

Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1914. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1915. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1916. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1917. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1918. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1919. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1920. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1921. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1922. Mr. MCCAIN (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself,

Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1923. Mr. MCCAIN (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1924. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1925. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1926. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1927. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1928. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1929. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1848 submitted by Mr. LAUTENBERG and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1930. Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1931. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1932. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1933. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1934. Mr. PAUL submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1935. Mr. CHAMBLISS submitted an amendment intended to be proposed to

amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1936. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1937. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1938. Ms. AYOTTE submitted an amendment intended to be proposed by her to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1939. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3606, supra; which was ordered to lie on the table.

SA 1940. Mr. REID proposed an amendment to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

SA 1941. Mr. REID proposed an amendment to amendment SA 1940 proposed by Mr. REID to the bill S. 2038, supra.

SA 1942. Mr. REID proposed an amendment to the bill S. 2038, supra.

SA 1943. Mr. REID proposed an amendment to amendment SA 1942 proposed by Mr. REID to the bill S. 2038, supra.

SA 1944. Mr. REID proposed an amendment to amendment SA 1943 proposed by Mr. REID to the amendment SA 1942 proposed by Mr. REID to the bill S. 2038, supra.

#### TEXT OF AMENDMENTS

**SA 1904.** Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. . . . REPEAL OF AUTHORITY TO PROVIDE CERTAIN LOANS TO THE INTERNATIONAL MONETARY FUND; PROHIBITION ON LOANS TO THE FUND FOR EUROPEAN FINANCIAL STABILITY.**

(a) REPEAL OF AUTHORITY TO PROVIDE CERTAIN LOANS TO THE INTERNATIONAL MONETARY FUND AND INCREASE IN THE UNITED STATES QUOTA.—

(1) REPEAL OF AUTHORITIES.—The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended—

(A) in section 17—

(i) in subsection (a)—

(I) by striking “(1) In order” and inserting “In order”; and

(II) by striking paragraphs (2), (3), and (4); and

(ii) in subsection (b)—

(I) by striking “(1) For the purpose” and inserting “For the purpose”; and

(II) by striking “subsection (a)(1)” and inserting “subsection (a)”; and

(III) by striking paragraph (2);

(B) by striking sections 64, 65, 66, and 67; and

(C) by redesignating section 68 as section 64.

(2) RESCISSION OF AMOUNTS.—

(A) IN GENERAL.—The unobligated balance of the amounts specified in subparagraph (B)—

- (i) is rescinded;
- (ii) shall be deposited in the general fund of the Treasury to be dedicated for the sole purpose of deficit reduction; and
- (iii) may not be used as an offset for other spending increases or revenue reductions.

(B) AMOUNTS SPECIFIED.—The amounts specified in this subparagraph are the amounts appropriated under the heading “UNITED STATES QUOTA, INTERNATIONAL MONETARY FUND”, and under the heading “LOANS TO INTERNATIONAL MONETARY FUND”, under the heading “INTERNATIONAL MONETARY PROGRAMS” under the heading “INTERNATIONAL ASSISTANCE PROGRAMS” in title XIV of the Supplemental Appropriations Act, 2009 (Public Law 111-32; 123 Stat. 1916).

(b) PROHIBITION ON UNITED STATES LOANS TO THE INTERNATIONAL MONETARY FUND TO BE USED FOR FINANCING FOR EUROPEAN FINANCIAL STABILITY.—

(1) IN GENERAL.—Section 17 of the Bretton Woods Agreements Act (22 U.S.C. 286e-2), as amended by subsection (a)(1), is further amended by adding at the end the following:

“(e) RESTRICTION ON LOANS TO MEMBER STATES OF THE EUROPEAN UNION.—A loan may not be made under this section in a calendar year to enable the International Monetary Fund to provide financing, directly or indirectly—

“(1) to any member state of the European Union, until the ratio of the total outstanding public debt of each such member state to the gross domestic product of the member state, as of the end of the most recent fiscal year of the member state ending in the preceding calendar year, is not more than 60 percent; or

“(2) for any new credit or liquidity facility, or any new special purpose vehicle, related to European financial stability.”.

(2) UNITED STATES OPPOSITION TO INTERNATIONAL MONETARY FUND FINANCING FOR EUROPEAN FINANCIAL STABILITY.—The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.), as amended by subsection (a)(1), is further amended by adding at the end the following: **“SEC. 65. OPPOSITION OF UNITED STATES TO INTERNATIONAL MONETARY FUND FINANCING FOR EUROPEAN FINANCIAL STABILITY.**

“The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to use the voice and vote of the United States to oppose the provision of financing by the Fund, directly or indirectly—

“(1) to any member state of the European Union in a calendar year, until the ratio of the total outstanding public debt of each such member state to the gross domestic product of the member state, as of the end of the most recent fiscal year of the member state ending in the preceding calendar year, is not more than 60 percent; or

“(2) for any new credit or liquidity facility, or any new special purpose vehicle, related to European financial stability.”.

(c) SENSE OF CONGRESS ON IMPLEMENTATION OF DOUBLING OF UNITED STATES QUOTA IN THE INTERNATIONAL MONETARY FUND.—It is the sense of Congress that Congress should not approve any legislation to implement the December 15, 2010, vote of the Board of Governors of the International Monetary Fund to double the quota of the United States in the Fund.

**SA 1905.** Mr. DEMINT submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr.

REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**TITLE VIII—INTERNATIONAL MONETARY FUND**

**SEC. 801. REPEAL OF AUTHORITY TO PROVIDE CERTAIN LOANS TO THE INTERNATIONAL MONETARY FUND; PROHIBITION ON LOANS TO THE FUND FOR EUROPEAN FINANCIAL STABILITY.**

(a) REPEAL OF AUTHORITY TO PROVIDE CERTAIN LOANS TO THE INTERNATIONAL MONETARY FUND AND INCREASE IN THE UNITED STATES QUOTA.—

(1) REPEAL OF AUTHORITIES.—The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended—

(A) in section 17—  
(i) in subsection (a)—  
(I) by striking “(1) In order” and inserting “In order”; and  
(II) by striking paragraphs (2), (3), and (4); and

(ii) in subsection (b)—  
(I) by striking “(1) For the purpose” and inserting “For the purpose”;  
(II) by striking “subsection (a)(1)” and inserting “subsection (a)”; and  
(III) by striking paragraph (2);

(B) by striking sections 64, 65, 66, and 67; and

(C) by redesignating section 68 as section 64.

(2) RESCISSION OF AMOUNTS.—

(A) IN GENERAL.—The unobligated balance of the amounts specified in subparagraph (B)—

- (i) is rescinded;
- (ii) shall be deposited in the general fund of the Treasury to be dedicated for the sole purpose of deficit reduction; and
- (iii) may not be used as an offset for other spending increases or revenue reductions.

(B) AMOUNTS SPECIFIED.—The amounts specified in this subparagraph are the amounts appropriated under the heading “UNITED STATES QUOTA, INTERNATIONAL MONETARY FUND”, and under the heading “LOANS TO INTERNATIONAL MONETARY FUND”, under the heading “INTERNATIONAL MONETARY PROGRAMS” under the heading “INTERNATIONAL ASSISTANCE PROGRAMS” in title XIV of the Supplemental Appropriations Act, 2009 (Public Law 111-32; 123 Stat. 1916).

(b) PROHIBITION ON UNITED STATES LOANS TO THE INTERNATIONAL MONETARY FUND TO BE USED FOR FINANCING FOR EUROPEAN FINANCIAL STABILITY.—

(1) IN GENERAL.—Section 17 of the Bretton Woods Agreements Act (22 U.S.C. 286e-2), as amended by subsection (a)(1), is further amended by adding at the end the following:

“(e) RESTRICTION ON LOANS TO MEMBER STATES OF THE EUROPEAN UNION.—A loan may not be made under this section in a calendar year to enable the International Monetary Fund to provide financing, directly or indirectly—

“(1) to any member state of the European Union, until the ratio of the total outstanding public debt of each such member state to the gross domestic product of the member state, as of the end of the most re-

cent fiscal year of the member state ending in the preceding calendar year, is not more than 60 percent; or

“(2) for any new credit or liquidity facility, or any new special purpose vehicle, related to European financial stability.”.

