(a) EXEMPTED TRANSACTIONS.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

“(7) transactions meeting the requirements of subsection (d).”;

(2) by redesignating the second subsection (b) (relating to securities offered and sold in compliance with Rule 506 of Regulation D) as subsection (c); and

(3) by adding at the end the following:

“(d) CERTAIN ACCREDITED INVESTOR TRANSACTIONS.—The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:

“(1) ACCREDITED INVESTOR REQUIREMENT.—Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).

“(2) PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.—Neither the seller, nor any person acting on the seller’s behalf, offers or sells securities by any form of general solicitation or general advertising.

“(3) INFORMATION REQUIREMENT.—In the case of a transaction involving the securities of an issuer that is neither subject to section 13 or 15(d) of the Securi-

ties Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)), nor exempt from reporting pursuant to section 240.12g3-2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):

- “(A) The exact name of the issuer and the issuer’s predecessor (if any).
 - “(B) The address of the issuer’s principal executive offices.
 - “(C) The exact title and class of the security.
 - “(D) The par or stated value of the security.
 - “(E) The number of shares or total amount of the securities outstanding as of the end of the issuer’s most recent fiscal year.
 - “(F) The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.
 - “(G) A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.
 - “(H) The names of the officers and directors of the issuer.
 - “(I) The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person’s participation in the offer or sale of the securities.
 - “(J) The issuer’s most recent balance sheet and profit and loss statement and similar financial statements, which shall—
 - “(i) be for such part of the two preceding fiscal years as the issuer has been in operation;
 - “(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;
 - “(iii) be presumed reasonably current if—
 - “(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and
 - “(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer’s balance sheet; and
 - “(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.
 - “(K) To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.
- “(4) ISSUERS DISQUALIFIED.—The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.
- “(5) BAD ACTOR PROHIBITION.—Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 C.F.R. 230.506(d)(1)) or is subject to a statutory disqualification described under section 3(a)(39) of the Securities Exchange Act of 1934.
- “(6) BUSINESS REQUIREMENT.—The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that the issuer’s primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.
- “(7) UNDERWRITER PROHIBITION.—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.
- “(8) OUTSTANDING CLASS REQUIREMENT.—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.
- “(e) ADDITIONAL REQUIREMENTS.—

“(1) IN GENERAL.—With respect to an exempted transaction described under subsection (a)(7):

“(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

“(B) Such transaction shall be deemed not to be a distribution for purposes of section 2(a)(11).

“(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 C.F.R. 230.144).

“(2) RULE OF CONSTRUCTION.—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 5.”

(b) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) by redesignating the second subparagraph (D) and subparagraph (E) as subparagraphs (E) and (F), respectively;

(2) in subparagraph (E), as so redesignated, by striking “; or” and inserting a semicolon;

(3) in subparagraph (F), as so redesignated, by striking the period and inserting “; or”; and

(4) by adding at the end the following new subparagraph:

“(G) section 4(a)(7).”.

PURPOSE AND SUMMARY

Introduced by Representative McHenry, H.R. 1839, the “Reforming Access for Investments in Startup Enterprises Act of 2015” or “RAISE” Act, amends Section 4 of the Securities Act of 1933 to increase market liquidity and resolve legal uncertainty that impedes employees of private companies from selling their company-issued securities. Currently, a holder of securities issued in a private placement may resell the securities on a public market after a holding period. However, there is not a similar law for the private resale of restricted securities. Accordingly, H.R. 1839 codifies a legal framework for these transactions to facilitate private company capital formation.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1839, as amended, facilitates the sale of company-issued securities by employees of private companies by amending Section 4 of the Securities Act of 1933 to provide that the resale of any securities are “exempted transactions” (which do not trigger the Act’s registration provisions) as long as: (1) each purchaser is an accredited investor; (2) the securities are not offered by means of general solicitation or general advertising; (3) the seller and a prospective purchaser obtain from the issuer certain information relating to the sale; and (4) the transaction does not involve a public offering.

At an April 29, 2015, Capital Markets Subcommittee hearing, Shane Kovacs, Executive Vice President and Chief Executive Officer of PTC Therapeutics, Inc., testified that H.R. 1839 will enhance liquidity in the market for company-issued securities and further improvements made by the Jumpstart Our Business Startups Act (P.L. 112–106):

by ensuring that the legal framework at the SEC supports the secondary market for the shares offered and sold in Regulation A+ offerings. Without enhanced liquidity on the secondary market, investors could be hesitant to participate in Regulation A+ offerings—but Representative McHenry has taken the important step to codify the regulatory framework for the resale of restricted securities, en-

hancing the capital potential of a Regulation A+ offering and ensuring that Title IV of the JOBS Act will have its intended impact.

