Association (NASAA), of which I am a member, is already hard at work on a state level model rule on crowdfunding that would preserve a state's ability to prevent scam artists from using crowdfunding offerings as the latest method for ripping off Main Street investors. I urge you to remove the state preemption section from the bill.

Thank you for your attention to this important matter. Please don't hesitate to contact me if I may be of any assistance, or if you or your staff have questions regarding the legislation in question.

Sincerely,

ELAINE F. MARSHALL,
Secretary of State.

I yield back the balance of my time.

Mr. MCCARTHY of California. Mr. Speaker, I rise to claim the time in opposition.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. MCCARTHY of California. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from North Carolina's amendment goes against the very purpose of this bill. This amendment would force private companies raising capital to actually face stiffer regulations than public companies regarding compensation. The Securities and Exchange Commission doesn't require public companies selling to retail investors to put this in their advertising, and even Dodd-Frank did not go this far.

With Ms. WATERS' help, we made sure that this bill specifically targets only sophisticated Securities and Exchange accredited investors. The SEC has no authority to regulate the compensation of executives at private companies. At a time when the costs and benefits of regulations are so important, the Miller amendment would fail anyone's cost benefit analysis. I, therefore, urge my colleagues to reject this amendment.

I yield 1 minute to the gentlelady from New York, NAN HAYWORTH.

Ms. HAYWORTH. Mr. Speaker, I would like to add to my colleague's comments by noting that shareholders in major public corporations, major issuers of public stock have said over and over again that they do not find that the amount of capital that would have to be devoted, the amount of resources that would have to be devoted to unusual disclosures about executive compensation beyond what the SEC rules already require prior to Dodd-Frank actually make any difference to their decisions about investing at all. So you can certainly expect that accredited investors who are sophisticated will not need this kind of additional burden to be placed on companies that clearly they want to see thrive and grow with the precious capital that they have.

Mr. MCCARTHY of California. Mr. Speaker, the purpose of H.R. 2940 is to help facilitate capital for small business. This amendment flies directly in the face of that effort. I urge my colleagues to oppose the amendment.

I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to the rule, the previous question is ordered on the bill, as amended, and on the amendment offered by the gentleman from North Carolina (Mr. MILLER).

Mr. MCCARTHY of California. Mr. Speaker, I ask unanimous consent that the Speaker may postpone further proceedings on the amendment offered by Mr. MILLER of North Carolina to H.R. 2940 as though under clause 8(a)(1)(A) of rule XX.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from North Carolina (Mr. MILLER).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. MILLER of North Carolina. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the previous order of the House, further proceedings on this question will be postponed.

ENTREPRENEUR ACCESS TO CAPITAL ACT

Mr. MCHENRY. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on H.R. 2930 and to insert extraneous material thereon.

The SPEAKER pro tempore (Mr. GARRETT). Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 453 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 2930.

□ 1545

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 2930) to amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes, with Mr. BASS of New Hampshire in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from North Carolina (Mr. MCHENRY) and the gentleman from Colorado (Mr. PERLMUTTER) each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. MCHENRY. Mr. Chairman, I yield myself such time as I may consume.

When I'm at home in western North Carolina, I hear frequently from my constituents, from small businesses, that they have a very difficult time raising capital in these very challenging times that we're in. And over 2 years into an economic recovery that is struggling, America's labor and capital markets continue to face unprecedented challenges. Nearly 14 million Americans remain officially unemployed, with an additional 11 million underemployed. And small businesses continue to struggle to access capital despite an endless number of government initiatives.

The origin of these barriers to capital formation rests in two Federal securities laws—the Securities Act of 1933 and the Securities Exchange Act of 1934—that have not been substantially updated since a gallon of gasoline cost 10 cents and only 31 percent of households owned a telephone. Today, a gallon of gas, as we know, costs about 35 times more per gallon than it did then, and nearly every American owns a telephone. In fact, most people have the Internet in their pocket.

So while the comparison of then and now is nostalgic, the ramifications of not modernizing our securities regulations have led to registration and reporting requirements so onerous and costly that small companies have great difficulty raising capital.

For instance, if a startup company offers an equity stake to investors through a medium like Facebook or Twitter, it is presumably in violation of SEC regulations for that communication and offering. However, soliciting money for one's favorite charity or even a political candidate through the same Internet medium is perfectly legal. So, clearly, something is not right.

Furthermore, high net worth individuals can invest in businesses before the average family can. And that small business is limited on the amount of equity stakes they can provide investors and limited in the number of investors they can get. So, clearly, something has to be done to open these capital markets to the average investor, and that's what the Entrepreneur Access to Capital Act is all about.

It removes the SEC restrictions on crowdfunding to allow entrepreneurs and small businesses to raise capital from everyday investors. Already prevalent in Europe and Asia, crowdfunding has proven that broadening the communication investment capabilities between investors and entrepreneurs can have a positive impact and a positive effect on capital formation which is the lifeblood of a strong and growing economy.

Specifically, my bill will allow companies to pool up to $1 million without the expense of registering with the SEC or up to $2 million if the company provides investors with audited financial statements. Individual contributors are limited to $10,000 or 10 percent of the investor's annual income, whichever is less.

In addition, H.R. 2930 creates a regulatory structure of investor protection

around this new, innovative form of financing with substantial intermediary requirements or issue requirements if there is no intermediary. This key mandate for investor protection is why the bill has received broad bipartisan support both in the Financial Services Committee and from President Obama.

This has been crafted both with Republican and Democrat staffers, getting input from my colleagues from across the aisle at a subcommittee markup, multiple hearings we've had on the idea of crowdfunding, as well as a full committee markup. And we worked together and passed it with a bipartisan vote coming out of committee. This was a collaborative operation, and I appreciate my colleagues and I appreciate the staff of the Financial Services Committee as well as the staff on the Oversight and Government Reform Committee and my subcommittee where we had a number of hearings on capital formation, and out of that came this idea.

□ 1550

This is the culmination of months of work. The process began for crafting this piece of legislation over the summer. When the President stood in this Hall, in this room just a couple months ago for his jobs bill, and when he included in the proposal this idea of crowdfunding, it was a very positive thing—not just to have a good idea that we can pass here in the House, but to have a good idea that has the possibility of getting through the Senate, where it's a very challenging time for them to pass legislation at all. And that way it can make it to the President's desk and really give entrepreneurs the opportunity to raise this capital, to actually create and grow jobs. That's why they need the capital, so we can grow jobs, create jobs and provide more opportunity for our constituents and folks across this country.

We can protect and inspire confidence in the investor community as well as allow small businesses, those companies most critical to our economy, to gain the capital needed to expand, compete, and thrive.

I urge my colleagues to support this bill that combines both the best of microfinance with the power of crowdsourcing and give folks the opportunity—the average, everyday investor—the opportunity to have an equity stake in their favorite company, not just accredited investors and not just so-called high net worth individuals. That's the purpose of this legislation. I ask my colleagues to support this legislation, and I reserve the balance of my time.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, November 2, 2011.

STATEMENT OF ADMINISTRATION POLICY

H.R. 2930—ENTREPRENEUR ACCESS TO CAPITAL ACT

(Rep. McHenry, R–North Carolina, and 5 cosponsors)

The Administration supports House passage of H.R. 2930. In the President's September 8th Address to a Joint Session of Congress on jobs and the economy, he called for cutting away the red tape that prevents many rapidly growing startup companies from raising needed capital, including through a ''crowdfunding'' exemption from the requirement to register public securities offerings with the Securities and Exchange Commission. This proposal, which would enable greater flexibility in soliciting relatively small equity investments, grew out of the President's Startup America initiative and has been endorsed by the President's Council on Jobs and Competitiveness. H.R. 2930 is broadly consistent with the President's proposal. This bill will make it easier for entrepreneurs to raise capital and create jobs. The Administration looks forward to continuing to work with the Congress to craft legislation that facilitates capital formation and job growth, and provides appropriate investor protections.

Mr. PERLMUTTER. Mr. Chairman, I yield myself such time as I may consume.

I thank my friend from North Carolina for bringing this matter to the floor, for being the sponsor of this bill and for working with us to make this bill better.

Now, as Mr. MCHENRY said, this is a bill that really allows money to be raised, investments to be made by people without a lot of money. They are investors who are going to make smaller investments but in a large volume. As my friend said, this isn't 1933, and this isn't 1934 when those acts were passed. But still, what we've got to remember is sales can be made on the Internet now, or this bill will ask that sales be made of securities on the Internet. Originally, it could be on the phone, it could have been by mail, and it could have been by word of mouth. But what we've got to do with this ability to raise money across the Internet is ensure that the proper protections are put into place so that those who might deceive or defraud or in some other way mislead investors who are making these investments can be policed and the laws can be enforced if, in fact, there is some type of fraudulent act.

Now H.R. 2930 enables small companies and individuals to make use of Internet-based social networks to raise up to $1 million from friends, family, and other interested investors. While the bill caps both the total level of securities and the amount investors can invest, Democrats expressed strong concerns about the potential harm this new market could pose to investors. Originally, the bill provided few investor protections and no SEC or State regulatory oversight.

During the committee markup of H.R. 2930, Democrats added provisions requiring crowdfunding. And ''crowdfunding'' is a term that really isn't seen in our law to date. And what it is is the sale of securities, the solicitation of investments across the Internet in small amounts. So Democrats asked that there be notice given to State regulators so that they could police the activities against wrongful conduct, deception, fraud, embezzlement, or other kinds of misdeeds. Democrats successfully added a provision to disqualify bad actors, individuals that have been convicted of either State or Federal securities law violations or other financial law violations. Democrats also requested, and the gentleman from North Carolina and the Republicans agreed, to create a regulatory framework for the crowdfunding Web sites that would provide additional disclosures, safeguards, and protections for investors who wanted to buy into one of these investments.

We recently had a financial crisis that we're still continuing to dig our way out of. There were Ponzi schemes. Everybody is aware of the Madoff Ponzi scheme and others. We need to have protections for investors as businesses seek to form and develop capital. We thank the gentleman from North Carolina in working with us to place some of those investor protections into this bill.

