

MICRO OFFERING SAFE HARBOR ACT

NOVEMBER 1, 2017.—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

together with

MINORITY VIEWS

[To accompany H.R. 2201]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2201) to amend the Securities Act of 1933 to exempt certain micro-offerings from the registration requirements of such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On April 27, 2017, Representative Tom Emmer introduced H.R. 2201 the “Micro Offering Safe Harbor Act”, which amends the Securities Act of 1933 (Securities Act) to exempt certain micro-offerings from the Act’s registration requirements. An issuer of securities would not violate the Act when making a non-public securities offering if all of the following requirements are met: (1) each purchaser has a substantive pre-existing relationship with an officer, director, or shareholder with 10 percent or more of the shares of the issuer; (2) the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer that are sold in reliance on the exemption during the 12-month period preceding the transaction; and (3) the aggregate amount of all securities sold by the issuer does not exceed \$500,000 over a 12-month period.

BACKGROUND AND NEED FOR LEGISLATION

The Micro Offering Safe Harbor Act amends the Securities Act to exempt certain securities offerings from the Act’s registration requirements. Although small companies are at the forefront of technological innovation and job creation, they often face significant obstacles in obtaining funding in the capital markets. These obstacles are commonly the result of the disproportionate burden that securities regulations—written for large public companies—place on small companies when they seek to go public to raise equity capital.

A large portion of startups rely on small, nonpublic offerings (also known as “private placements”), such as a “friends and family” round, to raise initial, early-stage, seed capital. However, the Securities Act does not clearly define what constitutes a public offering, or conversely, a nonpublic offering, which then makes it easy for early-stage companies to unintentionally run afoul of the Act when it seeks to offer securities to potential investors in a private placement.

Since the enactment of the federal securities laws 1933, “transactions by an issuer not involving any public offering” have been exempt. To address the uncertainty such language imposes on early-stage companies, the Micro Offering Safe Harbor Act finally defines the “nonpublic offering” exemption under the Securities Act and provides small businesses with needed clarity and confidence to know that their offering is not a Securities Act violation.

As an example, H.R. 2201 could allow the owner of a local restaurant chain or a start-up business to make a presentation to a local chamber of commerce and solicit an investment in their business without running afoul of the federal securities laws. By facilitating micro-offerings, the bill provides a useful alternative to asking friends or family for money, which can be time consuming, and to completing a private offering under Securities and Exchange Commission (SEC) Regulation D, which can be costly for a small business.

H.R. 2201 does not remove or inhibit either the SEC or the Department of Justice’s authority to prosecute securities fraud. With anti-fraud protections still in place, the legislation appropriately scales federal rules and regulatory compliance costs for small businesses and provides another practical option for entrepreneurs to raise the capital necessary to start or grow their business. Under H.R. 2201, small private companies will not have to incur formidable legal costs and contend with regulatory uncertainty, as the SEC will not have to take any action to authorize a micro-offering.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 2201 on March 22, 2017, April 26, 2017, and July 18, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11, 2017 and October 12, 2017, and ordered H.R. 2201 to be reported favorably to the House without amendment by a recorded

vote of 34 yeas to 26 nays (Record vote no. FC-92), a quorum being present.

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 recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 34 yeas to 26 nays (Record vote no. FC-92), a quorum being present.

Record vote no. FC-92

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	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. 2201 will allow small businesses to access capital needed to grow by amending the Securities Act of 1933 to clarify what constitutes a “nonpublic offering” of securities and by authorizing “micro-offerings” to clarify the requirements that small businesses need to comply with to not violate the federal securities laws when making a nonpublic offering.

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.

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, October 30, 2017.

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. 2201, the Micro Offering Safe Harbor Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2201—Micro Offering Safe Harbor Act

Under current law, the Securities and Exchange Commission (SEC) prohibits the sale or delivery of securities that have not been registered with the agency. Some transactions are exempt from this prohibition. H.R. 2201 would expand the exemption to include the sale of securities that meet certain criteria regarding the number

of purchasers and aggregate offering amount sold by the issuer in a 12-month period. The bill also would exempt such transactions from state regulation of securities offerings.

Under H.R. 2201, CBO expects only a relatively small number of securities transactions would be covered under the expanded exemption that are not currently covered by other existing exemptions. As a result, and on the basis of information from the SEC, CBO estimates that implementing H.R. 2201 would have no significant effect on the agency's costs to update, monitor, and enforce regulations. Moreover, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 2201 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2201 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2201 would preempt state laws that govern state-level registration of security offerings by exempting some security offerings from state registration and regulation. Issuers would be exempt from registering such securities if each purchaser of the security has a pre-existing relationship with the officer of the issuer, the offering has 35 or fewer purchasers, and the aggregate amount of securities sold by the issuer does not exceed \$500,000 in a 12-month period. The preemption would be a mandate as defined in the Unfunded Mandate Reform Act (UMRA) because it would limit the authority of states to apply their own laws and regulations. However, CBO estimates that the preemption itself would impose no duty on states that would result in additional spending or a loss of revenues.

