

112TH CONGRESS
2D SESSION

S. 2190

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

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2012

Mr. MERKLEY (for himself, Mr. BENNET, Mr. BROWN of Massachusetts, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Capital Raising Online
5 While Deterring Fraud and Unethical Non-Disclosure Act
6 of 2012” or the “CROWDFUND Act”.

1 **SEC. 2. CROWDFUNDING EXEMPTION.**

2 (a) SECURITIES ACT OF 1933.—Section 4 of the Se-
3 curities Act of 1933 (15 U.S.C. 77d) is amended by add-
4 ing at the end the following:

5 “(6) transactions involving the offer or sale of
6 securities by an issuer (including all entities con-
7 trolled by or under common control with the issuer),
8 provided that—

9 “(A) the aggregate amount sold to all in-
10 vestors by the issuer, including any amount sold
11 in reliance on the exemption provided under
12 this paragraph during the 12-month period pre-
13 ceeding the date of such transaction, is not more
14 than \$1,000,000;

15 “(B) the aggregate amount sold to any in-
16 vestor by an issuer, including any amount sold
17 in reliance on the exemption provided under
18 this paragraph during the 12-month period pre-
19 ceeding the date of such transaction, does not
20 exceed—

21 “(i) the greater of \$2,000 or 5 per-
22 cent of the annual income or net worth of
23 such investor, as applicable, if either the
24 annual income or the net worth of the in-
25 vestor is less than \$100,000; and

1 “(ii) 10 percent of the annual income
2 or net worth of such investor, as applica-
3 ble, not to exceed a maximum aggregate
4 amount sold of \$100,000, if either the an-
5 nual income or net worth of the investor is
6 equal to or more than \$100,000;

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

10 “(D) the issuer complies with the require-
11 ments of section 4A(b).”.

12 (b) REQUIREMENTS TO QUALIFY FOR
13 CROWDFUNDING EXEMPTION.—The Securities Act of
14 1933 (15 U.S.C. 77a et seq.) is amended by inserting after
15 section 4 the following:

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

18 “(a) REQUIREMENTS ON INTERMEDIARIES.—A per-
19 son engaged in the business of effecting transactions in
20 securities for the account of others pursuant to section
21 4(6) shall—

22 “(1) register with the Commission as—

23 “(A) a broker; or

1 “(B) a funding portal (as defined in sec-
2 tion 3(a)(80) of the Securities Exchange Act of
3 1934);

4 “(2) register with any applicable self-regulatory
5 organization (as defined in section 3(a)(26) of the
6 Securities Exchange Act of 1934);

7 “(3) provide such disclosures, including disclo-
8 sures related to risks and other investor education
9 materials, as the Commission shall, by rule, deter-
10 mine appropriate;

11 “(4) ensure that each investor—

12 “(A) reviews investor-education informa-
13 tion, in accordance with standards established
14 by the Commission, by rule;

15 “(B) positively affirms that the investor
16 understands that the investor is risking the loss
17 of the entire investment, and that the investor
18 could bear such a loss; and

19 “(C) answers questions demonstrating—

20 “(i) an understanding of the level of
21 risk generally applicable to investments in
22 startups, emerging businesses, and small
23 issuers;

24 “(ii) an understanding of the risk of
25 illiquidity; and

1 “(iii) an understanding of such other
2 matters as the Commission determines ap-
3 propriate, by rule;

4 “(5) take such measures to reduce the risk of
5 fraud with respect to such transactions, as estab-
6 lished by the Commission, by rule, including obtain-
7 ing a background and securities enforcement regu-
8 latory history check on each officer, director, and
9 person holding more than 20 percent of the out-
10 standing equity of every issuer whose securities are
11 offered by such person;

12 “(6) not later than 21 days prior to the first
13 day on which securities are sold to any investor (or
14 such other period as the Commission may establish),
15 make available to the Commission and to potential
16 investors any information provided by the issuer
17 pursuant to subsection (b);