(2) UNITED STATES OPPOSITION TO INTERNATIONAL MONETARY FUND FINANCING FOR EUROPEAN FINANCIAL STABILITY.—The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.), as amended by subsection (a)(1), is further amended by adding at the end the following:

**“SEC. 65. OPPOSITION OF UNITED STATES TO INTERNATIONAL MONETARY FUND FINANCING FOR EUROPEAN FINANCIAL STABILITY.**

“The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to use the voice and vote of the United States to oppose the provision of financing by the Fund, directly or indirectly—

“(1) to any member state of the European Union in a calendar year, until the ratio of the total outstanding public debt of each such member state to the gross domestic product of the member state, as of the end of the most recent fiscal year of the member state ending in the preceding calendar year, is not more than 60 percent; or

“(2) for any new credit or liquidity facility, or any new special purpose vehicle, related to European financial stability.”.

(c) SENSE OF CONGRESS ON IMPLEMENTATION OF DOUBLING OF UNITED STATES QUOTA IN THE INTERNATIONAL MONETARY FUND.—It is the sense of Congress that Congress should not approve any legislation to implement the December 15, 2010, vote of the Board of Governors of the International Monetary Fund to double the quota of the United States in the Fund.

**SA 1906.** Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . REPEAL OF PPACA.**

(a) IN GENERAL.—

(1) JOB-KILLING HEALTH CARE LAW.—Effective as of the enactment of Public Law 111-148, such Act is repealed, and the provisions of law amended or repealed by such Act are restored or revived as if such Act had not been enacted.

(2) HEALTH CARE-RELATED PROVISIONS IN THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010.—Effective as of the enactment of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), title I and subtitle B of title II of such Act are repealed, and the provisions of law amended or repealed by such title or subtitle, respectively, are restored or revived as if such title and subtitle had not been enacted.

(b) BUDGETARY EFFECTS OF THIS ACT.—The budgetary effects of this section, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this section, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, as long as such statement has been submitted prior to the vote on passage of this Act.

**SA 1907.** Mr. DEMINT submitted an amendment intended to be proposed to

amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**TITLE \_\_\_\_\_ MISCELLANEOUS PROVISIONS**  
**SEC. 1. REPEAL OF PPACA.**

(A) IN GENERAL.—

(1) JOB-KILLING HEALTH CARE LAW.—Effective as of the enactment of Public Law 111-148, such Act is repealed, and the provisions of law amended or repealed by such Act are restored or revived as if such Act had not been enacted.

(2) HEALTH CARE-RELATED PROVISIONS IN THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010.—Effective as of the enactment of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), title I and subtitle B of title II of such Act are repealed, and the provisions of law amended or repealed by such title or subtitle, respectively, are restored or revived as if such title and subtitle had not been enacted.

(b) BUDGETARY EFFECTS OF THIS ACT.—The budgetary effects of this section, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this section, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, as long as such statement has been submitted prior to the vote on passage of this Act.

**SA 1908.** Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. INFORMATION AND CERTIFICATIONS ABOUT WORKFORCE NUMBERS REQUIRED FROM ENTITIES SEEKING OR RECEIVING FINANCING FROM THE EXPORT-IMPORT BANK OF THE UNITED STATES.**

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

“(i) INFORMATION AND CERTIFICATIONS ABOUT WORKFORCE NUMBERS REQUIRED FROM ENTITIES SEEKING OR RECEIVING FINANCING.—

“(1) INFORMATION REQUIRED FROM ENTITIES SEEKING FINANCING.—The Board of Directors of the Bank may not approve an application submitted on or after the date that is 90 days after the date of the enactment of the Export-Import Bank Reauthorization Act of 2012 for financing (including any guarantee,

insurance, or extension of credit, or participation in any extension of credit) by the Bank for a transaction that is subject to approval by the Board unless, as a condition of providing such financing, the Bank requires the applicant to submit the following information:

“(A) The number of individuals employed by the primary exporter involved with the transaction in the United States.

“(B) The number of individuals employed by the primary exporter involved with the transaction outside the United States.

“(2) CERTIFICATIONS FROM ENTITIES RECEIVING FINANCING.—

“(A) IN GENERAL.—Not later than 1 year after the Board of Directors of the Bank approves an application submitted by an entity for financing for a transaction described in paragraph (1), and annually thereafter until the entity no longer receives financing from the Bank, the entity to which the financing was provided shall submit to the Bank a written certification of—

“(i) the percentage of the workforce of the primary exporter involved with the transaction employed in the United States that was separated from employment by the exporter during the year preceding the submission of the report; and

“(ii) the percentage of the total workforce of the primary exporter involved with the transaction that was separated from employment by the exporter during the preceding year.

“(B) TERMINATION OF ASSISTANCE TO CERTAIN ENTITIES.—If an entity to which financing was provided for a transaction described in paragraph (1) submits a certification to the Bank under subparagraph (A) in which the percentage described in clause (i) of that subparagraph is greater than the percentage described in clause (ii) of that subparagraph, the Bank may not provide any additional financing to that entity until the entity submits a certification under subparagraph (A) in which the percentage described in clause (i) of that subparagraph is not greater than the percentage described in clause (ii) of that subparagraph.

“(C) FAILURE TO SUBMIT CERTIFICATIONS; FALSE CERTIFICATIONS.—If an entity to which financing was provided for a transaction described in paragraph (1) does not submit a certification required by subparagraph (A) to the Bank by the date on which the certification is due, or submits a false certification under that subparagraph, the Bank—

“(i) shall terminate all financing provided to the entity on and after the date that is 60 days after the date on which the certification was due; and

“(ii) may not provide any additional financing to that entity.”.

**SA 1909.** Mr. AKAKA submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 24, between lines 11 and 12, insert the following:

(d) DEFINITION OF ACCREDITED INVESTOR RULES.—Not later than the date on which the Commission revises its rules pursuant to subsection (a), the Commission shall, by rule or regulation, revise its rules to modify the definition of the term “accredited investor” in section 230.501 of title 17, Code of Federal Regulations—

(1) to include a natural person under section 230.501(a)(5) of title 17, Code of Federal Regulations, only if the person has an individual net worth, or joint net worth with the

spouse of that person, at the time of the purchase that exceeds \$3,000,000, or such higher amount as the Commission may determine better serves the public interest;

(2) to include a natural person under section 230.501(a)(6) of title 17, Code of Federal Regulations, only if the person—

(A) had an individual income in excess of \$600,000 in each of the 2 most recently completed calendar years, or joint income with the spouse of that person in excess of \$900,000 in each of those years; and

(B) has a reasonable expectation of reaching the same income level in the current year, or such higher amounts as the Commission may determine better serve the public interest; and

(3) to increase the amounts specified in paragraphs (1) and (2) (or such higher amounts as the Commission may determine better serve the public interest) not less than frequently than annually, at a rate at least equal to the rate of any growth in the gross national product for the preceding year.

**SA 1910.** Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 10, line 1, strike “\$350,000,000” and all that follows through page 11, line 22 and insert the following: “\$200,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration statement under this title shall continue to be deemed an emerging growth company until the earliest of—

“(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$200,000,000 or more;

“(B) the last day of the fiscal year of the issuer in which the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this title occurs;

“(C) the date on which such issuer is deemed to be a ‘large accelerated filer’, as defined in section 240.12b-2 of title 17, Code of Federal Regulations (or any successor there- to); or

“(D) the date on which the issuer has, during the previous 3-year period, issued in excess of an aggregate of \$1,000,000,000 of securities, other than common equity, whether or not such securities were issued in transactions registered under this title.”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating the second paragraph designated as paragraph (77) (relating to asset-backed securities) as paragraph (79); and

(2) by adding at the end the following:

“(80) The term ‘emerging growth company’ means an issuer that had total annual gross revenues of less than \$200,000,000 during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year and that has completed a sale of common equity securities pursuant to an effective registration

statement under the Securities Act of 1933 shall continue to be deemed an emerging growth company until the earliest of—

“(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$200,000,000 or more;

**SA 1911.** Mrs. FEINSTEIN submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 13 line 14, strike “2 years” and insert “3 years”.

**SA 1912.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. EXPORT-IMPORT BANK EXPOSURE LIMIT BUSINESS PLAN.**

(a) IN GENERAL.—Not later than August 31, 2012, the Export-Import Bank of the United States shall submit to Congress and the Comptroller General of the United States a written report that contains the following:

(1) A business plan that—

(A) includes a proposal by the Bank that recommends the appropriate exposure limit of the Bank for 2012, 2013, 2014, 2015 and beyond;

(B) justifies the recommendations of the Bank for the appropriate exposure limit; and

(C) details any anticipated growth of the Bank for 2012, 2013, 2014, 2015, and beyond—

(i) by industry sector;

(ii) by whether the products involved are short-term loans, medium-term loans, long-term loans, insurance, medium-term guarantees, or long-term guarantees; and

(iii) by key market.