H.R. 2201 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 2201 as the “Micro Offering Safe Harbor Act.”

Section 2. Exemptions for micro-offerings

This section amends Section 4 of the Securities Act of 1933 to clarify the exemptions from federal securities laws for nonpublic offerings. Specifically, small businesses are exempt if they meet all of the following requirements: each investor has a substantive pre-existing relationship with an officer, director, or shareholder of the issuer; there are 35 or fewer purchasers of securities from the issuer that are sold in reliance on the applicable exemption over a 12-month period; and the amount of securities sold by the issuer does not exceed \$500,000 over a 12-month period. The section also exempts such micro-offerings from state regulation of securities offerings.

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):

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—

* * * * *

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 paragraph 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).

(8) *transactions meeting the requirements of subsection (f).*

(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.

(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 2 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 CFR 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 CFR 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.

(f) CERTAIN MICRO-OFFERINGS.—*The transactions referred to in subsection (a)(8) are transactions involving the sale of securities by an issuer (including all entities controlled by or under common control with the issuer) that meet all of the following requirements:*

(1) PRE-EXISTING RELATIONSHIP.—*Each purchaser has a substantive pre-existing relationship with an officer of the issuer, a director of the issuer, or a shareholder holding 10 percent or more of the shares of the issuer.*

(2) 35 OR FEWER PURCHASERS.—*There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer that are sold in reliance on the exemption provided under subsection (a)(8) during the 12-month period preceding such transaction.*

(3) SMALL OFFERING AMOUNT.—*The aggregate amount of all securities sold by the issuer, including any amount sold in reliance on the exemption provided under subsection (a)(8), during the 12-month period preceding such transaction, does not exceed \$500,000.*

* * * * *

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;

(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;

(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)**[.]**; or

(H) section 4(a)(8).

(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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MINORITY VIEWS

H.R. 2201, the so-called “Micro-Offering Safe Harbor Act of 2017” would put investors at risk by allowing companies to sell unregistered securities without important guardrails that normally apply to such transactions. Specifically, the bill eliminates all of the existing investor protections for unregistered securities offerings, provided that: (1) the securities are sold to investors with a substantive pre-existing relationship with individuals affiliated with the company; (2) there are 35 or fewer purchasers of the offered securities; and (3) the company has not sold more than \$500,000 of securities in the year prior to the transaction.

Federal securities laws generally prohibit a company from selling its securities unless it either registers them with the Securities and Exchange Commission (SEC), or qualifies for an exemption. Because unregistered offerings are subject to reduced disclosure requirements and often involve illiquid securities, these exemptions include protections intended to mitigate risks to investors. For example, the SEC’s Regulation Crowdfunding and Regulation A permit small businesses to raise capital via unregistered securities offerings, provided that the businesses supply investors with important disclosures about the offerings. Both exemptions also include limitations on the dollar amount of securities an individual investor can purchase. Similarly, Regulation D exempts certain offerings from registration with the SEC, but imposes limitations on solicitation and the financial sophistication and risk-tolerance of purchasers. H.R. 2201 leaves out the investor protections characteristic of these exemptions.

One particularly troubling aspect of H.R. 2201 is that unregistered securities purchased under the exemption would not be characterized as “restricted,” and could thus be sold off to other investors immediately. As history demonstrates, the failure to restrict resale of unregistered securities could expose investors to abusive “pump and dump” schemes. Previously, Rule 504 of Regulation D permitted a company to generally solicit and sell up to \$1 million in unregistered securities without any restrictions on resale. In 1999, however, the SEC revised Rule 504 to prohibit general solicitation and establish a holding period for those securities unless the offering meets certain state law requirements. The revisions followed SEC findings that “the freely tradable nature of these securities may have facilitated some later fraudulent secondary transactions in the over-the-counter markets for securities of ‘microcap’ companies.”

Additionally, state securities regulators, who often have primary regulatory responsibility over small, local securities offerings, have raised serious concerns with H.R. 2201. For example, the North American Securities Administrators Association stated that the bill’s failure to disqualify “bad actors” would allow investors to be

sold private securities by “persons having been convicted of crimes or subject to one or more previous state enforcement actions, without any disclosure to the investor, and without any notice to state or federal regulators.”

Democrats do not support creating statutory exemptions that leave investors vulnerable to fraud and repeated exploitation by bad actors.

For these reasons, we oppose H.R. 2201.

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