18 “(7) ensure that all offering proceeds are only
19 provided to the issuer when the aggregate capital
20 raised from all investors is equal to or greater than
21 a target offering amount, and allow all investors to
22 cancel their commitments to invest, as the Commis-
23 sion shall, by rule, determine appropriate;

24 “(8) make such efforts as the Commission de-
25 termines appropriate, by rule, to ensure that no in-

1 investor in a 12-month period has purchased securities
2 offered pursuant to section 4(6) that, in the aggregate,
3 from all issuers, exceed the investment limits
4 set forth in section 4(6)(B);

5 “(9) take such steps to protect the privacy of
6 information collected from investors as the Commission
7 shall, by rule, determine appropriate;

8 “(10) not compensate promoters, finders, or
9 lead generators for providing the broker or funding
10 portal with the personal identifying information of
11 any potential investor;

12 “(11) prohibit its directors, officers, or partners
13 (or any person occupying a similar status or performing
14 a similar function) from having any financial
15 interest in an issuer using its services; and

16 “(12) meet such other requirements as the
17 Commission may, by rule, prescribe, for the protection
18 of investors and in the public interest.

19 “(b) REQUIREMENTS FOR ISSUERS.—For purposes
20 of section 4(6), an issuer who offers or sells securities
21 shall—

22 “(1) be organized under and subject to the laws
23 of a State or territory of the United States or the
24 District of Columbia;

25 “(2) not be—

1 “(A) subject to the requirement to file re-
2 ports pursuant to section 13 or section 15(d) of
3 the Securities Exchange Act of 1934 (15
4 U.S.C. 78m, 78p(d)); or

5 “(B) treated as—

6 “(i) an investment company, as de-
7 fined in section 3 of the Investment Com-
8 pany Act of 1940 (15 U.S.C. 80a-3);

9 “(ii) an issuer excluded from the In-
10 vestment Company Act of 1940 (15 U.S.C.
11 80a et seq.); or

12 “(iii) such other company as the Com-
13 mission, by rule or regulation, determines
14 appropriate;

15 “(3) file with the Commission and provide to
16 investors and the relevant broker or funding portal,
17 and make available to potential investors—

18 “(A) the name, legal status, physical ad-
19 dress, and website address of the issuer;

20 “(B) the names of the directors and offi-
21 cers (and any persons occupying a similar sta-
22 tus or performing a similar function), and each
23 person holding more than 20 percent of the
24 shares of the issuer;

1 “(C) a description of the business of the
2 issuer and the anticipated business plan of the
3 issuer;

4 “(D) a description of the financial condi-
5 tion of the issuer, including, for offerings that,
6 together with all other offerings of the issuer
7 under section 4(6) within the preceding 12-
8 month period, have, in the aggregate, target of-
9 fering amounts of—

10 “(i) \$100,000 or less—

11 “(I) the income tax returns filed
12 by the issuer for the most recently
13 completed year (if any); and

14 “(II) financial statements of the
15 issuer, which shall be certified by the
16 principal executive officer of the issuer
17 to be true and complete in all material
18 respects;

19 “(ii) more than \$100,000, but not
20 more than \$500,000, financial statements
21 reviewed by a public accountant who is
22 independent of the issuer, using profes-
23 sional standards and procedures for such
24 review or standards and procedures estab-

1 lished by the Commission, by rule, for such
2 purpose; and

3 “(iii) more than \$500,000 (or such
4 other amount as the Commission may es-
5 tablish, by rule), audited financial state-
6 ments;

7 “(E) a description of the stated purpose
8 and intended use of the proceeds of the offering
9 sought by the issuer with respect to the target
10 offering amount;

11 “(F) the target offering amount, the dead-
12 line to reach the target offering amount, and
13 regular updates regarding the progress of the
14 issuer in meeting the target offering amount;

15 “(G) the price to the public of the securi-
16 ties or the method for determining the price,
17 provided that, prior to sale, each investor shall
18 be provided in writing the final price and all re-
19 quired disclosures, with a reasonable oppor-
20 tunity to rescind the commitment to purchase
21 the securities;