(2) An analysis of the potential for increased or decreased risk of loss to the Bank as a result of the proposed exposure limit, including an analysis of increased or decreased risks associated with changes in the composition of Bank exposure, by industry sector, by product offered, and by key market.

(3) An analysis of the ability of the Bank to meet its small business and sub-Saharan Africa mandates and comply with its carbon policy mandate under the proposed exposure limit, and an analysis of any increased or decreased risk of loss associated with meeting or complying with the mandates under the proposed exposure limit.

(4) An analysis of the ability of the Bank to process, approve, and monitor authorizations, including the conducting of required economic impact analysis, under the proposed exposure limit.

(b) GAO REVIEW OF REPORT AND BUSINESS PLAN.—Not later than December 31, 2012, the

Comptroller General of the United States shall submit to Congress a written analysis of the report and business plan submitted under subsection (a), which shall include such recommendations with respect to the report and business plan as the Comptroller General deems appropriate.

**SA 1913.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

Strike section 809 of the amendment and insert the following:

**SEC. 809. CONTENT GUIDELINES FOR THE PROVISION OF FINANCING BY THE EXPORT-IMPORT BANK OF THE UNITED STATES.**

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

“(1) CONTENT GUIDELINES FOR THE PROVISION OF FINANCING.—

“(1) IN GENERAL.—The Bank shall, after notice and comment and Board approval, establish clear and comprehensive guidelines with respect to the content of the goods and services involved in a transaction for which the Bank will provide financing, which shall be aimed at ensuring that the Bank enables companies with operations in the United States to maintain and create jobs in the United States and contribute to a stronger national economy through the export of their goods and services.

“(2) REQUIRED CONSIDERATIONS.—In establishing the guidelines, the Bank shall take into account such considerations as the Bank deems relevant to meet the purposes described in paragraph (1), including the following:

“(A) The needs of different industry sectors to obtain financing from the Bank for exporting their products or services in order to create and maintain jobs in the United States.

“(B) The ability of companies with operations in the United States to compete effectively for export opportunities that will create and maintain jobs in the United States, particularly with respect to the Bank’s content requirements and co-financing arrangements.

“(C) The totality of support, including financing and subsidies, extended by export credit agencies to support the exports of goods and services, as well as key differences in, types of trade-offs among, and national trade promotion strategies of OECD member countries and of non-OECD member countries.

“(D) Recommendations from the advisory committee established under section 3(d), including any dissenting views.

“(E) Any findings or recommendations of the Government Accountability Office pertaining to the ability of the Bank to provide financing that is competitive with the financing provided by foreign export credit agencies, to enable companies with operations in the United States to contribute to a stronger United States economy by maintaining or increasing the employment of workers in the United States through the export of goods and services.

“(F) The effects of the guidelines on the manufacturing workforce and service workforce of the United States.

“(G) The effect of changes to current Bank content requirements on the incentive for companies to create and maintain operations in the United States in order to increase the employment of workers in the United States.

“(3) SEPARATE GUIDELINES.—

“(A) The Bank may establish separate guidelines under this subsection for services and for goods.

“(B) The Bank may establish separate guidelines under this subsection for small business concerns (as defined in section 3(a) of the Small Business Act).

“(C) The Bank may continue separate guidelines under this subsection with respect to different terms and products.

“(4) CERTIFICATION THAT DOMESTIC CONTENT HAS NOT BEEN REDUCED BECAUSE OF THE GUIDELINES.—In determining whether to provide financing for a proposed transaction, the exporter shall certify that the domestic content of a good has not been reduced solely as a result of the guidelines.

“(5) PROCEDURAL PROVISIONS.—Within 60 days after the date of the enactment of this Act, the Bank shall publish a notice with respect to the issuance or modification of guidelines under this subsection. Within 60 days after the end of the public comment period otherwise required by law with respect to the issuance or modification of the guidelines, the Bank shall submit to the Congress, for its review, the guidelines in proposed final form. At the end of the 60-day period that begins with the date the proposed final guidelines are so submitted, the proposed final guidelines shall be considered a final agency action for all purposes and shall take effect and be implemented immediately.

“(6) TERM.—Every 2 years, the Bank shall review and, as appropriate, modify the guidelines, subject to paragraph (5).

“(7) REPORT TO CONGRESS.—Within 1 year after the implementation of new or modified guidelines under this subsection, the Inspector General of the Bank shall submit to the Congress a report evaluating the guidelines, which shall include—

“(A) a discussion of the considerations required to be taken into account in establishing the guidelines, a comparison of how the guidelines reflect each consideration, and a description of the extent to which the guidelines enabled companies with operations in the United States who submitted an application for financing from the Bank to maintain and create jobs in the United States and contribute to a stronger national economy through the export of their goods and services;

“(B) a description of the effect of the guidelines on the number of domestic jobs to be supported, the kinds of domestic jobs to be supported, including their duration and geographic location, and the existence and nature of any transfers of technology or production; and

“(C) recommendations for how the guidelines could be modified to better facilitate exports of goods and services from the United States in order to maintain and create jobs in the United States and contribute to a stronger national economy.”.

**SA 1914.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to

increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. NON-SUBORDINATION REQUIREMENT.**

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

“(i) NON-SUBORDINATION REQUIREMENT.—In entering into financing contracts, the Bank shall seek a creditor status which is not subordinate to that of all other creditors, in order to reduce the risk to, and enhance recoveries for, the Bank.”.

**SA 1915.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. IMPROVEMENT OF METHOD FOR CALCULATING THE EFFECTS OF FINANCING BY THE EXPORT-IMPORT BANK OF THE UNITED STATES ON JOB CREATION AND MAINTENANCE IN THE UNITED STATES.**

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study of the process and methodology used by the Export-Import Bank of the United States (in this section referred to as the “Bank”) to calculate the effects of the provision of financing by the Bank on the creation and maintenance of employment in the United States, determine and assess the basis on which the Bank has used that methodology, and make any recommendations the Comptroller General deems appropriate.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress and the Bank the results of the study required by subsection (a).

(c) IMPLEMENTATION OF RECOMMENDATIONS.—If the report submitted pursuant to subsection (b) includes recommendations, the Bank may establish a more accurate methodology of the kind described in subsection (a) based on the recommendations.

**SA 1916.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. PERIODIC AUDITS OF TRANSACTIONS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES.**

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, and periodically (but not less frequently than every 4 years) thereafter, the Comptroller General of the United States shall conduct an audit of the loan and guarantee transactions of the Export-Import Bank of the United States to determine the compliance of the Bank with the underwriting guidelines, lending policies, due diligence procedures, and content guidelines of the Bank.

(b) REVIEW OF FRAUD CONTROLS.—The Comptroller General of the United States shall review the adequacy of the design and effectiveness of the controls used by the Export-Import Bank of the United States to prevent, detect, and investigate fraudulent applications for loans and guarantees, including by auditing a sample of Bank transactions, and submit to Congress a written report that contains such recommendations with respect to the controls as the Comptroller General deems appropriate.

**SA 1917.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. FOREIGN AIR CARRIERS ECONOMIC IMPACT ANALYSES.**

Section 2 of the Export-Import Bank Act of 1945 (12 U.S.C. 635) is amended by adding at the end the following:

“(i) FOREIGN AIR CARRIERS ECONOMIC IMPACT ANALYSES.—

“(1) PROCEDURES TO REDUCE ADVERSE EFFECTS OF LOANS AND GUARANTEES.—

“(A) NOTICE AND COMMENT REQUIREMENTS.—

“(i) IN GENERAL.—Before considering or approving any application for a loan or financial guarantee that may be used in whole or in part to purchase large air carrier aircraft, the Bank shall—

“(I) publish in the Federal Register a notice of the application;

“(II) provide a period of not less than 14 days (which, on request by any affected party, shall be extended to a period of not more than 30 days) for the submission to the Bank of comments on the economic or other potentially adverse effects of the provision of the loan or guarantee; and

“(III) seek comments on the economic or other potentially adverse effects of the provision of the loan or guarantee from the Department of Commerce, the Office of Management and Budget, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

“(ii) CONTENT OF NOTICE.—The notice published under clause (i)(I) with respect to an application for a loan or financial guarantee that may be used in whole or in part to purchase large air carrier aircraft shall include appropriate information about—

“(I) the country to which the aircraft will be shipped;

“(II) the type of aircraft being exported;

“(III) the amount of the loan or guarantee;

“(IV) the number of aircraft that would be produced as a result of the provision of the loan or guarantee.