We know there will be a number of amendments that are proposed that will continue to strengthen those investor protections. We thank the gentleman from North Carolina for bringing this bill forward.

I reserve the balance of my time.

Mr. MCHENRY. I thank my colleague from Colorado for working actively with me and with my staff to make this bill better, as well as my colleagues, Mrs. MALONEY from New York, Ms. WATERS of California, and Mr. AL GREEN. Thank you so much for your work in working in a bipartisan way to improve the bill.

With that, I would like to yield such time as he may consume to the chairman of the Financial Services Committee, the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I feel like I'm having a dream, and in that dream my colleague, PATRICK MCHENRY, has legislation on the floor, and President Obama has endorsed that legislation. I feel like I ought to wake up and find out that that was a dream. But in reality, it's actually what's happening here today. I told Mr. MCHENRY that I would like unanimous consent to ask that we call this the McHenry-Obama friendship bill, but I won't do that.

Let me say this: The President did issue a statement yesterday, and in that statement, it says that the administration supports House passage of H.R. 2930. It goes on to say, in the President's September 8 address to the Joint Session of Congress on jobs and the economy, he called for cutting away redtape that prevents many rapidly growing startup companies from raising needed capital, including through crowdfunding exemption from the requirement to register public securities offerings with the Securities and Exchange Commission. He goes on to say that he believes that this bill will make it much easier for entrepreneurs to raise capital and create jobs. And it will.

Last night, I was at a Faith & Politics dinner where our friends, Congressman STENY HOYER and Senator ROY BLUNT, were receiving the John Lewis-Amo Houghton Award. As we know, both those colleagues are bridge builders. The gentleman at the table next to me, and these were people that were supporting Faith & Politics, said to me, I appreciate the fact you're going to bring a crowdfunding bill to the floor of the House. And I was somewhat amazed, because a few months ago—I have to admit, I'm not a high techie like the President or Congressman MCHENRY—I really didn't know the difference between clown funding and crowdfunding before we started talking about this bill.

I said to him, how do you know about this bill? He said, well, I'm an executive with Facebook. And he said many companies similar to Facebook, and you mentioned this in your earlier speech, in other countries they raise money through crowdfunding. And he said they even do it here, but they avoid the law. It is a modern thing to do. It's like Facebook, it's like Google, and it's like BlackBerry several years ago. It's something that we didn't know about. But we do now, and we do need to keep our laws current.

I do also close by commending Congressman PERLMUTTER for making this bill a better bill and one that protects consumers. With this legislation, we'll move this provision into the 21st century and bring it up to date with modern ways to finance businesses.

□ 1600

That will give us an advantage that presently is a disadvantage when it comes to competing with some of our foreign competition. We certainly want to level that playing field and create jobs, and this bill does that.

Mr. PERLMUTTER. Madam Chair, I yield myself such time as I may consume.

For the record, H.R. 2930 creates a new exemption from registration under the Securities Act of 1933 for what we call ''crowdfunding'' securities. I think the record should have a definition. Crowdfunding refers to a technique for raising money over the Internet in relatively small amounts from a large number of people. And that's the exemption that's being sought pursuant to this bill, a different way to raise money. Would the gentleman agree?

I yield to my friend from North Carolina.

Mr. MCHENRY. I thank my colleague for submitting that for the record, the definition.

Now, the intention is that you have an Internet portal of sorts, but this could be done on any mass basis. But the disclosures have to be very clear—which we specify in the legislation—and we've given the SEC the ability to specify additional pieces. I have a technical amendment to clarify what the Securities and Exchange Commission staff thinks is very important to add to this bill. But I do appreciate the gentleman offering the definition.

Mr. PERLMUTTER. I thank my friend.

One other new term in the bill that we ought to have some discussion about is ''intermediary.'' Intermediary in the bill is more or less a custodian of funds. Am I correct or not?

I yield to my friend.

Mr. MCHENRY. I appreciate the gentleman.

The intention would be that the intermediary is, in essence, the conduit of funds. There's the notion of the broker-dealer, which is well established in law. What this does is, it's similar to a broker-dealer; but it is a very low-regulatory, low-cost basis of doing it.

What this is, in essence, is an intermediary defined as Websters would define an intermediary. And I think that's probably the better way to describe it.

Mr. PERLMUTTER. To the degree that the intermediary exists in this, they will be subject to the enforcement principles as we go through the amendments.

With that, I yield 3 minutes to my other friend from North Carolina (Mr. MILLER).

Mr. MILLER of North Carolina. Madam Chair, exempting this funding source from SEC regulation is not all this bill does. It also prohibits the States from doing anything. This is not a case where the proponents of the bill are saying, let's not let the Federal Government do this; let's let the States do this. They say, no, the States can't touch it at all.

The people of the various States, using their right to vote, can't decide that in their State they want someone looking at what is being offered to mom-and-pop investors to make sure that they're not getting flim-flammed. That is a great deal of the investor protections that we've had in this country. It has been done at the State level, and this takes those cops off the beat altogether.

So if you think that the people of the States should be able to exercise their own judgment about whether they want their States looking at what is being offered to mom-and-pop investors, you should vote against this bill.

Mr. MCHENRY. Madam Chair, I yield myself such time as I may consume.

I need to correct the record with regard to what my colleague from North Carolina said. What he said is simply not, in fact, what this bill does.

Furthermore, as we know, securities fraud is prosecuted not just at the Federal level, but by the States as well. That will continue to exist.

Furthermore, if my colleague from North Carolina would reach out to my colleague from Colorado, I'm supporting his amendment which preserves the States' rights of action.

Mr. MILLER of North Carolina. Will the gentleman yield?

Mr. MCHENRY. I yield to the gentleman.

Mr. MILLER of North Carolina. Yes, that has to do with enforcement. But the bill prohibits the States from having up-front disclosure requirements so that a Secretary of State—who is typically the securities law enforcer in most States—can look at it, require disclosure, look at what the disclosures are, look at what is being offered is really what is there. Yes, the bill does, thanks to the gentleman from Colorado's good work——

Mr. MCHENRY. Reclaiming my time, to correct the record, in the State of North Carolina, there is no pre-filing requirement. In the State of New York, for instance, they actually have up-front filing requirements.

Additionally, in this legislation, how it is crafted is the SEC would provide notice of this offering to the States once that offering occurs. This is something that my colleague from New York (Mrs. MALONEY) crafted in the subcommittee. My staff, as well as the Financial Services Committee Republican staff, worked diligently with the Democrat staff on the Financial Services Committee as well as Mrs. MALONEY's staff and came up with a three-page amendment, which was adopted on a bipartisan basis at the committee—I appreciate my colleague from New York offering that—and it has improved the bill.

Mr. MILLER of North Carolina. If the gentleman will yield, did the gentleman not get a letter dated November 3, 2011, from Elaine Marshall saying what you just said isn't right?

Mr. MCHENRY. Reclaiming my time, I did not receive that letter. My two Democratic colleagues from North Carolina that are on the Financial Services Committee did in fact get that letter. My colleague MEL WATT—a fantastic member—submitted it for the record in the Financial Services Committee. I had neither a letter nor a call from my Secretary of State raising concerns about that.

With that, I would be happy to yield such time as he may consume to my colleague from New Jersey, the chairman of the Subcommittee on Capital Markets in Financial Services, Mr. GARRETT.

Mr. GARRETT. I thank the gentleman from North Carolina for all of his work on this legislation, as well as the chairman of the full committee, SPENCER BACHUS, for his leadership on this initiative as well.

To the extent, as with the previous piece of legislation that we had, it goes to the overarching theme I think of today—and also during the last 10 months of this time in the House—which is job creation for this country, what can we do here in the House of Representatives to facilitate the creation of more jobs.

And just like with the last piece of legislation, what we can do is help businesses, both small and large, to obtain additional capital, capital being at the heart of the ability of a small business to go out, to expand, to grow, to

hire new employees, and to create jobs in this country.

The legislation before us goes well in that direction. And now, done in a bipartisan manner, it, as the sponsor, stands head and shoulders above the way it was before because it adds additional provisions for safety and soundness to it.

It allows for equity financing, in which investors can purchase ownership stakes in the company in exchange for basically stock or shares in those companies to grow in a future direction, to grow larger and what have you. And it allows the companies to obtain those funds without having to repay specific amounts at any particular time. What does that mean? That means it enables the company today to obtain that capital today to expand the company and hire new employees.

Now, through the efforts of the gentleman from North Carolina, what they did, in a bipartisan manner, was to add additional—what do you want to call it, protections, I guess, it will—and which was part of the discussion I think we had in committee at the time. And that was a good discussion there. We had the markup in the committee to allow for some of these discussions; and I know it went further, after the hearing and eventually with markup, to achieve this.

I think it's important—I'm just going to spend a minute—I know you touched on some of these, but I want to take a minute or two to run through what the additional protections are that we are providing for investors, in no particular order—well, maybe they are, actually. They are in the order of page eight and nine of the bill, but in front of me here, first: Warning investors of the speculative nature generally applicable to investment in startups—and that's what we're talking about here, they're startups. And if you're going to invest in a startup, it's not a sure thing, it is speculative. So those warnings are there.

Secondly, warning investors that they are subject to the restrictions on sale requirements. What that basically means is that if you're investing in this today, don't expect necessarily that you can just take your money out tomorrow, but that there may be restrictions as to when you can take out your money. But that's necessary, as I said before, so that the business can have that capital to grow. So it's reasonable.

Thirdly, taking reasonable measures to reduce the risk of fraud with respect to such transactions—again, a reasonable measure.

Fourthly, providing the SEC, the Securities and Exchange Commission, with continuous investor-level access to the issuer's Web site. Why? Because we want to make sure that that information that is being conveyed to whom—the investors in this—is the same information that the SEC has. A good provision.

Fifthly, requiring each investor to answer questions, to do what? To demonstrate their abilities—and I think the gentleman from North Carolina already went through this as far as what those restrictions should be—but, A, recognition of the level of risk generally applicable. It goes back to what I said before: If you're going to get involved in this, make sure that you understand it. And that's one of the questions. B, risk of liquidity. If you're talking about a startup company as opposed to something that's traded on one of the exchanges, there's not a lot of liquidity out there, generally speaking.