At the same hearing, Tom Quaadman of the U.S. Chamber of Commerce testified that H.R. 1839 “would help foster a robust secondary market for the resale of restricted securities that were acquired in a private placement. While past court decisions have had the effect of allowing the resale of certain private offerings, restricted securities remain an illiquid market and could benefit from a modernization of current SEC rules.” In a June 23, 2015, letter to Chairman Hensarling, Sara Hanks, the Co-Founder and CEO of CrowdCheck, Inc., a provider of due diligence services for investors looking for investments and entrepreneurs seeking funding wrote that, “[t]he employees of private companies, as well as founders and early investors . . . have an increasing need for some level of liquidity before those companies choose to publicly register an IPO. Some companies (and CrowdCheck is among them) are unlikely to make a registered public offering of their shares for many years, if ever.”

Finally, Steven Bochner of the Palo Alto-based law firm Wilson Sonsini Goodrich & Rosati wrote to Chairman Hensarling on June 11, 2015, in support of H.R. 1839 that, “[f]acilitating shareholder liquidity is critical to the overall success of private companies. Private companies . . . find it much easier to raise primary capital when prospective investors understand that some degree of liquidity will be available to them, particularly in the case of private companies that wish to remain private and defer their IPOs.”

HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 1839 on April 29, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2015 and July 29, 2015, and ordered H.R. 1839 to be reported favorably to the House as amended by a recorded vote of 58 yeas to 0 nays (Record vote no. FC-51), a quorum being present. Before the vote to favorably report the measure was ordered, the Committee adopted an amendment in the nature of a substitute by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 58 yeas to 0 nays (Record vote no. FC-51, a quorum being present).

Record vote no. FC-51

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X	.....	.....	Ms. Waters (CA)	X	.....	.....
Mr. King (NY)	X	.....	.....	Mrs. Maloney (NY)	X	.....	.....
Mr. Royce	X	.....	.....	Ms. Velázquez	X	.....	.....
Mr. Lucas	X	.....	.....	Mr. Sherman	X	.....	.....
Mr. Garrett	X	.....	.....	Mr. Meeks	X	.....	.....
Mr. Neugebauer	X	.....	.....	Mr. Capuano	X	.....	.....
Mr. McHenry	X	.....	.....	Mr. Hinojosa	X	.....	.....
Mr. Pearce	X	.....	.....	Mr. Clay	X	.....	.....
Mr. Posey	X	.....	.....	Mr. Lynch	X	.....	.....
Mr. Fitzpatrick	X	.....	.....	Mr. David Scott (GA)	X	.....	.....
Mr. Westmoreland	X	.....	.....	Mr. Al Green (TX)	X	.....	.....
Mr. Luetkemeyer	X	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Huizenga (MI)	X	.....	.....	Ms. Moore	X	.....	.....
Mr. Duffy	X	.....	.....	Mr. Ellison	X	.....	.....
Mr. Hurt (VA)	X	.....	.....	Mr. Perlmutter	X	.....	.....
Mr. Stivers	X	.....	.....	Mr. Himes	X	.....	.....
Mr. Fincher	X	.....	.....	Mr. Carney .....	.....	.....	.....
Mr. Stutzman	X	.....	.....	Ms. Sewell (AL)	X	.....	.....
Mr. Mulvaney	X	.....	.....	Mr. Foster	X	.....	.....
Mr. Hultgren	X	.....	.....	Mr. Kildee	X	.....	.....
Mr. Ross	X	.....	.....	Mr. Murphy (FL)	X	.....	.....
Mr. Pittenger	X	.....	.....	Mr. Delaney	X	.....	.....
Mrs. Wagner	X	.....	.....	Ms. Sinema	X	.....	.....
Mr. Barr	X	.....	.....	Mrs. Beatty	X	.....	.....
Mr. Rothfus	X	.....	.....	Mr. Heck (WA)	X	.....	.....
Mr. Messer	X	.....	.....	Mr. Vargas	X	.....	.....
Mr. Schweikert	X	.....	.....		
Mr. Guinta	X	.....	.....		
Mr. Tipton	X	.....	.....		
Mr. Williams	X	.....	.....		
Mr. Poliquin	X	.....	.....		
Mrs. Love	X	.....	.....		
Mr. Hill	X	.....	.....		
Mr. Emmer	X	.....	.....		