22 “(H) a description of the ownership and
23 capital structure of the issuer, including—

24 “(i) terms of the securities of the
25 issuer being offered and each other class of

1 security of the issuer, including how such
2 terms may be modified, and a summary of
3 the differences between such securities, in-
4 cluding how the rights of the securities
5 being offered may be materially limited, di-
6 luted, or qualified by the rights of any
7 other class of security of the issuer;

8 “(ii) a description of how the exercise
9 of the rights held by the principal share-
10 holders of the issuer could negatively im-
11 pact the purchasers of the securities being
12 offered;

13 “(iii) the name and ownership level of
14 each existing shareholder who owns more
15 than 20 percent of any class of the securi-
16 ties of the issuer;

17 “(iv) how the securities being offered
18 are being valued, and examples of methods
19 for how such securities may be valued by
20 the issuer in the future, including during
21 subsequent corporate actions; and

22 “(v) the risks to purchasers of the se-
23 curities relating to minority ownership in
24 the issuer, the risks associated with cor-
25 porate actions, including additional issu-

1 ances of shares, a sale of the issuer or of
2 assets of the issuer, or transactions with
3 related parties; and

4 “(I) such other information as the Com-
5 mission may, by rule, prescribe, for the protec-
6 tion of investors and in the public interest;

7 “(4) not advertise the terms of the offering, ex-
8 cept for notices which direct investors to the funding
9 portal or broker;

10 “(5) not compensate or commit to compensate,
11 directly or indirectly, any person to promote its of-
12 ferings through communication channels provided by
13 a broker or funding portal, without taking such
14 steps as the Commission shall, by rule, require to
15 ensure that such person clearly discloses the receipt,
16 past or prospective, of such compensation, upon each
17 instance of such promotional communication;

18 “(6) not less than annually, file with the Com-
19 mission and provide to investors reports of the re-
20 sults of operations and financial statements of the
21 issuer, as the Commission shall, by rule, determine
22 appropriate, subject to such exceptions and termi-
23 nation dates as the Commission may establish, by
24 rule; and

1 “(7) comply with such other requirements as
2 the Commission may, by rule, prescribe, for the pro-
3 tection of investors and in the public interest.

4 “(c) LIABILITY FOR MATERIAL MISSTATEMENTS
5 AND OMISSIONS.—

6 “(1) ACTIONS AUTHORIZED.—

7 “(A) IN GENERAL.—Subject to paragraph
8 (2), a person who purchases a security in a
9 transaction exempted by the provisions of sec-
10 tion 4(6) may bring an action against an issuer
11 described in paragraph (2), either at law or in
12 equity in any court of competent jurisdiction, to
13 recover the consideration paid for such security
14 with interest thereon, less the amount of any
15 income received thereon, upon the tender of
16 such security, or for damages if such person no
17 longer owns the security.

18 “(B) LIABILITY.—An action brought under
19 this paragraph shall be subject to the provisions
20 of section 12(b) and section 13, as if the liabil-
21 ity were created under section 12(a)(2).

22 “(2) APPLICABILITY.—An issuer shall be liable
23 in an action under paragraph (1), if the issuer—

24 “(A) by the use of any means or instru-
25 ments of transportation or communication in

1 interstate commerce or of the mails, by any
2 means of any written or oral communication, in
3 the offering or sale of a security in a trans-
4 action exempted by the provisions of section
5 4(6), makes an untrue statement of a material
6 fact or omits to state a material fact required
7 to be stated or necessary in order to make the
8 statements, in the light of the circumstances
9 under which they were made, not misleading,
10 provided that the purchaser did not know of
11 such untruth or omission; and

12 “(B) does not sustain the burden of proof
13 that such issuer did not know, and in the exer-
14 cise of reasonable care could not have known, of
15 such untruth or omission.