□ 1610

That means there's not a lot of folks out there who are trading these shares on a daily or hourly basis. So you have to understand that there is going to be a restriction on liquidity in this marketplace.

And, C, such areas as the SEC may determine appropriate, so broad authority there.

Sixth out of seventh I'm going to touch upon, and maybe this is the point that the gentleman was just referencing in some respects, the outsourcing of cash-managing functions to a qualified third-party custodian. And I think the gentleman referenced traditional broker-dealers, but actually this goes into a slightly different caveat from that which, I think, is actually the appropriate manner; otherwise, what you may be doing with all these restrictions being good, you don't want to get too restrictive in this and too costly. If you did do that, then you may end up making this just as difficult as if you were in some other framework.

Mr. MCHENRY. Will the gentleman yield?

Mr. GARRETT. I yield to the gentleman from North Carolina.

Mr. MCHENRY. I thank my colleague for yielding.

This is a very important point of distinction here. These intermediaries are not broker-dealers. That is neither the intent on either side of the aisle. That is not the description of it. These intermediaries are there to have a low-cost conduit for capital formation and a means to do that. That is the intention.

And all the protections outlined in the bill on these intermediaries, on how they are to operate, are there to enable it to be both low-cost but also preserve individuals' capital and make sure their investment's appropriately taken care of.

Mr. GARRETT. One of the reasons that you do that is because we are talking about small companies, companies that may be creative artists starting up a business, a nonprofit starting up a business, a small entrepreneur, so you're talking about small folks, small businesses. You're talking about businesses under $1 million.

If you were talking about what we read about in The Wall Street Journal, if we were talking about things that may be shortly traded on the New York Stock Exchange, that would be more appropriate. But you're talking about these much more, smaller type of industries here; right?

Mr. MCHENRY. Absolutely. And I appreciate my colleague yielding.

The intent is, if you're going to raise $50,000 from 5,000 people, it has to be a low-cost basis of doing that; and the traditional broker-dealer model is not efficient at those lower cost basis fundraising opportunities or equity-raising opportunities.

Mr. GARRETT. Part of the other problem is that you may not find the interest actually by the broker-dealers if you're talking about a $25,000 or $50,000 or $100,000 enterprise.

Is that another reason why you went this way?

Mr. MCHENRY. Yes. The idea is that, with the traditional broker-dealers, they're not in this market. So our intent with these low-dollar issuances, that has not been a traditional part of the action on Wall Street, not in the modern era, and so we're trying to carve out this opportunity for small business folks.

Mr. GARRETT. Before you leave, tied to this is another one of the two last points I was going to raise, which perhaps you would like to illuminate on.

The bill also requires that the intermediaries state a target amount that you're raising. You just said perhaps $50,000; right? And one of the requirements under it, as I understand it, is that you would have to withhold the capital formation proceeds, the money that you collect, the capital, until you hit a percentage of or that target amount. Is that correct?

Mr. MCHENRY. Correct.

Mr. GARRETT. The point of that is, again, what? Basically investor protection here. What you don't want to have happen, I guess, is: Say I'm going to go out into the marketplace and start raising money, and as soon as the cash starts coming in I can start using it right away, even though I was intending to raise $200,000, but I'm going to start using it right away. Those proceeds may not go to the point where you intended.

I see the gentleman from Colorado is nodding his head. Is that your understanding? Is that the reason why this was included in here?

Mr. PERLMUTTER. The answer is yes, if my friend from New Jersey is yielding to me for a second.

Mr. GARRETT. Well, I will very briefly. I understand that I've gone over the time that I was supposed to be speaking.

Mr. PERLMUTTER. I will reserve my comments for my time.

Mr. GARRETT. With that, I rise in complete support of this legislation.

Mr. PERLMUTTER. I would like to ask the Chair what time each side has remaining.

The Acting CHAIR (Mrs. MILLER of Michigan). The gentleman from Colorado has 23 minutes remaining. The

gentleman from North Carolina has 9½ minutes remaining.

Mr. PERLMUTTER. I yield myself such time as I may consume.

The gentleman from New Jersey just brought something up. My friend from North Carolina is correct, and I misstated it. The intermediary is more or less the platform, the conduit. But one of its responsibilities, and this is found in 4A, section 10, is to outsource the cash management responsibilities to qualified third-party custodians such as broker-dealers or insured depository institutions, which was a concern that we were all—we all had during the committee hearing is, ''Okay. Who's holding the money? Can they be trusted? Will they release the money at the right time?'' which was what the gentleman from New Jersey was just talking about.

So I thank my friend from North Carolina for reminding me of that section. Again, it's another piece of investor protection and a good idea that helps with capital formation. Again, we're trying to blend these two concepts.

I would like to yield 3 minutes to the gentleman from Texas (Mr. AL GREEN).

Mr. AL GREEN of Texas. Thank you, Mr. PERLMUTTER, and I thank Mr. MCHENRY.

I rise in support of H.R. 2930, the Entrepreneur Access to Capital Act.

I'm standing where I'm standing because I'm honored to celebrate the bipartisanship associated with this act. For those who are at home who may not be able to see and understand, normally I would be standing to my right; but I do unconventional things, and I think it's appropriate today to stand where I'm standing.

Mr. MCHENRY, I'd like to thank you for the spirit that you have shown as we have tried to make this a better bill. I'd also like to echo these same expressions of appreciation to Mr. BACHUS. I think that Mrs. MALONEY merits an expression of appreciation as well. And I especially, notwithstanding all of the other persons that I've had a chance to thank, including the ranking member, but I do want to thank the staffs who worked with us because they did outstanding work.

Mr. GRIMM and I were able to craft a bipartisan amendment that would aid and assist in the effort that Mr. PERLMUTTER has called to our attention, making sure that the persons who handle the dollars, that these persons are not persons who have been convicted of either State securities fraud or Federal securities fraud. And this amendment would require that the SEC construct appropriate measures, regulation or rule, to prevent these persons from handling the money, if you will.

And I'm honored to say that, with this amendment, I find this bill much better than it was initially. But I also have to say that Mr. MCHENRY never rejected the bill, the amendment, and I'm grateful that it has worked out to the extent that it has.

So today we will have greater transparency. We will have small businesses in a position such that they can use this thing called crowdfunding to fund their efforts. And also, we give persons who cannot invest in a large way an opportunity to invest in a small way and hopefully enter into the capital markets for equity purposes.

Mr. MCHENRY. Madam Chair, I reserve the balance of my time.

Mr. PERLMUTTER. I yield 3 minutes to the Congresswoman from New York (Mrs. MALONEY).

Mrs. MALONEY. I thank the gentleman for yielding and for his outstanding work on this bill and so many others.

I, first of all, want to thank Ranking Member WATERS and Ranking Member FRANK for their hard work on this bill, and to commend Ranking Member FRANK for his outstanding leadership on the Dodd-Frank regulatory reform bill.

I also applaud the leadership of Chairman BACHUS and Chairman GARRETT and my colleague Mr. MCHENRY from the great State of North Carolina for his work on this really new idea in capital formation, and for working so well and being so open to Democratic ideas and working in a very professional way with the Democratic staff and Members' staffs and Members and literally, in some form or another, accepting every Democratic amendment, which I think is a first. So we are grateful for that.

Crowdfunding is a way for small startups to raise capital through the Internet. Investors use these Web sites to come together, and on the Internet they are able to raise lower dollar amounts to help enterprises get off the ground.

Crowdfunding is a new way of raising capital. It's a new idea, and it helps small businesses. In this time of economic hardship, we have repeatedly heard from our constituents about the need to help small businesses. We have heard from small businesses about the need to have more liquidity and more loans.

□ 1620

We really need to make sure that America's innovators and entrepreneurs and researchers have the resources necessary to drive economic recovery and to turn their ideas into the reality of a company that will create jobs and grow our economy.

By passing this bill, we will make it easier to provide different avenues for startups and smaller businesses to access the capital they need to move our economy forward, and it will not only help small businesses raise capital, but thanks to the changes and amendments we agreed upon in committee, it contains much stronger investor protections as well.

During the committee markup, I offered an amendment that was accepted which will require the issuers to provide notice to the SEC that they intend to engage in crowdfunding. The SEC must then make that notice available to the State's securities regulators. And with that knowledge, the States can ensure and better protect investors, and it's strengthening, really, investor protection and, really, enforcement.

The Acting CHAIR. The time of the gentlewoman has expired.

Mr. PERLMUTTER. I yield 1 additional minute to the gentlelady.

Mrs. MALONEY. The manager's amendment agreed to in the committee will empower the SEC with additional safeguards to make crowdfunding safer for investors. It was literally a joint Democratic and Republican amendment, and I am very glad we were able to work together to make this a better bill.

I'm really happy about this bill because New York is a center for innovators, and many people come from all around the world to build their ideas. And this bill will help them do it.

It was done in a joint effort. And I hope that my friends on the other side of the aisle will join us in passing the American Jobs Act, which will also put Americans to work and help grow our economy.

We are not going to cut our way to prosperity. We need to invest in growth. The American Jobs Act invests in our infrastructure, in our workers, in innovation. It helps build the American Dream. So I hope my colleagues will join with us in passing that important bill, too.

I urge my colleagues to support this bill.

Mr. MCHENRY. I yield myself 20 seconds.

I thank my colleague from New York for improving this legislation and her staff for working so diligently with my staff and the staff on the committees as well. Very wonderful and constructive process.

I think this is a better bill, and I hope the Senate can take it up and pass it and send it to the President.

I reserve the balance of my time.

Mr. PERLMUTTER. Madam Chair, I yield myself such time as I may consume.

I would like to thank my friend from North Carolina for bringing this bill forward.

It is a good idea. It allows for investments to be made in smaller amounts by more people using mass kinds of solicitations through the Internet, through some other vehicle that we may not know of at this point. And that is a good step. And as we've gone through the process, we've built it into a better bill by adding in investor protections because this is something where people could be misled. There could be misrepresentations, and there has to be some penalty for that. As the amendment process goes forward today, we will build those amendments into this.