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1839 will facilitate private company capital formation by enhancing liquidity in the market for certain securities that are issued by such companies and owned by their employees.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 20, 2015.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1839, the Reforming Access for Investments in Startup Enterprises Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1839—Reforming Access for Investments in Startup Enterprises Act of 2015

H.R. 1839 would exempt certain securities from statutory requirements that, among other things, they be registered with the Securities and Exchange Commission (SEC) prior to being offered for sale. To be eligible for the exemption, such securities must be offered only in a private sale to accredited investors that have received certain information about the issuer of the security and the security itself.

Based on information from the SEC, CBO estimates that implementing H.R. 1839 would cost less than \$500,000 over the 2016–2020 period; the agency would not make any changes to current regulations as a result of the bill. Under current law, the SEC is authorized to collect fees to offset its annual appropriation; therefore, assuming appropriation action consistent with that authority, CBO estimates that implementing the bill would have a negligible effect on net discretionary spending. Enacting H.R. 1839 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1839 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting states from requiring the registration or review of the sale of securities in some cases. CBO estimates that the cost to state governments of complying with the mandate would be small and well below the annual threshold established in UMRA for intergovernmental mandates (\$76 million in 2014, adjusted annually for inflation).

H.R. 1839 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Melissa Merrell (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1839 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1839 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1839 does not require any directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 1839 as the “Reforming Access for Investment in Startup Enterprises Act of 2015” or the “RAISE Act of 2015.”

Section 2. Exempted transactions

This section establishes a class of transactions that are exempt from the registration requirements of the Securities Act of 1933.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECURITIES ACT OF 1933**TITLE I—SHORT TITLE**

* * * * * *

EXEMPTED TRANSACTIONS

SEC. 4. (a) The provisions of section 5 shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this para-

graph does not exceed the amount allowed under section 3(b)(1) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

(6) transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

(A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;

(B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed—

(i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and

(ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000;

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

(D) the issuer complies with the requirements of section 4A(b).

(7) *transactions meeting the requirements of subsection (d).*

(b) Offers and sales exempt under section 230.506 of title 17, Code of Federal Regulations (as revised pursuant to section 201 of the Jumpstart Our Business Startups Act) shall not be deemed public offerings under the Federal securities laws as a result of general advertising or general solicitation.

[(b)] (c)(1) With respect to securities offered and sold in compliance with Rule 506 of Regulation D under this Act, no person who meets the conditions set forth in paragraph (2) shall be subject to registration as a broker or dealer pursuant to section 15(a)(1) of this title, solely because—

(A) that person maintains a platform or mechanism that permits the offer, sale, purchase, or negotiation of or with respect to securities, or permits general solicitations, general advertisements, or similar or related activities by issuers of such securities, whether online, in person, or through any other means;

(B) that person or any person associated with that person co-invests in such securities; or

(C) that person or any person associated with that person provides ancillary services with respect to such securities.

(2) The exemption provided in paragraph (1) shall apply to any person described in such paragraph if—

(A) such person and each person associated with that person receives no compensation in connection with the purchase or sale of such security;

(B) such person and each person associated with that person does not have possession of customer funds or securities in connection with the purchase or sale of such security; and

(C) such person is not subject to a statutory disqualification as defined in section 3(a)(39) of this title and does not have any person associated with that person subject to such a statutory disqualification.

(3) For the purposes of this subsection, the term “ancillary services” means—

(A) the provision of due diligence services, in connection with the offer, sale, purchase, or negotiation of such security, so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors; and

(B) the provision of standardized documents to the issuers and investors, so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and issuers are not required to use the standardized documents as a condition of using the service.

(d) *CERTAIN ACCREDITED INVESTOR TRANSACTIONS.*—*The transactions referred to in subsection (a)(7) are transactions meeting the following requirements:*

(1) *ACCREDITED INVESTOR REQUIREMENT.*—*Each purchaser is an accredited investor, as that term is defined in section 230.501(a) of title 17, Code of Federal Regulations (or any successor regulation).*

(2) *PROHIBITION ON GENERAL SOLICITATION OR ADVERTISING.*—*Neither the seller, nor any person acting on the seller’s behalf, offers or sells securities by any form of general solicitation or general advertising.*