16 “(3) DEFINITION.—As used in this subsection,
17 the term ‘issuer’ includes any person who is a direc-
18 tor or partner of the issuer, and the principal execu-
19 tive officer or officers, principal financial officer, and
20 controller or principal accounting officer of the
21 issuer (and any person occupying a similar status or
22 performing a similar function) that offers or sells a
23 security in a transaction exempted by the provisions
24 of section 4(6), and any person who offers or sells
25 the security in such offering.

1 “(d) INFORMATION AVAILABLE TO STATES.—The
2 Commission shall make, or shall cause to be made by the
3 relevant broker or funding portal, the information de-
4 scribed in subsection (b) and such other information as
5 the Commission, by rule, determines appropriate, available
6 to the securities commission (or any agency or office per-
7 forming like functions) of each State and territory of the
8 United States and the District of Columbia.

9 “(e) RESTRICTIONS ON SALES.—Securities issued
10 pursuant to a transaction described in section 4(6)—

11 “(1) may not be transferred by the purchaser
12 of such securities during the 1-year period beginning
13 on the date of purchase, unless such securities are
14 transferred—

15 “(A) to the issuer of the securities;

16 “(B) to an accredited investor;

17 “(C) as part of an offering registered with
18 the Commission; or

19 “(D) to a member of the family of the pur-
20 chaser or the equivalent, or in connection with
21 the death or divorce of the purchaser or other
22 similar circumstance, in the discretion of the
23 Commission; and

24 “(2) shall be subject to such other limitations
25 as the Commission shall, by rule, establish.

1 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion or section 4(6) shall be construed as preventing an
3 issuer from raising capital through methods not described
4 under section 4(6).

5 “(g) CERTAIN CALCULATIONS.—

6 “(1) DOLLAR AMOUNTS.—Dollar amounts in
7 section 4(6) and subsections (a)(9) and (b)(2) of
8 this section shall be adjusted by the Commission not
9 less frequently than once every 5 years, by notice
10 published in the Federal Register to reflect any
11 change in the Consumer Price Index for All Urban
12 Consumers published by the Bureau of Labor Statis-
13 tics.

14 “(2) INCOME AND NET WORTH.—The income
15 and net worth of a natural person under section
16 4(6)(B)(ii) and subsection (a)(9) of this section shall
17 be calculated in accordance with any rules of the
18 Commission under this title regarding the calcula-
19 tion of the income and net worth, respectively, of an
20 accredited investor.”.

21 “(c) RULEMAKING.—Not later than 270 days after the
22 date of enactment of this Act, the Securities and Ex-
23 change Commission (in this Act referred to as the “Com-
24 mission”) shall issue such rules as the Commission deter-
25 mines may be necessary or appropriate for the protection

1 of investors to carry out sections 4(6) and section 4A of
2 the Securities Act of 1933, as added by this Act. In car-
3 rying out this section, the Commission shall consult with
4 any securities commission (or any agency or office per-
5 forming like functions) of the States, any territory of the
6 United States, and the District of Columbia, which seeks
7 to consult with the Commission, and with any applicable
8 national securities association.

9 (d) DISQUALIFICATION.—

10 (1) IN GENERAL.—Not later than 270 days
11 after the date of enactment of this Act, the Commis-
12 sion shall, by rule, establish disqualification provi-
13 sions under which—

14 (A) an issuer shall not be eligible to offer
15 securities pursuant to section 4(6) of the Secu-
16 rities Act of 1933, as added by this Act; and

17 (B) a broker or funding portal shall not be
18 eligible to effect or participate in transactions
19 pursuant to that section 4(6).