Now, having said all of that, having listened to the description of the bill

that preceded us about making it easier to sell securities, sell investments, sell deals to accredited investors, that's a nice step, too. Again, we need to have investor protection restrictions in there just to make sure people don't get defrauded. We just suffered through that in 2008 with the likes of Madoff and Stanford and a number of other fraudsters, con artists. We want to minimize that if we can as we try to make capital available to businesses to grow.

Now, let's not make any mistake here. These are nice steps, but they're not going to put a lot of people back to work.

My friend, Mr. MCHENRY, described the President speaking in this very Chamber about this bill, but what he was really talking about was the American Jobs Act. And the American Jobs Act is what this body needs to pass as well. We need to keep teachers on the job. We need to keep firefighters on the job. We need to put construction workers back on the job.

There were complaints about the United States Senate slowing things down, blocking things. Well, today, the United States Senate, the Republicans in the United States Senate, blocked rebuilding the infrastructure of this country—the roads, the bridges, the energy system, the sewer systems, the basic things that this country needs which would put thousands and thousands of construction workers back on the job.

So it would be jobs today, investments for a long time for this country.

We need to keep those teachers on the job. We need to put our veterans, as they come home from Iraq and from Afghanistan, we need to make sure they have a job. That's part of the Jobs Act. That's what needs to be done today. This is a good step in capital formation. But it isn't putting people to work right away. That's what this Nation needs.

This Jobs Act that the President proposed when he talked about crowdfunding, as we have been in this bill, what he was here for was to get the Jobs Act, to get these tax credits passed that would help our veterans get to work, to get our infrastructure rebuilt, to rebuild our schools and to keep teachers on the job. That's what this Nation needs. That's what this Nation wants. That's what our people expect.

So I thank my friend from North Carolina for bringing this bill forward. It's a good idea. He's been willing to work with us to make it a better idea, and we thank him. We also ask him and his colleagues on the Republican side of the aisle to pass this Jobs Act today. America needs it today.

With that, I yield back the balance of my time.

Mr. MCHENRY. Madam Chair, I yield myself the balance of my time.

The Entrepreneur Access to Capital Act is about giving entrepreneurs the power to raise money, to raise equity stakes in their business or their business idea, to grow their business or create a new business. That's really what this is about.

The legislation we have here on the floor today—I know to some of my colleagues, as some people talk about, the Internet is just a series of tubes, or they refer to the Internet as the ''Internets'' or something like that. But we understand and my colleagues understand that the Internet can be used in a positive way, in an absolutely positive way.

With a Web site like eBay, you have individuals exchanging goods that don't know each other. But they can tell their reputation. And they can exchange these goods and get quality goods for a quality price. And you have a lot of choices. We want to take that idea and give investors that same idea.

We have crowdfunding Web sites in the United States today. They help raise money for musicians or artists. And what the artists do is say, ''You know, if you invest in my ability to go into the studio and record an album,'' or whatever they call it, ''I'll give you the first download, or I'll give you the first CD.''

□ 1630

So you have folks pony up $50 or $25 for their favorite banks. You have folks who are raising money—folks who have a bakery—and they say, If you contribute a few bucks, you'll get six whoopie pies.

People have innovative ways of doing this. We're giving them the power, the opportunity; and we're relieving this Federal restriction that currently prevents them from having equity stakes in their favorite businesses, in their favorite ideas—their local coffee shops or their bakeries, their favorite bands or even the next Facebook. These are the opportunities that we're going to be able to give investors.

We have fraud protection in this legislation, language which has been crafted in a bipartisan way. It's a strong improvement to the bill, and I look forward to a bipartisan vote. I am very hopeful it will make its way intact through the Senate and make its way to the President's desk where he can sign it. That way, we can allow entrepreneurs and innovators that opportunity.

We take the best of micro-finance and the best of crowdsourcing and combine them in this legislation, and it's a positive thing. We can work together on important matters of creating jobs—and we have—and this is a first step. I certainly appreciate my colleague's willingness to work to improve the bill and to bring us to this day.

With that, I yield back the balance of my time.

Ms. JACKSON LEE of Texas. Madam Chair, I rise today in support of H.R. 2930, "Entrepreneur Access to Capital Act" to amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes. This bill reduces the regulatory burdens on capital formation by small businesses and addresses regulations on crowdfunding.

The concept of crowdfunding focuses on collective cooperation where investors try to get funding publicly instead of from personal contacts. The network is large, and many investors are often found through the Internet. It is a valuable tool for startups and other fledgling businesses. As I have said time and time again, startups are the lifeblood of our economy and American innovation. They provide necessary jobs, especially in this sluggish market.

This bill provides a crowdfunding exemption to the Securities and Exchange Commission (SEC) registration requirements for firms raising up to $5 million, with individual investments limited to $10,000 or 10 percent of an investor's income. As per the exemption, limits are removed on the number of investors until the first $5 million of capital is raised. This exemption provides smaller investors the chance to support startups, which is currently not an option under SEC regulation. There is a current 499-shareholder cap for private companies. The bill excludes crowdfunding investors from the cap for private companies and removes the ban on general solicitation that exists in many current exemptions.

I support this bill because its purpose is to ease the regulations that implement stipulations on garnering investors and capital. It is a measure fledgling small businesses benefit from. Also it should limit fraud and promote the jobs America needs.

Without access to initial investors and capital, Houston native Michael Dell would not have been able to start one of the most successful computer retail businesses in the world. His $1,000 dollar primary investment in the 1980s allowed Dell Computers to become a household name. Without this capital, America would not have had one of its premier innovators.

The economic impact of this legislation is encouraging. Businesses require investors and capital in order to expand and flourish. When businesses are presented with this opportunity, jobs are created that in turn, will stimulate economic growth. Dell's headquarters alone employs roughly 16,000 people.

I urge my colleagues to join me in supporting H.R. 2930, ''Entrepreneur Access to Capital Act,'' this will ease SEC restrictions in order to stimulate innovation, and promote regulations that open up the sphere for startups that would not have the opportunity to succeed without a wide network of investors. This, in turn, promotes economic recovery and job creation.

The Acting CHAIR. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Entrepreneur Access to Capital Act''.

SEC. 2. CROWDFUNDING EXEMPTION.

(a) SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end the following:

''(6) transactions involving the issuance of securities for which—

''(A) the aggregate annual amount raised through the issue of the securities is—

''(i) $1,000,000 or less; or

''(ii) if the issuer provides potential investors with audited financial statements, $2,000,000 or less;

''(B) individual investments in the securities are limited to an aggregate annual amount equal to the lesser of—

''(i) $10,000; and

''(ii) 10 percent of the investor's annual income;

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

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

(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING EXEMPTION.—The Securities Act of 1933 is amended by inserting after section 4 the following:

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

''(a) REQUIREMENTS ON INTERMEDIARIES.—For purposes of section 4(6), a person acting as an intermediary in a transaction involving the issuance of securities shall comply with the requirements of this subsection if the intermediary—

''(1) warns investors, including on the intermediary's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

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

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

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

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

''(6) requires each potential investor to answer questions demonstrating competency in—

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

''(B) risk of illiquidity; and

''(C) such other areas as the Commission may determine appropriate;

''(7) requires the issuer to state a target offering amount and withhold capital formation proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

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

''(9) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—

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

''(B) the names of the issuer's principals;

''(C) the stated purpose and intended use of the capital formation funds sought by the issuer; and

''(D) the target offering amount;

''(10) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;

''(11) maintains such books and records as the Commission determines appropriate;

''(12) makes available on the intermediary's website a method of communication that permits the issuer and investors to communicate with one another; and

''(13) does not offer investment advice.

''(b) REQUIREMENTS ON ISSUERS IF NO INTERMEDIARY.—For purposes of section 4(6), an issuer who offers securities without an intermediary shall comply with the requirements of this subsection if the issuer—

''(1) warns investors, including on the issuer's website, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity;

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

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

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

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

''(6) requires each potential investor to answer questions demonstrating competency in—

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

''(B) risk of illiquidity; and

''(C) such other areas as the Commission may determine appropriate;

''(7) states a target offering amount and withholds capital formation proceeds until the aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;

''(8) provides the Commission with basic notice of the offering, not later than the first day funds are solicited from potential investors, including—

''(A) the stated purpose and intended use of the capital formation funds sought by the issuer; and

''(B) the target offering amount;

''(9) outsources cash-management functions to a qualified third party custodian, such as a traditional broker or dealer or insured depository institution;

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

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

''(12) does not offer investment advice; and

''(13) discloses to potential investors, on the issuer's website, that the issuer has an interest in the issuance.

''(c) VERIFICATION OF INCOME.—For purposes of section 4(6), an issuer or intermediary may rely on certifications provided by an investor to verify the investor's income.

''(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make the notices described under subsections (a)(9) and (b)(8) and the information described under subsections (a)(4) and (b)(4) available to the States.

''(e) RESTRICTION ON SALES.—With respect to a transaction involving the issuance of securities described under section 4(6), an investor may not sell such securities during the 1-year period beginning on the date of purchase, unless such securities are sold to—

''(1) the issuer of such securities; or

''(2) an accredited investor.

''(f) CONSTRUCTION.—

''(1) NO TREATMENT AS BROKER.—With respect to a transaction described under section 4(6) involving an intermediary, such intermediary shall not be treated as a broker under the securities laws solely by reason of participation in such transaction.

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

(c) RULEMAKING.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall issue such rules as may be necessary to carry out section 4A of the Securities Act of 1933. In issuing such rules, the Commission shall carry out the cost-benefit analysis required under section 2(b) of such Act.

(d) DISQUALIFICATION.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission shall by rule or regulation establish disqualification provisions under which a person shall not be eligible to utilize the exemption under section 4(6) of the Securities Act of 1933 or to participate in the affairs of an intermediary facilitating the use of that exemption. Such provisions shall be substantially similar to the disqualification provisions contained in the regulations adopted in accordance with section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note).