“(B) PROCEDURE REGARDING MATERIALLY CHANGED APPLICATIONS.—If a material change is made to an application to which subparagraph (A)(i) applies, after a notice with respect to the application is published under subparagraph (A)(i)(I), the Bank shall publish in the Federal Register a revised notice of the application and provide for an additional comment period as provided in subparagraph (A)(i)(II).

“(C) REQUIREMENT TO ADDRESS VIEWS OF ADVERSELY AFFECTED PERSONS.—Before taking final action on an application to which subparagraph (A)(i) applies, the staff of the Bank shall provide in writing to the Board of Directors the views of any person who submitted comments on the application pursuant to this paragraph.

“(D) PUBLICATION OF CONCLUSIONS.—Within 30 days after a party affected by a final decision of the Board of Directors with respect to a loan or guarantee to which subparagraph (A)(i) applies makes a written request therefor, the Bank shall provide to the affected party a non-confidential summary of the facts found and conclusions reached in any detailed economic impact analysis or similar study with respect to the loan or guarantee, that was submitted to the Board of Directors.

“(2) DEFINITIONS.—In this subsection:

“(A) LARGE AIR CARRIER AIRCRAFT.—The term ‘large air carrier aircraft’, means an aircraft designed to hold seats for at least 31 passengers.

“(B) MATERIAL CHANGE.—The term ‘material change’, with respect to an application for a loan or guarantee that may be used in whole or in part to purchase large air carrier aircraft, includes—

“(i) a change of at least 25 percent in the amount of a loan or guarantee requested in the application; and

“(ii) a change in the type or number of aircraft to be produced as a result of any transaction that would be facilitated by the provision of the loan or guarantee.”.

**SA 1918.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. PUBLICATION OF GUIDELINES FOR ECONOMIC IMPACT ANALYSES AND DOCUMENTATION OF SUCH ANALYSES.**

(a) PUBLICATION OF GUIDELINES.—Not later than 90 days after the date of the enactment of this Act, the Export-Import Bank of the United States shall develop and make publicly available methodological guidelines to be used by the Bank in conducting economic impact analyses or similar studies under section 2(e) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(e)). In developing the guidelines, the Bank shall take into consideration any relevant guidance from the Office of Management and Budget.

(b) MAINTENANCE OF DOCUMENTATION.—Section 2(e)(7) of the Export-Import Bank Act of

1945 (12 U.S.C. 635(e)(7)) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following:

“(E) MAINTENANCE OF DOCUMENTATION.—The Bank shall maintain documentation relating to economic impact analyses and similar studies conducted under this subsection in a manner consistent with the Standards for Internal Control of the Federal Government issued by the Comptroller General of the United States.”.

**SA 1919.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. DISCLOSURE REQUIREMENT FOR BOARD MEETINGS.**

Section 3(c)(9) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)(9)) is amended by adding at the end the following new sentence: “Not later than 25 days before any meeting of the Board for final consideration of a transaction the value of which exceeds \$75,000,000, and concurrent with any statement required to be submitted under section 2(b)(3) with respect to the transaction, the Bank shall post a notice on the website of the Bank that includes a description of the item proposed to be financed, the identities of the obligor, principal supplier, and guarantor, and a description of any item with respect to which Bank financing is being sought, in a manner that does not disclose any information that is confidential or proprietary business information, that would violate the Trade Secrets Act, or that would jeopardize jobs in the United States by supplying information which competitors could use to compete with companies in the United States.”.

**SA 1920.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

Strike section 812 of the amendment and insert the following:

**SEC. 812. REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES ON THE ROLE OF THE EXPORT-IMPORT BANK OF THE UNITED STATES IN THE WORLD ECONOMY AND THE BANK'S RISK MANAGEMENT.**

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall complete and submit to the Export-Import Bank of the United States, the Committee on Banking,

Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report that evaluates—

(1) the history of the rate of growth of the Bank, and its causes, with specific consideration given to—

(A) the capital market conditions for export financing;

(B) increased competition from foreign export credit agencies;

(C) the rate of growth of the Bank from 2008 to the present;

(2) the effectiveness of the Bank's risk management, including—

(A) potential for losses from each of the products offered by the Bank; and

(B) the overall risk of the Bank's portfolio, taking into account—

(i) market risk;

(ii) credit risk;

(iii) political risk;

(iv) industry-concentration risk;

(v) geographic-concentration risk;

(vi) obligor-concentration risk; and

(vii) foreign-currency risk;

(3) the Bank's use of historical default and recovery rates to calculate future program costs, taking into consideration cost estimates determined under the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and whether discount rates applied to cost estimates should reflect the risks described in paragraph (2);

(4) the fees charged by the Bank for the products the Bank offers, whether the Bank's fees properly reflect the risks described in paragraph (2), and how the fees are affected by United States participation in international agreements; and

(5) whether the Bank's loan loss reserves policy is sufficient to cover the risks described in paragraph (2).

**SA 1921.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. CATEGORIZATION OF PURPOSE OF LOANS AND LONG-TERM GUARANTEES IN ANNUAL REPORT.**

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g), as amended by sections 808 and 810, is amended by adding at the end the following:

“(1) CATEGORIZATION OF PURPOSE OF LOANS AND LONG-TERM GUARANTEES.—In the annual report of the Bank under subsection (a), the Bank shall categorize each loan and long-term guarantee made by the Bank in the fiscal year covered by the report, and according to the following purposes:

“(1) ‘To assume commercial or political risk that exporter or private financial institutions are unwilling or unable to undertake’.

“(2) ‘To overcome maturity or other limitations in private sector export financing’.

“(3) ‘To meet competition from a foreign, officially sponsored, export credit competitor’.

“(4) ‘Not identified’, and the reason why the purpose is not identified.”.

**SA 1922.** Mr. MCCAIN (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

**TITLE —FOREIGN EARNINGS REINVESTMENT**

**SEC. 01. SHORT TITLE.**

This title may be cited as the “Foreign Earnings Reinvestment Act”.

**SEC. —. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM A CONTROLLED FOREIGN CORPORATION.**

(a) APPLICABILITY OF PROVISION.—

(1) IN GENERAL.—Subsection (f) of section 965 is amended to read as follows:

“(f) ELECTION; ELECTION YEAR.—

“(1) IN GENERAL.—The taxpayer may elect to apply this section to—

“(A) the taxpayer's last taxable year which begins before the date of the enactment of the Foreign Earnings Reinvestment Act, or

“(B) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

“(C) ELECTION YEAR.—For purposes of this section, the term ‘election year’ means the taxable year—

“(i) which begins after the date that is one year before the date of the enactment of the Foreign Earnings Reinvestment Act, and

“(ii) to which the taxpayer elects under paragraph (1) to apply this section.”.

(2) CONFORMING AMENDMENTS.—

(A) EXTRAORDINARY DIVIDENDS.—Section 965(b)(2) of such Code is amended—

(i) by striking “June 30, 2003” and inserting “September 30, 2011”, and

(ii) by adding at the end the following new sentence: “The amounts described in clauses (i), (ii), and (iii) shall not include any amounts which were taken into account in determining the deduction under subsection (a) for any prior taxable year.”.

(B) DETERMINATIONS RELATING TO RELATED PARTY INDEBTEDNESS.—Section 965(b)(3)(B) of such Code is amended by striking “October 3, 2004” and inserting “September 30, 2011”.

(C) APPLICABLE FINANCIAL STATEMENT.—Section 965(c)(1) of such Code is amended by striking “June 30, 2003” each place it appears and inserting “September 30, 2011”.

(D) DETERMINATIONS RELATING TO BASE PERIOD.—Section 965(c)(2) of such Code is amended by striking “June 30, 2003” and inserting “September 30, 2011”.

(b) DEDUCTION INCLUDES CURRENT AND ACCUMULATED FOREIGN EARNINGS.—

(1) IN GENERAL.—Paragraph (1) of section 965(b) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the sum of the current and accumulated earnings and profits described in section 959(c)(3) for the year a deduction is claimed under subsection (a), without diminution by reason of any distributions made during the election year, for all controlled foreign corporations of the United States shareholder.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 965(c) of such Code, as amended by subsection (a), is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5), as paragraphs (1), (2), (3), and (4), respectively.

(B) Paragraph (4) of section 965(c) of such Code, as redesignated by subparagraph (A), is amended to read as follows:

“(4) CONTROLLED GROUPS.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.”