20 (2) INCLUSIONS.—Disqualification provisions
21 required by this subsection shall—

22 (A) be substantially similar to the provi-
23 sions of section 230.262 of title 17, Code of
24 Federal Regulations (or any successor thereto);
25 and

1 (B) disqualify any offering or sale of secu-
2 rities by a person that—

3 (i) is subject to a final order of a
4 State securities commission (or an agency
5 or officer of a State performing like func-
6 tions), a State authority that supervises or
7 examines banks, savings associations, or
8 credit unions, a State insurance commis-
9 sion (or an agency or officer of a State
10 performing like functions), an appropriate
11 Federal banking agency, or the National
12 Credit Union Administration, that—

13 (I) bars the person from—

14 (aa) association with an en-
15 tity regulated by such commis-
16 sion, authority, agency, or officer;

17 (bb) engaging in the busi-
18 ness of securities, insurance, or
19 banking; or

20 (cc) engaging in savings as-
21 sociation or credit union activi-
22 ties; or

23 (II) constitutes a final order
24 based on a violation of any law or reg-
25 ulation that prohibits fraudulent, ma-

1 manipulative, or deceptive conduct within
2 the 10-year period ending on the date
3 of the filing of the offer or sale; or
4 (ii) has been convicted of any felony
5 or misdemeanor in connection with the
6 purchase or sale of any security or involv-
7 ing the making of any false filing with the
8 Commission.

9 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**
10 **SHAREHOLDER CAP.**

11 (a) EXEMPTION.—Section 12(g) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78l(g)) is amended by add-
13 ing at the end the following:

14 “(6) EXCLUSION FOR PERSONS HOLDING CER-
15 TAIN SECURITIES.—The Commission shall, by rule,
16 exempt, conditionally or unconditionally, securities
17 acquired pursuant to an offering made under section
18 4(6) of the Securities Act of 1933 from the provi-
19 sions of this subsection.”.

20 (b) RULEMAKING.—The Commission shall issue a
21 rule to carry out section 12(g)(6) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78c), as added by this
23 section, not later than 270 days after the date of enact-
24 ment of this Act.

1 **SEC. 4. FUNDING PORTAL REGULATION.**

2 (a) EXEMPTION.—

3 (1) IN GENERAL.—Section 3 of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78c) is amended
5 by adding at the end the following:

6 “(h) LIMITED EXEMPTION FOR FUNDING POR-
7 TALS.—

8 “(1) IN GENERAL.—The Commission shall, by
9 rule, exempt, conditionally or unconditionally, a reg-
10 istered funding portal from the requirement to reg-
11 ister as a broker or dealer under section 15(a)(1),
12 provided that such funding portal—

13 “(A) remains subject to the examination,
14 enforcement, and other rulemaking authority of
15 the Commission;

16 “(B) is a member of a national securities
17 association registered under section 15A; and

18 “(C) is subject to such other requirements
19 under this title as the Commission determines
20 appropriate under such rule.

21 “(2) NATIONAL SECURITIES ASSOCIATION MEM-
22 BERSHIP.—For purposes of sections 15(b)(8) and
23 15A, the term ‘broker or dealer’ includes a funding
24 portal and the term ‘registered broker or dealer’ in-
25 cludes a registered funding portal, except to the ex-
26 tent that the Commission, by rule, determines other-

1 wise, provided that a national securities association
2 shall only examine for and enforce against a reg-
3 istered funding portal rules of such national securi-
4 ties association written specifically for registered
5 funding portals.”.

6 (2) RULEMAKING.—The Commission shall issue
7 a rule to carry out section 3(h) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78c), as added by
9 this subsection, not later than 270 days after the
10 date of enactment of this Act.

11 (b) DEFINITION.—Section 3(a) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78c(a)), as amended by
13 title II of this Act, is amended by adding at the end the
14 following:

15 “(80) FUNDING PORTAL.—The term ‘funding
16 portal’ means any person engaged in the business of
17 effecting transactions in securities for the account of
18 others, solely pursuant to section 4(6) of the Securi-
19 ties Act of 1933 (15 U.S.C. 77d(6)), that does not—

20 “(A) offer investment advice or rec-
21 ommendations;

22 “(B) solicit purchases, sales, or offers to
23 buy the securities offered or displayed on its
24 website or portal;

1 “(C) compensate employees, agents, or
2 other persons for such solicitation or based on
3 the sale of securities displayed or referenced on
4 its website or portal;

5 “(D) hold, manage, possess, or otherwise
6 handle investor funds or securities; or

7 “(E) engage in such other activities as the
8 Commission, by rule, determines appropriate.”.