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

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

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

''(5) DEFINITIONS.—

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

(2) by adding at the end the following:

''(B) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—For purposes of this subsection, the term 'held of record' shall not include holders of securities issued pursuant to transactions described under section 4(6) of the Securities Act of 1933.''.

SEC. 4. PREEMPTION OF STATE LAW.

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

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

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

''(C) section 4(6);''.

The Acting CHAIR. No amendment to the committee amendment is in order except those printed in part A of House Report 112–265. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. MCHENRY

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in part A of House Report 112–265.

Mr. MCHENRY. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

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

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

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

Page 5, beginning on line 13, strike ''individual investments in the securities are limited to an aggregate annual amount equal

to'' and insert ''the aggregate amount sold to any investor in reliance on this exemption within the previous 12-month period does not exceed''.

Page 5, line 17, strike ''the'' and insert ''such''.

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

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

Page 6, line 24, strike ''person'' and insert ''intermediary''.

Page 7, line 4, strike ''competency in''.

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

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

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

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

''(7) requires the issuer to state a target offering amount and a deadline to reach the target offering amount and ensure the third party custodian described under paragraph (10) withholds offering proceeds until aggregate capital raised from investors other than the issuer is no less than 60 percent of the target offering amount;''.

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

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

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

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

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

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

''(13) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and''.

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

Page 8, line 17, before ''securities'' insert ''or sells''.

Page 9, line 13, strike ''competency in''.

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

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

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

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

Page 10, line 1, strike ''basic''.

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

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

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

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

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

''(13) provides the Commission with a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; and''.

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

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

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

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

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

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

Page 11, line 21, strike ''90'' and insert ''180''.

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

Page 12, line 3, strike ''90'' and insert ''180''.

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

Page 12, beginning on line 8, strike ''or to participate in the affairs of an intermediary facilitating the use of that exemption.'' and insert ''based on the disciplinary history of the issuer or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles. The Commission shall also establish disqualification provisions under which an intermediary shall not be eligible to act as an intermediary in connection with an offering utilizing the exemption under section 4(6) of the Securities Act of 1933 based on the disciplinary history of the intermediary or its predecessors, affiliates, officers, directors, or persons fulfilling similar roles.''.

Page 13, beginning on line 1, strike ''the term 'held of record' shall not include holders of securities issued pursuant to transactions described under section 4(6) of the Securities Act of 1933.'' and insert ''securities held by persons who purchase such securities in transactions described under section 4(6) of the Securities Act of 1933 shall not be deemed to be 'held of record'.''.

The Acting CHAIR. Pursuant to House Resolution 453, the gentleman from North Carolina (Mr. MCHENRY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. MCHENRY. This is primarily a technical amendment based on post-markup feedback from the staff of the Securities and Exchange Commission. The final language has been negotiated between my staff and the majority and minority staffs of the Financial Services Committee.

The more substantive changes made to this amendment include: requiring the issuer to state a target offering amount and a deadline to reach the target offering amount; requiring the commission to provide a notice upon completion of the offering, which shall include the aggregate offering amount and the number of purchasers; clarifying the disqualification provision to ensure that both issuers and intermediaries, as well as their predecessors, affiliates, officers, directors or persons fulfilling similar roles, are disqualified from the exemption established in this bill should they have a history of committing securities fraud.

I appreciate the SEC staff lending their technical expertise to this amendment, and I appreciate the bipartisan effort from both the majority and minority committee staffs to further improve the final bill.

With that, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from North Carolina (Mr. MCHENRY).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. FINCHER

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in part A of House Report 112–265.

Mr. FINCHER. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 5, line 9, insert after ''$1,000,000'' the following: '', as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,''.

Page 5, line 12, insert after ''$2,000,000'' the following: '', as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,''.

The Acting CHAIR. Pursuant to House Resolution 453, the gentleman from Tennessee (Mr. FINCHER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. FINCHER. I want to thank my colleague from North Carolina (Mr. MCHENRY) for his great work on this bill and for trying to put the focus on creating jobs. It's not often so many times what we do but what we can undo up here in Washington that will let the private sector get back in the business of creating jobs.

Madam Chairman, the amendment I am offering with my colleague from California (Mr. SHERMAN) would simply adjust for inflation the $1 million and $2 million caps in the underlying bill. This will ensure investment opportunities today are just as strong tomorrow.

As the real value of money decreases over time, small-contribution investors may be discouraged from supporting start-up companies in the future due to the diminishing buying power of their original investments. By indexing the caps in the bill to reflect the annual change in the consumer price index, we will continue to allow investment opportunities for Main Street Americans, like our teachers, police officers and farmers, to pool their money and support entrepreneurs in their communities.

I urge my colleagues to support this amendment.

Mr. MCHENRY. Will the gentleman yield?

Mr. FINCHER. I yield to my colleague from North Carolina.

Mr. MCHENRY. I thank the gentleman from Tennessee for offering

this bipartisan amendment. This is a good-government amendment.

The old adage is ''a million bucks isn't what it used to be.'' Well, when reg D–504 of the Securities and Exchange Act of 1934 had a $1 million exemption that was put in place in 1982, that $1 million would be $2.4 million today. So, just in a short period of time, it can show you the impact of 30 years of inflation.

I appreciate my colleague for offering this amendment, as it's a very good amendment, and I certainly appreciate your representing the good folks of Tennessee.

Mr. FINCHER. I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Tennessee (Mr. FINCHER).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. QUAYLE

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in part A of House Report 112–265.

Mr. QUAYLE. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 5, line 16, insert before the semicolon the following: '', as such amount is adjusted by the Commission to reflect the annual change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics''.

The Acting CHAIR. Pursuant to House Resolution 453, the gentleman from Arizona (Mr. QUAYLE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. QUAYLE. Madam Chair, I yield myself such time as I may consume.

I want to thank my friend and colleague from North Carolina for bringing this bill to the floor, and I want to thank our friends on the other side of the aisle for working on this important bill as well.

Madam Chair, this is a commonsense amendment that will make it easier for American companies to raise capital, to expand, and to hire more workers.

I support the gentleman from North Carolina's legislation, which removes an unnecessary barrier to allow startups and small businesses to raise capital through individual investments of up to $10,000, or 10 percent of an investor's income. My amendment would simply index this individual investment cap to inflation.

Entrepreneurs and new businesses play a vital role in advancing both job creation and innovation in our country. Over the last three decades, new businesses have created nearly 40 million jobs and have been responsible for nearly all net new job creation. Unfortunately, the environment for new businesses has grown increasingly unfavorable. In the past 3 years, the number of new businesses launched has fallen 23 percent. Capital investment in start-up companies has decreased, and far fewer small companies are holding initial public offerings.

Madam Chair, too often when legislation is not indexed to inflation, Congress must go back and amend current laws. For instance, $10,000 in 1980 would actually be $27,535 today. The need for small businesses to have access to capital is constant. It makes sense that, as the value of the dollar fluctuates over time, we should adjust the investment cap accordingly.

This amendment will promote economic growth at no cost to the taxpayer. I support H.R. 2930, and I urge my colleagues to support this pro-growth amendment.

I reserve the balance of my time.

Mr. PERLMUTTER. I claim time in opposition, although I am not opposed to the amendment.

The Acting CHAIR. Without objection, the gentleman from Colorado is recognized for 5 minutes.

There was no objection.

□ 1640

Mr. PERLMUTTER. I want my friend from New York to catch her breath. That's why I'm going to claim time in opposition. But I also do have a question.

In 2008 when the stock market crashed, when we saw home prices drop like a rock, when people lost their jobs, we experienced over a several month period deflation—not inflation; deflation. Under the amendments, both the preceding one as well as the amendment by my friend from Arizona, when I look at it, I think, if the price goes down, this could also shrink.

I yield to my friend North Carolina.

Mr. MCHENRY. I thank my colleague for bringing this up, and it is a great concern. I didn't have the opportunity to say, I do, in fact, support the gentleman's amendment. I appreciate him offering it. It's a very thoughtful amendment.

I believe, looking at this, when you have it on an annualized basis, that does actually allay some of those concerns. But I think you and I agree that when we don't address some of these securities laws as frequently as we should to update with technology and what happens in the market, we should have in place these measures to ensure that Congress' intent is followed even 20 years from now and can keep pace with what is reasonable in the marketplace.

I think that your concern is actually a very interesting one. And I would be happy to talk with the gentleman more about ways that we can update securities laws to deal with some of these struggles.

Mr. PERLMUTTER. Reclaiming my time, I thank my friend from North Carolina. We have no opposition to this amendment. We urge its adoption.

I yield back the balance of my time.

Mr. QUAYLE. I yield to the gentleman from North Carolina.

Mr. MCHENRY. Madam Chair, I want to thank my colleague from Arizona (Mr. QUAYLE) for offering this amendment. It's a very sharp amendment, a very thoughtful approach to securities law, a very thoughtful approach to crowdfunding and the idea of allowing average, everyday investors the same opportunities that high-net-worth individuals enjoy in this country. I thank the gentleman for working on job creation and job growth.

Mr. QUAYLE. I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Arizona (Mr. QUAYLE).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MS. VELÁZQUEZ

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in part A of House Report 112–265.

Ms. VELÁZQUEZ. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 8, line 13, strike ''and''.

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

Page 8, after line 14, insert the following:

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

The Acting CHAIR. Pursuant to House Resolution 453, the gentlewoman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York.

Ms. VELÁZQUEZ. Madam Chair, I yield myself such time as I may consume.

In order for entrepreneurs to continue to fulfill their traditional role as job creators, it is essential that they have access to the capital they rely upon as fuel for innovation and economic expansion. Crowdfunding represents a promising new tool for this service. But in order to realize its full potential, investors who buy these securities must be able to make fully informed decisions. My amendment will make this possible by requiring crowdfunding intermediaries to disclose how they are compensated.