(3) *INFORMATION REQUIREMENT.*—*In the case of a transaction involving the securities of an issuer that is neither subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m; 78o(d)), nor exempt from reporting pursuant to section 240.12g3–2(b) of title 17, Code of Federal Regulations, nor a foreign government (as defined in section 230.405 of title 17, Code of Federal Regulations) eligible to register securities under Schedule B, the seller and a prospective purchaser designated by the seller obtain from the issuer, upon request of the seller, and the seller in all cases makes available to a prospective purchaser, the following information (which shall be reasonably current in relation to the date of resale under this section):*

(A) *The exact name of the issuer and the issuer’s predecessor (if any).*

(B) *The address of the issuer’s principal executive offices.*

(C) *The exact title and class of the security.*

(D) *The par or stated value of the security.*

(E) *The number of shares or total amount of the securities outstanding as of the end of the issuer’s most recent fiscal year.*

(F) *The name and address of the transfer agent, corporate secretary, or other person responsible for transferring shares and stock certificates.*

(G) *A statement of the nature of the business of the issuer and the products and services it offers, which shall be presumed reasonably current if the statement is as of 12 months before the transaction date.*

(H) *The names of the officers and directors of the issuer.*

(I) *The names of any persons registered as a broker, dealer, or agent that shall be paid or given, directly or indirectly, any commission or remuneration for such person's participation in the offer or sale of the securities.*

(J) *The issuer's most recent balance sheet and profit and loss statement and similar financial statements, which shall—*

(i) be for such part of the two preceding fiscal years as the issuer has been in operation;

(ii) be prepared in accordance with generally accepted accounting principles or, in the case of a foreign private issuer, be prepared in accordance with generally accepted accounting principles or the International Financial Reporting Standards issued by the International Accounting Standards Board;

(iii) be presumed reasonably current if—

(I) with respect to the balance sheet, the balance sheet is as of a date less than 16 months before the transaction date; and

(II) with respect to the profit and loss statement, such statement is for the 12 months preceding the date of the issuer's balance sheet; and

(iv) if the balance sheet is not as of a date less than 6 months before the transaction date, be accompanied by additional statements of profit and loss for the period from the date of such balance sheet to a date less than 6 months before the transaction date.

(K) *To the extent that the seller is a control person with respect to the issuer, a brief statement regarding the nature of the affiliation, and a statement certified by such seller that they have no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.*

(4) **ISSUERS DISQUALIFIED.**—*The transaction is not for the sale of a security where the seller is an issuer or a subsidiary, either directly or indirectly, of the issuer.*

(5) **BAD ACTOR PROHIBITION.**—*Neither the seller, nor any person that has been or will be paid (directly or indirectly) remuneration or a commission for their participation in the offer or sale of the securities, including solicitation of purchasers for the seller is subject to an event that would disqualify an issuer or other covered person under Rule 506(d)(1) of Regulation D (17 C.F.R. 230.506(d)(1)) or is subject to a statutory disqualification described under section 3(a)(39) of the Securities Exchange Act of 1934.*

(6) **BUSINESS REQUIREMENT.**—*The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not a blank check, blind pool, or shell com-*

pany that has no specific business plan or purpose or has indicated that the issuer's primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(7) *UNDERWRITER PROHIBITION.*—The transaction is not with respect to a security that constitutes the whole or part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the security or a redistribution.

(8) *OUTSTANDING CLASS REQUIREMENT.*—The transaction is with respect to a security of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction.

(e) *ADDITIONAL REQUIREMENTS.*—

(1) *IN GENERAL.*—With respect to an exempted transaction described under subsection (a)(7):

(A) Securities acquired in such transaction shall be deemed to have been acquired in a transaction not involving any public offering.

(B) Such transaction shall be deemed not to be a distribution for purposes of section 2(a)(11).

(C) Securities involved in such transaction shall be deemed to be restricted securities within the meaning of Rule 144 (17 C.F.R. 230.144).

(2) *RULE OF CONSTRUCTION.*—The exemption provided by subsection (a)(7) shall not be the exclusive means for establishing an exemption from the registration requirements of section 5.

* * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) *SCOPE OF EXEMPTION.*—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(4);

(C) section 4(6);

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

[(D)] (E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration

pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; **[or]**

[(E)] (F) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996**[,]**; or

(G) section 4(a)(7).

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

(A) with respect to—

(i) fraud or deceit; or

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

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) OFFERING DOCUMENT.—The term “offering document”—

(A) has the meaning given the term “prospectus” in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

(3) STATE.—The term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

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