9 **SEC. 5. RELATIONSHIP WITH STATE LAW.**

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

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

14 (2) by inserting after subparagraph (B) the fol-
15 lowing:

16 “(C) section 4(6);”.

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

19 (1) **IN GENERAL.**—The amendments made by
20 subsection (a) relate solely to State registration, doc-
21 umentation, and offering requirements, as described
22 under section 18(a) of Securities Act of 1933 (15
23 U.S.C. 77r(a)), and shall have no impact or limita-
24 tion on other State authority to take enforcement
25 action with regard to an issuer, funding portal, or

1 any other person or entity using the exemption from
2 registration provided by section 4(6) of that Act.

3 (2) CLARIFICATION OF STATE JURISDICTION
4 OVER UNLAWFUL CONDUCT OF FUNDING PORTALS
5 AND ISSUERS.—Section 18(c)(1) of the Securities
6 Act of 1933 (15 U.S.C. 77r(c)(1)) is amended by
7 striking “with respect to fraud or deceit, or unlawful
8 conduct by a broker or dealer, in connection with se-
9 curities or securities transactions.” and inserting the
10 following: “, in connection with securities or securi-
11 ties transactions

12 “(A) with respect to—

13 “(i) fraud or deceit; or

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

16 “(B) in connection to a transaction de-
17 scribed under section 4(6), with respect to—

18 “(i) fraud or deceit; or

19 “(ii) unlawful conduct by a broker,
20 dealer, funding portal, or issuer.”.

21 (c) NOTICE FILINGS PERMITTED.—Section 18(c)(2)
22 of the Securities Act of 1933 (15 U.S.C. 77r(c)(2)) is
23 amended by adding at the end the following:

24 “(F) FEES NOT PERMITTED ON
25 CROWDFUNDED SECURITIES.—Notwithstanding

1 subparagraphs (A), (B), and (C), no filing or
2 fee may be required with respect to any security
3 that is a covered security pursuant to sub-
4 section (b)(4)(B), or will be such a covered se-
5 curity upon completion of the transaction, ex-
6 cept for the securities commission (or any agen-
7 cy or office performing like functions) of the
8 State of the principal place of business of the
9 issuer, or any State in which purchasers of 50
10 percent or greater of the aggregate amount of
11 the issue are residents, provided that for pur-
12 poses of this subparagraph, the term ‘State’ in-
13 cludes the District of Columbia and the terri-
14 tories of the United States.”.

15 (d) FUNDING PORTALS.—

16 (1) STATE EXEMPTIONS AND OVERSIGHT.—Sec-
17 tion 15(i) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78o(i)) is amended—

19 (A) by redesignating paragraphs (2) and
20 (3) as paragraphs (3) and (4), respectively; and

21 (B) by inserting after paragraph (1) the
22 following:

23 “(2) FUNDING PORTALS.—

24 “(A) LIMITATION ON STATE LAWS.—Ex-
25 cept as provided in subparagraph (B), no State

1 or political subdivision thereof may enforce any
2 law, rule, regulation, or other administrative ac-
3 tion against a registered funding portal with re-
4 spect to its business as such.

5 “(B) EXAMINATION AND ENFORCEMENT
6 AUTHORITY.—Subparagraph (A) does not apply
7 with respect to the examination and enforce-
8 ment of any law, rule, regulation, or adminis-
9 trative action of a State or political subdivision
10 thereof in which the principal place of business
11 of a registered funding portal is located, pro-
12 vided that such law, rule, regulation, or admin-
13 istrative action is not in addition to or different
14 from the requirements for registered funding
15 portals established by the Commission.

16 “(C) DEFINITION.—For purposes of this
17 paragraph, the term ‘State’ includes the Dis-
18 trict of Columbia and the territories of the
19 United States.”.