Despite its relatively recent emergence, crowdfunding shares many characteristics with ordinary stock investing. In this marketplace, however, Web sites and social media will fill the role of brokers and dealers. They will act as a conduit between stock insurers and ordinary investors. Unlike stockbrokers, these intermediaries may be paid by commission, flat fees, or subscriptions. Depending on their compensation structure, however, intermediaries may have an incentive to advertise the ideas that provide them with the most money, rather than what makes the most investment sense. This not only puts ordinary investors at risk but also undermines the entire premise of crowdfunding, which is supposed to promote those ideas that have the most merit.

Compensation disclosure is not without precedent. It is currently required by all securities brokers and dealers. This transparency provides investors with the vital information necessary to have the confidence that their investment decisions are prudent. Furthermore, these disclosures take nothing more than a few lines on an offer sheet or a quick conversation. This is a simple commonsense amendment that will help ordinary people make informed investment decisions as this new industry evolves. If intermediaries are going to fill the role of brokers and dealers in crowdfunding operations, it only makes sense that just like others in the investment industry, they should be subject to similar requirements to protect the investors they will solicit.

I urge Members to vote ''yes'' on the amendment, and I reserve the balance of my time.

Mr. MCHENRY. Madam Chair, I claim time in opposition to the amendment.

The Acting CHAIR. The gentleman from North Carolina is recognized for 5 minutes.

Mr. MCHENRY. Unfortunately, I have to oppose this amendment. In the course of a subcommittee legislative hearing, a subcommittee markup, and a full committee markup, this amendment was never offered. My colleague from New York serves on the Financial Services Committee. As my other colleagues have mentioned, I worked diligently across the aisle to incorporate every idea my colleagues from across the aisle had. They've incorporated them into this bill. It's a better piece of legislation because of it.

My colleague had the opportunity at the full committee markup to offer this amendment and didn't. We heard at the capital formation and crowdfunding hearing in the Capital Markets Subcommittee—I attended that, and all Members of the Financial Services Committee that were there that day were allowed to participate. None of the witnesses raised a compensation disclosure as a precondition to create successful crowdfunding securities offerings. My colleague did not participate in the hearing. And when the subject matter of the amendment could have been raised with a panel of capital formation experts, it was not raised.

This is an interesting amendment. What we have in this legislation is an enormous amount of investor protection. We want crowdfunding intermediaries to be able to compete with one another and to innovate and to offer the best platform and technology for both issuers and investors. Our belief is that businesses will be able to work with different intermediaries. If they don't see an intermediary that fits with their cost structure or the cost basis they see fit, they can be their own intermediary. That's how this bill is constructed. This amendment doesn't work technically with the construct of that. By forcing intermediaries to disclose the compensation structure to potential investors, we believe it will have a chilling effect on compensation in the market and the participation of potential intermediaries in this mode.

So unfortunately, I have got to oppose this amendment. Had the gentlelady brought this to me during the subcommittee or full committee markup, I would have been happy to work with my colleague on trying to craft workable language. But here on the floor today, I'm opposed to the amendment. I ask my colleagues to vote against this flawed amendment.

I reserve the balance of my time.

Ms. VELÁZQUEZ. May I inquire as to how much time I have remaining?

The Acting CHAIR. The gentlewoman from New York has 2½ minutes remaining.

Ms. VELÁZQUEZ. I yield 30 seconds to the gentleman from Colorado (Mr. PERLMUTTER).

Mr. PERLMUTTER. I thank the gentlelady.

I would just say to my friend from North Carolina, I appreciate the fact that this is new, but I think when we are dealing with these small investments and lots of people, just as with a charity, you'd like to know that most of it's going to the charity and not to the solicitation effort. That is why I would say this is important, so you know that it's getting to your investment and not to the sale effort. So I would support her amendment.

Mr. MCHENRY. Madam Chair, I yield myself such time as I may consume.

I would ask my colleagues, do they disclose on their campaign Web sites how much it costs to process a credit card contribution?

Exactly. I don't know if my colleagues are making those disclosures when folks are contributing to their campaigns. So this restriction is actually a creation of Congress.

I understand the issue. It's a very powerful issue on compensation. This was never raised in the two subcommittee hearings I have had on capital formation on the TARP in the Financial Services Subcommittee of Oversight and Government Reform, nor in the legislative markup at the Subcommittee on Capital Markets, nor during the subcommittee markup nor the full committee markup in the Committee on Financial Services.

□ 1650

Furthermore, I would point my colleague to page 6 of the legislative text. We have investor protection requirements for intermediaries that go on for, really, three pages. This specifies a lot of investor protection. It has received a bipartisan vote. The time for this amendment is past. It is not best constructed here on the floor. I ask my colleagues to vote ''no.''

With that, I yield back the balance of my time.

Ms. VELÁZQUEZ. I yield myself the balance of my time.

It amazes me that given the experience that brought us to this time, that brought the economy to its knees with the Wall Street crisis, with the Madoff Ponzi scheme, that you come here and say this is not the appropriate time. It is the appropriate time to protect investors, and that is exactly what we do here.

Compensation disclosure, for the investors to have the information to know who their intermediaries are and how they are going to be compensated, this is the appropriate time. This is the right time. It is important that we protect investors by them knowing how those intermediaries will be compensated, how their money will be invested. What makes more sense for an intermediary to invest in this company versus this other company, because if he invests in this other company he's going to make more money? What is wrong with transparency? What is wrong with disclosure? Nothing is wrong.

You have three pages of protection, but you left the most important protection for investors. What is wrong with the investor to know how those intermediaries will be compensated? That is the core of my amendment. And we should, just like brokers and dealers, they will have their own business interest and they will not necessarily be the same as investors' interest. Their interest and that of the investors are not mutually exclusive. Just like brokers and dealers, intermediaries will have discretion to choose which investment they propose.

I ask for a ''yes'' vote on my amendment.

The Acting CHAIR. The question is on the amendment offered by gentlewoman from New York (Ms. VELÁZQUEZ).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Ms. VELÁZQUEZ. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from New York will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. BARROW

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in part A of House Report 112–265.

Mr. BARROW. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 11, after line 9, insert the following:

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

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

''(2) LINKS TO WEBSITE.—The intermediary in a transaction involving the issuance of securities described under section 4(6) or, in the case of such transaction not involving an intermediary, the issuer, shall place a link

to the website described under paragraph (1) in a prominent location on the main page of the website of such intermediary or issuer that is used to facilitate such transaction.''.

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

The Acting CHAIR. Pursuant to House Resolution 453, the gentleman from Georgia (Mr. BARROW) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. BARROW. Madam Chair, I yield myself such time as I may consume.

Many of the small business owners that I've talked to back home tell me that the biggest barrier that they face in starting up a business is securing access to capital. When traditional lenders aren't lending, we need to find innovative ways to get startup and expansion money in the hands of small business job creators.

This bill uses the Internet to knock down some of the financial barriers that get between mom-and-pop startups and willing investors so they can get the money they need to grow their businesses and put more people to work. However, as with almost everything involving the Internet, new opportunities to do good bring new opportunities for mischief. We all agree that businesses and investors must understand the potential risks that come with these innovations. The bill requires that the SEC adopt regulations specifying the warnings and information that the issuer has to offer, but it leaves the content and the formatting of this information to rulemaking proceedings to be completed later, and it leaves open the possibility of inconsistent warnings and information for different investment opportunities.

My amendment takes the bill's basic approach one step further by requiring that the offering contain a link to a site maintained by the SEC where the SEC will post a comprehensive set of warnings and safety tips to anyone who is about to use the Internet to raise capital without all of the hassle and the safeguards of a regulated SEC offering. This would provide a consistent set of warnings and avoid the inconsistent, unclear, or misleading messages that investors might get from different Web sites.

Madam Chair, a word to the wise is sufficient, but too many words can obscure the information that folks really need. My amendment offers something better than a word—a link to the information that we all agree that investors should have available to them before they put their money down. Investors don't have to read it and they don't have to heed it, but it's there. And that's the least that we should do. Small businesses and the investment community stand to gain from this system, but only if everyone involved is on the same page about the potential benefits and the drawbacks. My amendment will help make sure that happens.

I want to thank my colleagues for their work on this bipartisan bill, and I ask for your support in passing this job-creating, investor-protecting amendment.

I reserve the balance of my time.

Mr. MCHENRY. Madam Chair, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from North Carolina is recognized for 5 minutes.

Mr. MCHENRY. Unfortunately, I have to oppose this amendment. I ask my colleague from Georgia if he consulted, in the construct of this language, with the SEC staff.

I yield to the gentleman.

Mr. BARROW. Well, I understand that our staffs have consulted with each other about the utility of this. I don't know how far they have gone with the SEC. But I can tell you the basic outline of this requirement is not to gum up the offering, not to require the issuer to put all kinds of stuff in the offering that can actually obscure the information that the offerer wants to put to the public and can allow the SEC basically to intrude into that offering, but to require one simple link where they can go and get all of the information that any wise investor needs.

Mr. MCHENRY. Reclaiming my time, we did not see this legislative text until it was filed with the Rules Committee. We worked to try to accommodate the Member with text that could be acceptable. Unfortunately, the construct of this is simply not acceptable and we couldn't come to reasonable accommodation on language that would be workable.

Look, the SEC is certainly overburdened. We all know that. I mean, they're working very hard. They currently have two Web sites right now. What this amendment would do is force them to have a third Web site.

Furthermore, in the discussion of this amendment, my colleague describes this as a public offering. The crowdfunding legislation described here is an exempt offering, very different in nature than a public offering, and is exempt from the SEC regs.

On page 6 of the legislation, subsection (a)(1), it mandates that individuals, intermediaries in this process, would have to add a warning to investors, including the intermediary's Web site, of the speculative nature generally applicable to investments in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity.

(2) warns investors that they are subject to the restrictions on sales requirements described under subsection (e).

Additionally, (6) requires each potential investor to answer questions demonstrating competency in:

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

(B) risk of illiquidity; and

(C) such other areas as the Commission may determine appropriate.

This part of the legislation, my staff as well as the staff of the Financial Services Committee, Democrats and Republicans, as well as the staff of Mrs. MALONEY and Ms. WATERS crafted this language in a very balanced way. We've included those concerns.