(c) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (1) of section 965(a) of the Internal Revenue Code of 1986 is amended by striking “85 percent” and inserting “75 percent”.

(2) BONUS DEDUCTION IN SUBSEQUENT TAXABLE YEAR FOR INCREASING JOBS.—Section 965 of such Code is amended by adding at the end the following new subsection:

“(g) BONUS DEDUCTION.—

“(1) IN GENERAL.—In the case of any taxpayer who makes an election to apply this section, there shall be allowed as a deduction for the first taxable year following the election year an amount equal to the applicable percentage of the cash dividends which are taken into account under subsection (a) with respect to such taxpayer for the election year.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is the amount which bears the same ratio (not greater than 1) to 10 percent as—

“(A) the excess (if any) of—

“(i) the qualified payroll of the taxpayer for the calendar year which begins with or within the first taxable year following the election year, over

“(ii) the qualified payroll of the taxpayer for calendar year 2010, bears to

“(B) 10 percent of the qualified payroll of the taxpayer for calendar year 2010.”

“(3) QUALIFIED PAYROLL.—For purposes of this paragraph:

“(A) IN GENERAL.—The term ‘qualified payroll’ means, with respect to a taxpayer for any calendar year, the aggregate wages (as defined in section 3121(a)) paid by the corporation during such calendar year.

“(B) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—

“(i) ACQUISITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer acquires the trade or business of a predecessor, then the qualified payroll of such taxpayer for any calendar year shall be increased by so much of the qualified payroll of the predecessor for such calendar year as was attributable to the trade or business acquired by the taxpayer.

“(ii) DISPOSITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer disposes of a trade or business, then—

“(I) the qualified payroll of such taxpayer for calendar year 2010 shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer, and

“(II) if the disposition occurs after the beginning of the first taxable year following the election year, the qualified payroll of such taxpayer for the calendar year which begins with or within such taxable year shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer.

“(C) SPECIAL RULE.—For purposes of determining qualified payroll for any calendar year after calendar year 2011, such term shall not include wages paid to any individual if such individual received compensation from the taxpayer for services performed—

“(i) after the date of the enactment of this paragraph, and

“(ii) at a time when such individual was not an employee of the taxpayer.”

(3) REDUCTION FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—Paragraph (4) of section 965(b) of such Code (relating to limitations) is amended to read as follows:

“(4) REDUCTION IN BENEFITS FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—

“(A) IN GENERAL.—If, during the period consisting of the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1) and the succeeding 23 calendar months, the taxpayer does not maintain an average employment level at least equal to the taxpayer’s prior average employment, an additional amount equal to \$75,000 multiplied by the number of employees by which the taxpayer’s average employment level during such period falls below the prior average employment (but not exceeding the aggregate amount allowed as a deduction pursuant to subsection (a)(1)) shall be taken into income by the taxpayer during the taxable year that includes the final day of such period.

“(B) AVERAGE EMPLOYMENT LEVEL.—For purposes of this paragraph, the taxpayer’s average employment level for a period shall be the average number of full-time United States employees of the taxpayer, measured at the end of each month during the period.

“(C) PRIOR AVERAGE EMPLOYMENT.—For purposes of this paragraph, the taxpayer’s ‘prior average employment’ shall be the average number of full-time United States employees of the taxpayer during the period consisting of the 24 calendar months immediately preceding the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1).

“(D) FULL-TIME UNITED STATES EMPLOYEE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘full-time United States employee’ means an individual who provides services in the United States as a full-time employee, based on the employer’s standards and practices; except that regardless of the employer’s classification of the employee, an employee whose normal schedule is 40 hours or more per week is considered a full-time employee.

“(ii) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—Such term does not include—

“(I) any individual who was an employee, on the date of acquisition, of any trade or business acquired by the taxpayer during the 24-month period referred to in subparagraph (A), and

“(II) any individual who was an employee of any trade or business disposed of by the taxpayer during the 24-month period referred to in subparagraph (A) or the 24-month period referred to in subparagraph (C).

“(E) AGGREGATION RULES.—In determining the taxpayer’s average employment level and prior average employment, all domestic members of a controlled group shall be treated as a single taxpayer.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SA 1923. Mr. MCCAIN** (for himself and Mrs. HAGAN) submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth

by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following:

**TITLE —FOREIGN EARNINGS REINVESTMENT**

**SEC. 01. SHORT TITLE.**

This title may be cited as the “Foreign Earnings Reinvestment Act”.

**SEC. —. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM A CONTROLLED FOREIGN CORPORATION.**

(a) APPLICABILITY OF PROVISION.—

(1) IN GENERAL.—Subsection (f) of section 965 is amended to read as follows:

“(f) ELECTION; ELECTION YEAR.—

“(1) IN GENERAL.—The taxpayer may elect to apply this section to—

“(A) the taxpayer’s last taxable year which begins before the date of the enactment of the Foreign Earnings Reinvestment Act, or

“(B) the taxpayer’s first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

“(C) ELECTION YEAR.—For purposes of this section, the term ‘election year’ means the taxable year—

“(i) which begins after the date that is one year before the date of the enactment of the Foreign Earnings Reinvestment Act, and

“(ii) to which the taxpayer elects under paragraph (1) to apply this section.”

(2) CONFORMING AMENDMENTS.—

(A) EXTRAORDINARY DIVIDENDS.—Section 965(b)(2) of such Code is amended—

(i) by striking “June 30, 2003” and inserting “September 30, 2011”, and

(ii) by adding at the end the following new sentence: “The amounts described in clauses (i), (ii), and (iii) shall not include any amounts which were taken into account in determining the deduction under subsection (a) for any prior taxable year.”

(B) DETERMINATIONS RELATING TO RELATED PARTY INDEBTEDNESS.—Section 965(b)(3)(B) of such Code is amended by striking “October 3, 2004” and inserting “September 30, 2011”.

(C) APPLICABLE FINANCIAL STATEMENT.—Section 965(c)(1) of such Code is amended by striking “June 30, 2003” each place it appears and inserting “September 30, 2011”.

(D) DETERMINATIONS RELATING TO BASE PERIOD.—Section 965(c)(2) of such Code is amended by striking “June 30, 2003” and inserting “September 30, 2011”.

(b) DEDUCTION INCLUDES CURRENT AND ACCUMULATED FOREIGN EARNINGS.—

(1) IN GENERAL.—Paragraph (1) of section 965(b) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the sum of the current and accumulated earnings and profits described in section 959(c)(3) for the year a deduction is claimed under subsection (a), without diminution by reason of any distributions made during the election year, for all controlled foreign corporations of the United States shareholder.”

(2) CONFORMING AMENDMENTS.—

(A) Section 965(c) of such Code, as amended by subsection (a), is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5), as paragraphs (1), (2), (3), and (4), respectively.

(B) Paragraph (4) of section 965(c) of such Code, as redesignated by subparagraph (A), is amended to read as follows:

“(4) CONTROLLED GROUPS.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.”.

(c) AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (1) of section 965(a) of the Internal Revenue Code of 1986 is amended by striking “85 percent” and inserting “75 percent”.

(2) BONUS DEDUCTION IN SUBSEQUENT TAXABLE YEAR FOR INCREASING JOBS.—Section 965 of such Code is amended by adding at the end the following new subsection:

“(g) BONUS DEDUCTION.—

“(1) IN GENERAL.—In the case of any taxpayer who makes an election to apply this section, there shall be allowed as a deduction for the first taxable year following the election year an amount equal to the applicable percentage of the cash dividends which are taken into account under subsection (a) with respect to such taxpayer for the election year.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is the amount which bears the same ratio (not greater than 1) to 10 percent as—

“(A) the excess (if any) of—

“(i) the qualified payroll of the taxpayer for the calendar year which begins with or within the first taxable year following the election year, over

“(ii) the qualified payroll of the taxpayer for calendar year 2010, bears to

“(B) 10 percent of the qualified payroll of the taxpayer for calendar year 2010.”

(3) QUALIFIED PAYROLL.—For purposes of this paragraph:

“(A) IN GENERAL.—The term ‘qualified payroll’ means, with respect to a taxpayer for any calendar year, the aggregate wages (as defined in section 3121(a)) paid by the corporation during such calendar year.

“(B) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—

“(i) ACQUISITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer acquires the trade or business of a predecessor, then the qualified payroll of such taxpayer for any calendar year shall be increased by so much of the qualified payroll of the predecessor for such calendar year as was attributable to the trade or business acquired by the taxpayer.