20 (2) STATE FRAUD AUTHORITY.—Section
21 18(c)(1) of the Securities Act of 1933 (15 U.S.C.
22 77r(c)(1)) is amended by striking “or dealer” and
23 inserting “, dealer, or funding portal”.

1 **SEC. 6. REPORTS TO CONGRESS.**

2 (a) IN GENERAL.—The Commission, after consulta-
3 tion with the securities commission (or any agency or of-
4 fice performing like functions) of the States and State at-
5 torneys general, shall submit a report to the Committee
6 on Banking, Housing, and Urban Affairs of the Senate
7 and the Committee on Financial Services of the House of
8 Representatives, not later than 1 year after the date on
9 which the Commission issues final rules under section
10 2(c), and every 2 years thereafter through the date that
11 is 7 years after that date of issuance.

12 (b) REPORTS.—Each report provided pursuant to
13 subsection (a) shall include—

14 (1) a description of the material risks posed to
15 investors in securities issued pursuant to section
16 4(6) of the Securities Act of 1933, as added by this
17 Act, including risks related to valuations, subsequent
18 corporate actions by the issuer, dilution of ownership
19 interests or rights, and any other risks to investors
20 that the Commission shall determine;

21 (2) a description of the performance of invest-
22 ments made in securities issued pursuant to that
23 section 4(6), to the extent that such information is
24 available to the Commission;

25 (3) a description of fraud or misconduct allega-
26 tions related to issuances made pursuant to that sec-

1 tion 4(6), including a description of actions by and
2 complaints to the Commission involving material
3 misstatements, material omissions, or other material
4 problems associated with offerings in reliance on
5 such exemption, provided that the description shall
6 be limited to concluded enforcement actions or infor-
7 mation that is otherwise publicly available;

8 (4) the approximate number of offerings made
9 pursuant to that section 4(6);

10 (5) a summary of information relating to pur-
11 chasers of securities offered pursuant to that section
12 4(6), including investor income and net worth levels,
13 the number of investments in such offerings made
14 by such investors, and the average sizes of such in-
15 vestments, to the extent that such information is
16 available to the Commission;

17 (6) a summary of information relating to
18 issuers of securities relying on that section 4(6), in-
19 cluding their asset sizes, revenues, numbers of inves-
20 tors, and the amounts raised, to the extent that such
21 information is available to the Commission;

22 (7) a description of any emerging trends in of-
23 ferings or issuances made pursuant to that section
24 4(6);

1 (8) recommendations regarding enhancements,
2 including additional issuer, broker, dealer, or fund-
3 ing portal requirements, regulatory oversight, or dis-
4 closures, that may improve protections for investors
5 purchasing securities issued pursuant to that section
6 4(6); and

7 (9) any other information that the Commission
8 deems necessary or appropriate.

9 (c) STATE REPORTS.—

10 (1) IN GENERAL.—If the securities commission
11 (or any agency or office performing like functions)
12 of a State or State attorney general issues a report
13 in writing to the Commission identifying any emerg-
14 ing trends that have undermined investor protec-
15 tions, or other risks pertaining to investor protec-
16 tion, in offerings or issuances relying upon section
17 4(6) of the Securities Act of 1933, as added by this
18 Act, other than in connection with a review con-
19 ducted by the Commission pursuant to this section,
20 the Commission shall—

21 (A) conduct a preliminary review of such
22 report; and

23 (B) respond in writing to such report, not
24 later than 120 days after the date of receipt of

1 such report, with the results of its preliminary
2 review.

3 (2) COPIES OF REPORT.—The Commission shall
4 provide a copy of any report of the securities com-
5 mission (or any agency or office performing like
6 functions) of a State or State attorney general de-
7 scribed in paragraph (1) and the response of the
8 Commission to the Committee on Banking, Housing,
9 and Urban Affairs of the Senate and the Committee
10 on Financial Services of the House of Representa-
11 tives, not later than 90 days after the date on which
12 such response is provided.

13 (d) DEFINITION OF STATE.—For purposes of this
14 section, the term “State” includes any territory of the
15 United States and the District of Columbia.

○