Unfortunately, the language before us today is deeply flawed, and with the nature of securities laws as they are in this country—and in the world, for that matter—we want to make sure that it has the appropriate balance, that it has been thoroughly vetted through counsel and actually has agreement. That is why this amendment is deeply flawed and I oppose it.

I reserve the balance of my time.

Mr. BARROW. Madam Chair, I yield myself such time as I may consume.

I understand the gentleman to be concerned about the distinction between this type of offering and a public offering, and I wish to remind him of what perhaps wasn't clearly understood. The point we're trying to make here is an exempt offering. That does not have all of the rigamarole and the hassle and the fine print and all of the safeguards that go along with a public offering.

□ 1700

It is because we're trying to provide the ease and convenience of an exempt offering while still providing the necessary information that folks have to have that we all are concerned about the investment warnings that the gentleman thinks we need to have in the bill. I agree with that. This is not a public offering. What we're trying to do, though, is to make sure that we don't exempt folks from having the information they might need to have before they make an investment in this entirely new and heretofore unregulated marketplace.

The gentleman is also concerned about the fact that there is yet another Web site. We're just talking about a page here that can be readily linked so the person looking at the information that the issuer wants to make available to the public, they can just hit on one link, and they can go someplace else immediately and get all the information that they need or the information they don't need. They can read it or not read it.

Mr. MCHENRY. Will the gentleman yield?

Mr. BARROW. I yield to the gentleman from North Carolina.

Mr. MCHENRY. The legislative text on line 4 specifies, establish a Web site.

Mr. BARROW. Yes, a site on the Internet, on the World Wide Web, can be just one page that can have all the information that you need.

Reclaiming my time, the main concern that I've got is that the investment protections the gentleman refers to in the bill suffer from the problem of being both overinclusive and underinclusive. On the one hand, it gives the SEC comprehensive authority to require that certain information be made

available and the person be tested and answer questions on the information that the SEC requires that they demonstrate competence on. This could suffer from underinclusion if the SEC doesn't ask or insist that the person have the most minimal information. It could be incredibly overinclusive if the SEC wants to use the authority given by the bill, as written, to require that the investor demonstrate competence on a million things.

Just think of the terms and conditions in the typical software download program; and if someone's got to answer a question about every sentence in there, you can actually give the SEC the authority, and you're kind of inviting them to go into this offering and to require competence on all kinds of stuff the person doesn't need.

Oftentimes, as Emerson said, a glimpse reveals what the gaze obscures. What I think folks need to have is a direct link that takes them to the information that anybody ought to have, and they can read it or not read it. They can heed it or not heed it. But it won't gum up the offering. It won't get between what the issuer wants to make available in order to make the sale and the information a person needs to have in order to decide whether or not this is the right place for them to make this kind of investment.

With that, I reserve the balance of my time.

Mr. MCHENRY. May I inquire of the Chair the remaining time on both sides.

The Acting CHAIR. The gentleman from North Carolina has 1¾ minutes remaining. The gentleman from Georgia has 30 seconds remaining.

Mr. MCHENRY. Madam Chair, I yield myself the balance of my time.

I certainly appreciate my colleague's intent, but I'm simply uncomfortable with requiring facilitators or these intermediaries that we create in this legislation of what is an exempt offering under securities law to actually link to the SEC's Web site. It gives the stamp of approval of sorts, it seems to me, of this exempt offering. It actually might create more confusion, not necessarily by the gentleman's intent, but by the design of the legislation before us, by the legislative text that we have here in this amendment.

Unfortunately, that is not helpful. Actually, it would be hurtful to this matter, and that's why I have to oppose it.

Now, I am hopeful that when this legislation is signed into law by the President that the Securities and Exchange Commission Office of Education and Investor Advocacy would create an investor alert, which is their standard process, regarding crowdfunding investments like the SEC did with the microcap stock, a guide to investors, which is available on the SEC's existing Web site.

And that's the concern here. We want to make sure that this is done appropriately. We currently are operating in securities law that originated over 75 years ago, or roughly 75 years ago. So we want to make sure we get this right. Unfortunately, this amendment is ill-crafted, and that's why we have to oppose it.

I yield back the balance of my time.

Mr. BARROW. Madam Chair, I yield myself the balance of my time.

I thank the gentleman for his discussion and for his good-faith effort to try and reach an understanding as how we can make the investment information more meaningful. I'm concerned, too, about the stamp of approval, the so-called Good Housekeeping Seal of Approval someone might get from finding something that is heretofore highly regulated available now in a totally brand-new marketplace. I'm concerned about the opposite impact, that not having the right information in the hands of the investor can serve as a Good Housekeeping Seal of Approval, what's in front of them now.

As written, the bill allows the SEC to prescribe all kinds of information that the person has to demonstrate a competence in. My bill would do a lot better than that. It would get the SEC out of the conversation, provide a link where a person can go someplace else and see what it is they need to see if they want to see it without getting between the issuer and the customer.

With that, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Georgia (Mr. BARROW).

The amendment was rejected.

AMENDMENT NO. 6 OFFERED BY MR. PERLMUTTER

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in part A of House Report 112–265.

Mr. PERLMUTTER. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

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

(a) IN GENERAL.—Section

In section 4, add at the end the following:

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

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

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

''(A) fraud or deceit;

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

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

The Acting CHAIR. Pursuant to House Resolution 453, the gentleman from Colorado (Mr. PERLMUTTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. PERLMUTTER. Madam Chair, I yield myself such time as I may consume.

This is the amendment we've been visiting about over the course of this bill. And what it does, the structure of the bill is such that it solicits, an issuer can solicit small investments via the Internet or some other mass type of media, and that solicitation then, a notification is made to the Securities and Exchange Commission. Once that notification is made, then notice of the solicitation on the Internet, this crowdfunding so to speak, is then given to each State so that the State regulators, the State enforcement authorities, are given notice of this solicitation, of this crowdfunding request for sale of securities.

The amendment that Mr. MCHENRY and I have prepared makes sure that when the States get this notice, they can use their police powers, their enforcement authority, to make sure that the issuer, or anyone involved with the solicitation, anyone involved with this crowdfunding which is being used across the Internet, can then, the laws can be enforced to stop any kinds of fraud, defalcation of funds, embezzlement, misrepresentation, any kinds of bad acts related to the solicitation under the crowdfunding.

This applies to both the issuer and the intermediaries. Anybody holding the funds will still be subject to the police powers of the State. So we maintain the States' rights for police power.

Mr. MCHENRY. Will the gentleman yield?

Mr. PERLMUTTER. I yield to my friend from North Carolina.

Mr. MCHENRY. I thank my colleague from Colorado for offering this amendment, and I thank my colleague for working diligently across the aisle. This was an idea that he had in the full committee markup. We worked diligently to get that done at full committee markup. It was not able to be done, but the language we have here today is a very good amendment.

The amendment ensures that the States' securities regulators have the means to police fraud, deceit, misrepresentation, and other unlawful behavior to protect investors. Since States' securities regulators already have the resources and expertise, much more so than the SEC, to examine unlawful behavior at a micro-level, it is essential that this legislation recognize and authorize them to continue to fight unlawful conduct. The powers of State securities regulators for crowdfunding are no different from what that which they have for any covered security.

Mr. PERLMUTTER. I reserve the balance of my time.

Mr. MCHENRY. Madam Chair, I claim time in opposition.

The Acting CHAIR. The gentleman from North Carolina is recognized for 5 minutes.

Mr. MCHENRY. I am not opposed to this legislation. I thank my colleague for offering it.

Mr. WATT. Will the gentleman yield?

Mr. MCHENRY. I'd be happy to yield to my colleague from North Carolina.

Mr. WATT. I was rising to claim time in opposition because I am opposed. But if the gentleman is going to yield me time.

Mr. MCHENRY. I'd be happy to let my colleague—

The Acting CHAIR. As a true opponent on his feet, the gentleman from North Carolina (Mr. WATT) is recognized for 5 minutes in lieu of the other gentleman from North Carolina (Mr. MCHENRY).

Mr. WATT. I thank the Chair.

□ 1710

Let me say this: This is kind of an awkward conversation because we did have this discussion in committee. We were advised in committee that the preemption language would be corrected between the committee and the floor. It was revised. And the amendment does take a step in the right direction, so I won't ask for a recorded vote on the amendment, but it doesn't take a step far enough in the right direction because the amendment still preempts States from having the prereview of these offerings that they now have. Even though it reserves to them the authority to do something about fraud, it does not reserve to them the authority to get involved in the review process. And in that sense, it continues to preempt State law.

I want to applaud my friends, both Mr. MCHENRY and Mr. PERLMUTTER, for making a step in the right direction, but this still preempts State law, and States ought to have the prerogative to be involved in this. The State of North Carolina, from which Mr. MCHENRY hails, the Secretary of State is adamantly of the opinion—and I agree with her—that this amendment does not go far enough.

When we get back into the full House and I can offer a letter into the RECORD, it will note that the North American Securities Administrators Association does not think the amendment goes far enough to protect States' rights.

I'm not accusing anybody of bad faith. I think they made a good faith effort to try to find grounds. But this raises the exact issue that I raised in the committee, which was the appropriate place to have done this and made this amendment and debated it and thought it out—in the committee, not on the floor of the House. And when you leave it to just a couple of individuals to work out something between committee and the floor of the House, sometimes it doesn't get to where people would like for it to be.

With that, I reserve the balance of my time.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, November 3, 2011.

Hon. JOHN BOEHNER,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I am writing on behalf of the North American Securities Administrators Association (NASAA) to express my opposition to H.R. 2930, the Entrepreneur Access to Capital Act, which is scheduled to be voted on by the House of Representatives this week.

This legislation is well intended, but structurally flawed. While intended to promote an internet-based fundraising technique known as ''crowd-funding'' as a tool for investment, this legislation will needlessly preempt state securities laws and weaken important investor protections.

Crowd-funding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been promoted as a way of assisting small businesses and start-ups looking for investment capital to help get their business ventures off the ground.