“(ii) DISPOSITIONS.—If, after December 31, 2009, and before the close of the first taxable year following the election year, a taxpayer disposes of a trade or business, then—

“(I) the qualified payroll of such taxpayer for calendar year 2010 shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer, and

“(II) if the disposition occurs after the beginning of the first taxable year following the election year, the qualified payroll of such taxpayer for the calendar year which begins with or within such taxable year shall be decreased by the amount of wages for such calendar year as were attributable to the trade or business which was disposed of by the taxpayer.

“(C) SPECIAL RULE.—For purposes of determining qualified payroll for any calendar year after calendar year 2011, such term shall not include wages paid to any individual if such individual received compensation from the taxpayer for services performed—

“(i) after the date of the enactment of this paragraph, and

“(ii) at a time when such individual was not an employee of the taxpayer.”.

(3) REDUCTION FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—Paragraph (4) of section 965(b) of such Code (relating to limitations) is amended to read as follows:

“(4) REDUCTION IN BENEFITS FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—

“(A) IN GENERAL.—If, during the period consisting of the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1) and the succeeding 23 calendar months, the taxpayer does not maintain an average employment level at least equal to the taxpayer’s prior average employment, an additional amount equal to \$75,000 multiplied by the number of employees by which the taxpayer’s average employment level during such period falls below the prior average employment (but not exceeding the aggregate amount allowed as a deduction pursuant to subsection (a)(1)) shall be taken into income by the taxpayer during the taxable year that includes the final day of such period.

“(B) AVERAGE EMPLOYMENT LEVEL.—For purposes of this paragraph, the taxpayer’s average employment level for a period shall be the average number of full-time United States employees of the taxpayer, measured at the end of each month during the period.

“(C) PRIOR AVERAGE EMPLOYMENT.—For purposes of this paragraph, the taxpayer’s ‘prior average employment’ shall be the average number of full-time United States employees of the taxpayer during the period consisting of the 24 calendar months immediately preceding the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1).

“(D) FULL-TIME UNITED STATES EMPLOYEE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘full-time United States employee’ means an individual who provides services in the United States as a full-time employee, based on the employer’s standards and practices; except that regardless of the employer’s classification of the employee, an employee whose normal schedule is 40 hours or more per week is considered a full-time employee.

“(ii) EXCEPTION FOR CHANGES IN OWNERSHIP OF TRADES OR BUSINESSES.—Such term does not include—

“(I) any individual who was an employee, on the date of acquisition, of any trade or business acquired by the taxpayer during the 24-month period referred to in subparagraph (A), and

“(II) any individual who was an employee of any trade or business disposed of by the taxpayer during the 24-month period referred to in subparagraph (A) or the 24-month period referred to in subparagraph (C).

“(E) AGGREGATION RULES.—In determining the taxpayer’s average employment level and prior average employment, all domestic members of a controlled group shall be treated as a single taxpayer.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SA 1924.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 1, strike line 2 and all that follows through page 24, line 14 and insert the following:

**SEC. 301. 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 offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

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

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

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

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

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

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

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

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

“(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

“(1) register with the Commission as—

“(A) a broker; or

“(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

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

“(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

“(4) ensure that each investor—

“(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

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

“(C) answers questions demonstrating—

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

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

“(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

“(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

“(6) not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any

information provided by the issuer pursuant to subsection (b);

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

“(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

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

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

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

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

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

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

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

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

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

“(i) \$100,000 or less—

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

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

“(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

“(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

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

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price

and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

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

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

“(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

“(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

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

“(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

“(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

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

“(1) ACTIONS AUTHORIZED.—

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

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

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

“(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security

in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

“(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

“(3) DEFINITION.—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

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

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

“(A) to the issuer of the securities;

“(B) to an accredited investor;

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

“(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

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

“(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

“(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

“(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

“(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

“(4) the Commission, by rule or regulation, determines appropriate.

“(g) RULE OF CONSTRUCTION.—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).

“(h) CERTAIN CALCULATIONS.—

“(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

“(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this

title regarding the calculation of the income and net worth, respectively, of an accredited investor.”.

(c) **RULEMAKING.**—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) **DISQUALIFICATION.**—

(1) **IN GENERAL.**—Not later than 271 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and

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

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

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

**SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.**

(a) **EXEMPTION.**—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

“(6) **EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.**—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.”.

(b) **RULEMAKING.**—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

**SEC. 303. FUNDING PORTAL REGULATION.**

(a) **EXEMPTION.**—

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

“(h) **LIMITED EXEMPTION FOR FUNDING PORTALS.**—

“(1) **IN GENERAL.**—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

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

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

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

“(2) **NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.**—For purposes of sections 15(b)(8) and 15A, the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”.

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

(b) **DEFINITION.**—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(80) **FUNDING PORTAL.**—The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

“(A) offer investment advice or recommendations;

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

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

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

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

**SEC. 304. RELATIONSHIP WITH STATE LAW.**

(a) **IN GENERAL.**—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);”.

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

(2) **CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS**

AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) 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

“(A) with respect to—

“(i) fraud or deceit; or

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

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

“(i) fraud or deceit; or

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

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

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

(d) **FUNDING PORTALS.**—

(1) **STATE EXEMPTIONS AND OVERSIGHT.**—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

“(2) **FUNDING PORTALS.**—

“(A) **LIMITATION ON STATE LAWS.**—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

“(B) **EXAMINATION AND ENFORCEMENT AUTHORITY.**—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

“(C) **DEFINITION.**—For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.”.

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

**SA 1925.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 1, strike line 2 and all that follows through page 24, line 14 and insert the following:

**SEC. 301. SHORT TITLE.**

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

**SEC. 302. 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 offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

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

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

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

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

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

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

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

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

“(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

“(1) register with the Commission as—

“(A) a broker; or

“(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

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

“(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

“(4) ensure that each investor—

“(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

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

“(C) answers questions demonstrating—

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

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

“(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

“(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securi-

ties enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

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

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

“(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

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

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

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

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

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

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

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

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

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

“(i) \$100,000 or less—

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

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

“(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

“(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

“(E) a description of the stated purpose and intended use of the proceeds of the offer-

ing sought by the issuer with respect to the target offering amount;

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

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

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

“(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

“(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

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

“(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

“(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

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

“(1) ACTIONS AUTHORIZED.—

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

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

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

“(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

“(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

“(3) DEFINITION.—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

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

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

“(A) to the issuer of the securities;

“(B) to an accredited investor;

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

“(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

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

“(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

“(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

“(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

“(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

“(4) the Commission, by rule or regulation, determines appropriate.

“(g) RULE OF CONSTRUCTION.—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).

“(h) CERTAIN CALCULATIONS.—

“(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

“(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.”

(c) RULEMAKING.—Not later than 271 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and

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

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

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

**SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.**

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

“(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by

rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.”

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

**SEC. 304. FUNDING PORTAL REGULATION.**

(a) EXEMPTION.—

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

“(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

“(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

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

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

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

“(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”

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

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(80) FUNDING PORTAL.—The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

“(A) offer investment advice or recommendations;

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

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

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

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

**SEC. 305. RELATIONSHIP WITH STATE LAW.**

(a) IN GENERAL.—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);”

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

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) 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

“(A) with respect to—

“(i) fraud or deceit; or

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

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

“(i) fraud or deceit; or

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

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

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

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

“(2) FUNDING PORTALS.—

“(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

“(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.”

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

**SA 1926.** Mr. MERKLEY submitted an amendment intended to be proposed to

amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

### TITLE III—CROWDFUNDING

#### SEC. 301. SHORT TITLE.

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

#### SEC. 302. 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 offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

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

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

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

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

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

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

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

#### “SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN SMALL TRANSACTIONS.

“(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

“(1) register with the Commission as—

“(A) a broker; or

“(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

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

“(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

“(4) ensure that each investor—

“(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

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

“(C) answers questions demonstrating—

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

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

“(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

“(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

“(6) not later than 20 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

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

“(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

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

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

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

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

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

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

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

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

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

“(i) \$100,000 or less—

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

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

“(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

“(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

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

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

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

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

“(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

“(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

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

“(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

“(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

“(C) LIABILITY FOR MATERIAL MISSTATEMENTS AND OMISSIONS.—

“(1) ACTIONS AUTHORIZED.—

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

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

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

“(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

“(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

“(3) DEFINITION.—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

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

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

“(A) to the issuer of the securities;

“(B) to an accredited investor;

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

“(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

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

“(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

“(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

“(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

“(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

“(4) the Commission, by rule or regulation, determines appropriate.

“(g) RULE OF CONSTRUCTION.—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).