State securities regulators are acutely aware of today's difficult economic environment and its effects on job growth. Small businesses are important to job growth and to improving the economy. However, by placing unnecessary limits on the ability of state securities regulators to protect retail investors from the risks associated with smaller, speculative investments, Congress is poised to enact policies intended to strengthen the economy that will very likely have precisely the opposite effect. If this legislation is enacted in its present form it will prohibit states from enforcing laws designed to minimize the risks to investors. As currently written, H.R. 2930 would only allow states to address investor losses after they occur. Under this scenario, the public will lose confidence in this business funding method, thus, hurting the efforts to make crowd-funding a viable means for raising capital.

PREEMPTION OF STATE LAW

Section 4 of H.R. 2930 would preempt state laws requiring disclosures or reviewing exempted investment offerings before they are sold to the public. The authority to require such filings is critical to the ability of states to get ''under the hood'' of an offering to make sure that it is what it says it is. Moreover, as a matter of principle and policy, NASAA ardently believes that review of offerings of this size should remain primarily the responsibility of the states. As the securities regulators closest to the investing public, and in light of our demonstrated record of effectiveness, states are the most appropriate regulator in this area. State regulators are closer, more accessible, and more in touch with the local and regional economic issues that affect both the issuer and the investor in a small business offering.

NASAA sincerely appreciates the effort of Congressman Ed Perlmutter (D–CO) to work with the bill's sponsor to produce a bipartisan amendment that would alleviate states concerns with the preemptive provisions of H.R. 2930. Unfortunately, the Perlmutter-McHenry amendment that was made in order by the Rules Committee on November 2 falls far short of this goal. By simply clarifying that states ''retain jurisdiction . . . to investigate and bring enforcement actions with respect to fraud or deceit,'' the amendment essentially restates the preemptive provisions as they existed in the original bill. The Perlmutter-McHenry amendment fails to address the fundamental concern that states have had with H.R. 2930 since its introduction: the preemption of state authority to review securities prior to their offering.

Congress should refrain from preempting state law. Preempting state authority is a very serious step and not something that should ever be undertaken lightly or without careful consideration, including a thorough examination of all available alternatives. In the case of crowd-funding, state securities regulators are not only capable of acting, but indeed, are acting, and Congress should allow them the opportunity to continue to protect retail investors from the risks associated with smaller, speculative investments.

INDIVIDUAL INVESTMENT CAP

One of the fundamental tenets of securities law is that an investor is protected when the seller of securities is required to disclose sufficient information so that an investor can make an informed decision. Post-sale anti-fraud remedies provide little comfort to an investor who has lost a significant sum of money that is unrecoverable. Any effort to remove or weaken the up-front registration and disclosure process should not happen without adequate alternative safeguards.

NASAA appreciates that the concept of crowd-funding is appealing in many respects because it provides small, innovative enterprises, access to capital that might not otherwise be available. Indeed, this is precisely the reason that states are now considering adopting a model rule that would establish a more modest exemption for crowd-funding as it is traditionally understood, with individual investments capped at several hundred dollars per investor.

By contrast, H.R. 2930 goes far beyond anything that is being contemplated by the states or traditional advocates of crowd-funding. By setting an individual investment cap of 10 percent of annual income, or $10,000, H.R. 2930 will create an exemption that will expose many more American families to potentially catastrophic financial harm. Given that most U.S. households have a relatively modest amount of savings, a loss of $10,000, in even a single case, can be financially crippling.

AGGREGATE INVESTMENT CAP

H.R. 2930 would permit businesses to solicit investments of up to $2 million, in increments of $10,000 per investment. Such a high cap on aggregate investment makes the bill inconsistent with the expressed rationale for the crowd-funding exception. A company that is sufficiently large to warrant the raising of $2 million in investment capital is also a company that can afford to comply with the applicable registration and filing requirements.

Registration and filing requirements at both the state and federal level exist to protect investors, and any company raising up to $2 million can afford to comply with them.

Thank you for your consideration of these important issues. If you have any questions, please feel free to contact me or Michael Canning, Co-Director of Policy, at the NASAA Corporate Office at (202) 737–0900.

Sincerely,

JACK E. HERSTEIN,
President.

STATE OF NORTH CAROLINA, DEPARTMENT OF THE SECRETARY OF STATE,

Raleigh, NC, November 3, 2011.

Re H.R. 2930—''Entrepreneur Access to Capital Act of 2011''

Hon. MELVIN WATT,
Rayburn HOB,
Washington, DC.

DEAR REPRESENTATIVE WATT: I am writing to express my concern with H.R. 2930, the Entrepreneur Access to Capital Act, which could be voted on by the House this week. This legislation, intended to promote an internet-based fundraising technique known as ''crowd-funding'' as a tool for investment, will preempt state investor protection laws and weaken important investor protections.

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been suggested as a way of assisting small businesses and start-ups looking for investment capital to get their business ventures off the ground.

Soliciting charitable donations from strangers online to advance a goal or cause is one thing. Selling shares in a business online to strangers who expect to realize a potential return on their investment is something very different.

H.R. 2930 contains a preemption provision that would prohibit my agency from requiring the filing or disclosure of information about these investment opportunities before they are offered to the public in my state. I believe enacting this preemption would be a serious mistake because, based on our previous experience, many of the crowdfunding opportunities will be targeted at Mom and Pop retail investors. The authority to require filings is critical to my office's ability to ''get under the hood'' of an offering to make sure that it really is what it says it is.

I appreciate efforts by Congressman Ed Perlmutter (D–CO) to work with the bill's sponsor to produce a bipartisan amendment that would alleviate the states' concern with the preemptive provisions of H.R. 2930. Unfortunately, the Perlmutter-McHenry Amendment made in order by the Rules Committee on November 2 does not achieve this goal. Indeed, by simply clarifying that states ''retain jurisdiction . . . to investigate and bring enforcement actions with respect to fraud or deceit,'' the amendment essentially restates the preemptive provisions as they existed in the original bill.

H.R. 2930 may be well intended, but I am concerned that it could create serious enforcement challenges and potentially open the door to the possibility of significant increases in investment fraud. Small businesses are vital to job growth and to improving the economy in our state, but by displacing significant safeguards currently provided by the crucial role of state securities regulators, Congress could enact policies intended to strengthen the economy that have precisely the opposite effect.

As North Carolina's top investor protection official, I urge you not to support H.R. 2930 in its current form. I understand the North American Securities Administrators Association (NASAA), of which I am a member, is already hard at work on a state level model rule on crowdfunding that would preserve a state's ability to prevent scam artists from using crowdfunding offerings as the latest method for ripping off Main Street investors. I urge you to remove the state preemption section from the bill.

Thank you for your attention to this important matter. Please don't hesitate to contact me if I may be of any assistance, or if you or your staff have questions regarding the legislation in question.

Sincerely,

ELAINE F. MARSHALL.

Mr. PERLMUTTER. Madam Chair, how much time remains?

The Acting CHAIR. The gentleman from Colorado has 2 minutes remaining. The gentleman from North Carolina has 2 minutes remaining.

Mr. MCHENRY. Will my colleague yield?

Mr. PERLMUTTER. I yield to my other friend from North Carolina.

Mr. MCHENRY. I thank my colleague Mr. PERLMUTTER for working diligently with us on this language. He raised significant concerns. The language that we have that the gentleman was integral in crafting actually is perhaps part of the reason why the President supports the legislation. And I appreciate Mr. PERLMUTTER's working diligently on this.

I would remind my colleagues that in our legislative hearing on this bill, the Democrat witness before the committee said that crowdfunding will not work but for this exemption from individual State registration. It is a very key part of this process. When it costs $150 to register a security in Connecticut, and all you're trying to do is raise $150 from Connecticut, you net zero. And beyond that, asking a lawyer to file the paperwork. What we want to do is preserve that anti-fraud bit that the States do very well at, and we have done that with this language.

I thank my colleague for yielding.

Mr. PERLMUTTER. I reserve the balance of my time.

Mr. WATT. Madam Chair, I yield myself the balance of my time, although I won't take it.

I want to express my thanks also to Mr. PERLMUTTER, and to my colleague from North Carolina (Mr. MCHENRY). As I indicated, they made an effort to move this in the right direction. They, in fact, moved it. This amendment is better than the underlying bill, which totally preempted State law. So it moves in the right direction, it just does not move far enough in the right direction. Because of that—I mean, I'm not going to vote against the amendment. I'm not even going to ask for a recorded vote on the amendment itself. But it will make it necessary for me to oppose the bill itself. And I thought it was important enough for me to come down and express this because there are a significant number of people out there, including a number of State Attorneys General and/or Secretaries of State who believe this does not go far enough.

With that, I yield back the balance of my time.

Mr. PERLMUTTER. In closing, Madam Chair, I appreciate Mr. WATT's comments. They're legitimate, except that the purpose of this is to have in effect a national solicitation notification nationally to the SEC, and then the powers of the States kick in, as opposed to individual notification State by State. And I appreciate his concern—it's legitimate, but to make this work, you have to have a structure that allows for the national offering, notice to the States, and then the States' police powers kick in. And the SEC has its police powers as well if there is any fraud, manipulation, misrepresentation, or the like.

With that, I would urge adoption of the amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Colorado (Mr. PERLMUTTER).

The amendment was agreed to.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. MCHENRY) assumed the chair.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate as passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2112. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 2112) ''An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes,'' agree to a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoints Mr. KOHL, Mr. HARKIN, Mrs. FEINSTEIN, Mr. JOHNSON (SD), Mr. NELSON (NE), Mr. PRYOR, Mr. BROWN (OH), Mr. INOUYE, Mrs. MURRAY, Ms. MIKULSKI, Mr. BLUNT, Mr. COCHRAN, Mr. MCCONNELL, Ms. COLLINS, Mr. MORAN, Mr. HOEVEN, Mrs. HUTCHISON, and Mr. SHELBY, to be the conferees on the part of the Senate.

The SPEAKER pro tempore. The Committee will resume its sitting.

ENTREPRENEUR ACCESS TO CAPITAL ACT

The Committee resumed its sitting.

AMENDMENT NO. 4 OFFERED BY MS. VELÁZQUEZ

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, the unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.