“(h) CERTAIN CALCULATIONS.—

“(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

“(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.”

(c) RULEMAKING.—Not later than 271 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and

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

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

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

**SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.**

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

“(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.”.

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

**SEC. 304. FUNDING PORTAL REGULATION.**

(a) EXEMPTION.—

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

“(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

“(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

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

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

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

“(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”.

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

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(80) FUNDING PORTAL.—The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

“(A) offer investment advice or recommendations;

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

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

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

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

**SEC. 305. RELATIONSHIP WITH STATE LAW.**

(a) IN GENERAL.—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);”.

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

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) 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

“(A) with respect to—

“(i) fraud or deceit; or

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

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

“(i) fraud or deceit; or

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

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

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

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

“(2) FUNDING PORTALS.—

“(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

“(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political sub-

division thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.”.

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

**SA 1927.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 1, strike line 2 and all that follows through page 24, line 14 and insert the following:

**SEC. 301. SHORT TITLE.**

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

**SEC. 302. 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 offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

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

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

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

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

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

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

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

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

“(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

“(1) register with the Commission as—

“(A) a broker; or

“(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

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

“(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

“(4) ensure that each investor—

“(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

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

“(C) answers questions demonstrating—

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

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

“(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

“(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

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

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

“(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

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

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

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

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

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

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

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

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

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, target offering amounts of—

“(i) \$100,000 or less—

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

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

“(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

“(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

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

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

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

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

“(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

“(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

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

“(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensa-

tion, upon each instance of such promotional communication;

“(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

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

“(1) ACTIONS AUTHORIZED.—

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

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

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

“(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

“(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

“(3) DEFINITION.—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

“(d) INFORMATION AVAILABLE TO STATES.—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

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

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

“(A) to the issuer of the securities;

“(B) to an accredited investor;

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

“(D) to a member of the family of the purchaser or the equivalent, or in connection

with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

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

“(f) APPLICABILITY.—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

“(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

“(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

“(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

“(4) the Commission, by rule or regulation, determines appropriate.

“(g) RULE OF CONSTRUCTION.—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).

“(h) CERTAIN CALCULATIONS.—

“(1) DOLLAR AMOUNTS.—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

“(2) INCOME AND NET WORTH.—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.”

(c) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) DISQUALIFICATION.—

(1) IN GENERAL.—Not later than 271 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and

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

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

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agen-

cy, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

#### SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.

(a) EXEMPTION.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

“(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.”

(b) RULEMAKING.—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

#### SEC. 304. FUNDING PORTAL REGULATION.

(a) EXEMPTION.—

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

“(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

“(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

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

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

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

“(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”

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

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(80) FUNDING PORTAL.—The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

“(A) offer investment advice or recommendations;

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

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

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

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

#### SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—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);”

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

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) 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

“(A) with respect to—

“(i) fraud or deceit; or

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

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

“(i) fraud or deceit; or

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

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

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

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

“(2) FUNDING PORTALS.—

“(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any

law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

“(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.”.

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

**SA 1928.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 1, strike line 6 and all that follows through page 24, line 14 and insert the following: “of 212” or the ‘CROWDFUND Act of 2012’.

**SEC. 302. 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 offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that—

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

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

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

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

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

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

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

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

“(a) REQUIREMENTS ON INTERMEDIARIES.—A person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) shall—

“(1) register with the Commission as—

“(A) a broker; or

“(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

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

“(3) provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate;

“(4) ensure that each investor—

“(A) reviews investor-education information, in accordance with standards established by the Commission, by rule;

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

“(C) answers questions demonstrating—

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

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

“(iii) an understanding of such other matters as the Commission determines appropriate, by rule;

“(5) take such measures to reduce the risk of fraud with respect to such transactions, as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

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

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

“(8) make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B);

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

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

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

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

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

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

“(A) the name, legal status, physical address, and website address of the issuer;

“(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

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

“(D) a description of the financial condition of the issuer, including, for offerings that, together with all other offerings of the issuer under section 4(6) within the preceding 12-month period, have, in the aggregate, targeted offering amounts of—

“(i) \$100,000 or less—

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

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

“(ii) more than \$100,000, but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the Commission, by rule, for such purpose; and

“(iii) more than \$500,000 (or such other amount as the Commission may establish, by rule), audited financial statements;

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

“(F) the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;

“(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities;

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

“(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

“(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

“(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

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

“(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties; and

“(I) such other information as the Commission may, by rule, prescribe, for the protection of investors and in the public interest;

“(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

“(3) not compensate or commit to compensate, directly or indirectly, any person to

promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication;

“(4) not less than annually, file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule; and

“(5) comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.

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

“(1) **ACTIONS AUTHORIZED.**—

“(A) **IN GENERAL.**—Subject to paragraph (2), a person who purchases a security in a transaction exempted by the provisions of section 4(6) may bring an action against an issuer described in paragraph (2), either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if such person no longer owns the security.

“(B) **LIABILITY.**—An action brought under this paragraph shall be subject to the provisions of section 12(b) and section 13, as if the liability were created under section 12(a)(2).

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

“(A) by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the offering or sale of a security in a transaction exempted by the provisions of section 4(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

“(B) does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

“(3) **DEFINITION.**—As used in this subsection, the term ‘issuer’ includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in a transaction exempted by the provisions of section 4(6), and any person who offers or sells the security in such offering.

“(d) **INFORMATION AVAILABLE TO STATES.**—The Commission shall make, or shall cause to be made by the relevant broker or funding portal, the information described in subsection (b) and such other information as the Commission, by rule, determines appropriate, available to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

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

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

“(A) to the issuer of the securities;

“(B) to an accredited investor;

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

“(D) to a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance, in the discretion of the Commission; and

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

“(f) **APPLICABILITY.**—Section 4(6) shall not apply to transactions involving the offer or sale of securities by any issuer that—

“(1) is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia;

“(2) is subject to the requirement to file reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934;

“(3) is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act; or

“(4) the Commission, by rule or regulation, determines appropriate.

“(g) **RULE OF CONSTRUCTION.**—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).

“(h) **CERTAIN CALCULATIONS.**—

“(1) **DOLLAR AMOUNTS.**—Dollar amounts in section 4(6) and subsection (b) of this section shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

“(2) **INCOME AND NET WORTH.**—The income and net worth of a natural person under section 4(6)(B) shall be calculated in accordance with any rules of the Commission under this title regarding the calculation of the income and net worth, respectively, of an accredited investor.”

(c) **RULEMAKING.**—Not later than 271 days after the date of enactment of this Act, the Securities and Exchange Commission (in this title referred to as the “Commission”) shall issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and section 4A of the Securities Act of 1933, as added by this title. In carrying out this section, the Commission shall consult with any securities commission (or any agency or office performing like functions) of the States, any territory of the United States, and the District of Columbia, which seeks to consult with the Commission, and with any applicable national securities association.

(d) **DISQUALIFICATION.**—

(1) **IN GENERAL.**—Not later than 270 days after the date of enactment of this Act, the Commission shall, by rule, establish disqualification provisions under which—

(A) an issuer shall not be eligible to offer securities pursuant to section 4(6) of the Securities Act of 1933, as added by this title; and

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

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

(A) be substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations (or any successor thereto); and

(B) disqualify any offering or sale of securities by a person that—

(i) is subject to a final order of a State securities commission (or an agency or officer

of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(ii) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

**SEC. 303. EXCLUSION OF CROWDFUNDING INVESTORS FROM SHAREHOLDER CAP.**

(a) **EXEMPTION.**—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)) is amended by adding at the end the following:

“(6) **EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.**—The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.”

(b) **RULEMAKING.**—The Commission shall issue a rule to carry out section 12(g)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), as added by this section, not later than 270 days after the date of enactment of this Act.

**SEC. 304. FUNDING PORTAL REGULATION.**

(a) **EXEMPTION.**—

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

“(h) **LIMITED EXEMPTION FOR FUNDING PORTALS.**—

“(1) **IN GENERAL.**—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

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

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

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

“(2) **NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.**—For purposes of sections 15(b)(8) and 15A, the term ‘broker or dealer’ includes a funding portal and the term ‘registered broker or dealer’ includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”

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

(b) **DEFINITION.**—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

“(80) FUNDING PORTAL.—The term ‘funding portal’ means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

“(A) offer investment advice or recommendations;

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

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

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

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

#### SEC. 305. RELATIONSHIP WITH STATE LAW.

(a) IN GENERAL.—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);”.

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

(2) CLARIFICATION OF STATE JURISDICTION OVER UNLAWFUL CONDUCT OF FUNDING PORTALS AND ISSUERS.—Section 18(c)(1) of the Securities Act of 1933 (15 U.S.C. 77r(c)(1)) 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

“(A) with respect to—

“(i) fraud or deceit; or

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

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

“(i) fraud or deceit; or

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

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

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

(d) FUNDING PORTALS.—

(1) STATE EXEMPTIONS AND OVERSIGHT.—Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)) is amended—

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

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

“(2) FUNDING PORTALS.—

“(A) LIMITATION ON STATE LAWS.—Except as provided in subparagraph (B), no State or political subdivision thereof may enforce any law, rule, regulation, or other administrative action against a registered funding portal with respect to its business as such.

“(B) EXAMINATION AND ENFORCEMENT AUTHORITY.—Subparagraph (A) does not apply with respect to the examination and enforcement of any law, rule, regulation, or administrative action of a State or political subdivision thereof in which the principal place of business of a registered funding portal is located, provided that such law, rule, regulation, or administrative action is not in addition to or different from the requirements for registered funding portals established by the Commission.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘State’ includes the District of Columbia and the territories of the United States.”.

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

**SA 1929.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1848 submitted by Mr. LAUTENBERG and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page strike line 3 and all that follows through page 3, line 2 and insert the following:

#### SEC. 304. OCCURRENCE OF FRAUD.

(a) REPORT ON OCCURRENCE OF FRAUD.—

(1) IN GENERAL.—The Commission shall, once every 2 years, beginning on the date of enactment of this Act, submit a report to Congress which includes an affirmative finding that the amount of fraud related to issuances made pursuant to section 4(6) of the Securities Act of 1933, as amended by this title, was not excessive during the reporting period.

(2) FINDING OF EXCESSIVE FRAUD.—If the Commission finds that the amount of fraud related to issuances made pursuant to section 4(6) of the Securities Act of 1933, as amended by this title, was excessive during the reporting period, the Commission shall—

(A) report such finding to the Congress, together with the reports required by this section; and

(B) initiate a rulemaking pursuant to subsection (b).

(b) RULEMAKING.—

(1) IN GENERAL.—If the Commission makes a finding of excessive fraud, as described in subsection (a)(2), the Commission shall amend its rules issued, amended, or enforced under this title, as necessary to reduce the incidence of fraud related to crowdfunding exemptions provided under this title.

(2) TIMING.—Amended rules shall be issued under paragraph (1) as interim final rules not later than 30 days after a finding by the Commission of excessive fraud, with public comments accepted for 31 days after the date of publication of the interim final rules.

**SA 1930.** Mr. MERKLEY submitted an amendment intended to be proposed to amendment SA 1884 submitted by Mr. MERKLEY (for himself, Mr. BENNET, and

Mr. BROWN of Massachusetts) and intended to be proposed to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 20, line 1, strike “270” and insert “271”.

**SA 1931.** Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following: “The Commission shall revise the definition of the term ‘held of record’ pursuant to section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) to include beneficial owners of such class of securities.”.

**SA 1932.** Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 37, line 21, strike “may” and insert “shall”.

**SA 1933.** Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

On page 39, line 5, strike “may” and insert “shall”.

**SA 1934.** Mr. PAUL submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

#### SEC. \_\_\_\_ . PROHIBITION ON FINANCING BY THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR ENTITIES THAT ARE CONTROLLED BY FOREIGN GOVERNMENTS.

Notwithstanding any provision of the Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.), the Export-Import Bank of the United States may not provide any financing (including any guarantee, insurance, extension of credit, or participation in the extension of credit) to an entity—

(1) in which a foreign government holds interests representing at least 50 percent of the capital structure of the entity or otherwise holds a controlling interest in the capital structure of the entity; or

(2) that is otherwise controlled in effect by a foreign government.

**SA 1935.** Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 1836 proposed by Mr. REID (for Ms. CANTWELL (for herself, Mr. JOHNSON of South Dakota, Mr. GRAHAM, Mr. SHELBY, Mr. WARNER, Mr. SCHUMER, Mr. BROWN of Ohio, Mrs. HAGAN, Mr. COONS, Mr. AKAKA, Mrs. MURRAY, Ms. LANDRIEU, Mr. KERRY, and Mr. KIRK)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

**SEC. 817. NEGOTIATIONS TO SUBSTANTIALLY REDUCE SUBSIDIES FOR AIRCRAFT FINANCING.**

(a) IN GENERAL.—The President shall initiate and pursue negotiations with all countries that finance large air carrier aircraft with funds from a state-sponsored entity, to substantially reduce export credit financing for the aircraft, with the ultimate goal of eliminating financing for the aircraft by state-sponsored entities. Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the progress of the negotiations until the President certifies in writing to the committees that all countries that finance large air carrier aircraft with funds from a state-sponsored entity have agreed to end the financing with funds from such an entity.

(b) LARGE AIR CARRIER AIRCRAFT DEFINED.—In subsection (a), the term “large air carrier aircraft”, means an aircraft designed to hold seats for at least 31 passengers.

**SA 1936.** Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the end, add the following: “The rules shall include the terms and conditions relating to the forms of permissible solicitation and advertising.”.

**SA 1937.** Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 1833 proposed by Mr. REID (for Mr. REED (for himself, Ms. LANDRIEU, Mr. LEVIN, Mr. BROWN of Ohio, Mr. MERKLEY, Mr. AKAKA, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. HARKIN, Mr. DURBIN, and Mrs. SHAHEEN)) to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

Strike section 602 and insert the following:

**SEC. 602. THRESHOLD FOR REGISTRATION.**

Section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 781(g)(1)) is amended by striking “shall—” and all that follows through “register such” and inserting “shall, not later than 120 days after the last

day of any fiscal year of the issuer on which the issuer has total assets exceeding \$10,000,000 and a class of equity securities (other than an exempted security) held of record by 750 or more persons (or, in the case of an issuer that is a bank or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), by 2,000 or more persons), register such”.

**SA 1938.** Ms. AYOTTE submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. . . . FIDUCIARY EXCLUSION.**

Section 3(21)(A) of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002(21)(A)) is amended by inserting “and except to the extent a person is providing an appraisal or fairness opinion with respect to qualifying employer securities (as defined in section 407(d)(5)) included in an employee stock ownership plan (as defined in section 407(d)(6)),” after “subparagraph (B)”,.

**SA 1939.** Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 3606, to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SECTION . . . NATIONAL RIGHT TO WORK.**

(a) AMENDMENTS TO THE NATIONAL LABOR RELATIONS ACT.—

(1) RIGHTS OF EMPLOYEES.—Section 7 of the National Labor Relations Act (29 U.S.C. 157) is amended by striking “except to” and all that follows through “authorized in section 8(a)(3)”.

(2) UNFAIR LABOR PRACTICES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(A) in subsection (a)(3), by striking “: *Provided*, That” and all that follows through “retaining membership”;

(B) in subsection (b)—  
(i) in paragraph (2), by striking “or to discriminate” and all that follows through “retaining membership”; and  
(ii) in paragraph (5), by striking “covered by an agreement authorized under subsection (a)(3)”; and

(C) in subsection (f), by striking clause (2) and redesignating clauses (3) and (4) as clauses (2) and (3), respectively.

(b) AMENDMENT TO THE RAILWAY LABOR ACT.—Section 2 of the Railway Labor Act (45 U.S.C. 152) is amended by striking paragraph Eleven.

**SA 1940.** Mr. REID proposed an amendment to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; as follows:

At the end, add the following new section:

**SEC. . . .**

This Act shall become effective 5 days after enactment.

**SA 1941.** Mr. REID proposed an amendment to amendment SA 1940 pro-

posed by Mr. REID to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; as follows:

In the amendment, strike “5 days” and insert “4 days”.

**SA 1942.** Mr. REID proposed an amendment to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; as follows:

At the end, add the following new section:

**SEC. . . .**

This Act shall become effective 3 days after enactment.

**SA 1943.** Mr. REID proposed an amendment to amendment SA 1942 proposed by Mr. REID to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; as follows:

In the amendment, strike “3 days” and insert “2 days”.

**SA 1944.** Mr. REID proposed an amendment to amendment SA 1943 proposed by Mr. REID to the amendment SA 1942 proposed by Mr. REID to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; as follows:

In the amendment, strike “2 days” and insert “1 day”.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON ARMED SERVICES**

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on March 20, 2012, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on March 20, 2012, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. MERKLEY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on March 20, 2012, at 10 a.m., in room 366 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.