

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Act of 1933 to preempt State securities law requiring registration for secondary transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MCHENRY introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Act of 1933 to preempt State securities law requiring registration for secondary transactions, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving
5 Crowdfunding Opportunities Act”.

6 **SEC. 2. CROWDFUNDING REVISIONS.**

7 (a) EXEMPTION FROM STATE REGULATION.—Sec-
8 tion 18(b)(4)(A) of the Securities Act of 1933 (15 U.S.C.

1 77r(b)(4)(A)) is amended by striking “pursuant to sec-
2 tion” and all that follows through the semicolon at the
3 end and inserting the following: “pursuant to—

4 “(i) section 13 or 15(d) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C.
6 78m, 78o(d)); or

7 “(ii) section 4A(b) or any regulation
8 issued under that section;”.

9 (b) LIABILITY FOR MATERIAL MISSTATEMENTS AND
10 OMISSIONS.—Section 4A(c) of the Securities Act of 1933
11 (15 U.S.C. 77d–1(c)) is amended—

12 (1) by redesignating paragraph (3) as para-
13 graph (4); and

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

16 “(3) LIABILITY OF FUNDING PORTALS.—For
17 the purposes of this subsection, a funding portal, as
18 that term is defined in section 3(a) of the Securities
19 Exchange Act of 1934 (15 U.S.C. 78c(a)), shall not
20 be considered to be an issuer unless, in connection
21 with the offer or sale of a security, the funding por-
22 tal knowingly—

23 “(A) makes any untrue statement of a ma-
24 terial fact or omits to state a material fact in
25 order to make the statements made, in light of

1 the circumstances under which they are made,
2 not misleading; or

3 “(B) engages in any act, practice, or
4 course of business which operates or would op-
5 erate as a fraud or deceit upon any person.”.

6 (c) APPLICABILITY OF BANK SECRECY ACT RE-
7 QUIREMENTS.—

8 (1) SECURITIES ACT OF 1933.—Section 4A(a) of
9 the Securities Act of 1933 (15 U.S.C. 77d–1(a)) is
10 amended—

11 (A) in paragraph (11), by striking “and”
12 at the end;

13 (B) in paragraph (12), by striking the pe-
14 riod at the end and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(13) not be subject to the recordkeeping and
17 reporting requirements relating to monetary instru-
18 ments under subchapter II of chapter 53 of title 31,
19 United States Code.”.

20 (2) TITLE 31, UNITED STATES CODE.—Section
21 5312 of title 31, United States Code, is amended by
22 striking subsection (c) and inserting the following:

23 “(c) ADDITIONAL CLARIFICATION.—The term ‘finan-
24 cial institution’ (as defined in subsection (a))—

1 “(1) includes any futures commission merchant,
2 commodity trading advisor, or commodity pool oper-
3 ator registered, or required to register, under the
4 Commodity Exchange Act (7 U.S.C. 1 et seq.); and

5 “(2) does not include a funding portal, as that
6 term is defined in section 3(a) of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78c(a)).”.

8 (d) PROVISION OF IMPERSONAL INVESTMENT AD-
9 VICE AND RECOMMENDATIONS.—Section 3(a) of the Secu-
10 rities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amend-
11 ed—

12 (1) by redesignating the second paragraph (80)
13 (relating to funding portals) as paragraph (81); and

14 (2) in paragraph (81)(A), as so redesignated,
15 by inserting after “recommendations” the following:
16 “(other than by providing impersonal investment ad-
17 vice by means of written material, or an oral state-
18 ment, that does not purport to meet the objectives
19 or needs of a specific individual or account)”.

20 (e) TARGET AMOUNTS OF CERTAIN EXEMPTED OF-
21 FERINGS.—The Securities and Exchange Commission
22 shall amend paragraph (t)(1) of section 227.201 of title
23 17, Code of Federal Regulations so that such paragraph
24 applies with respect to an issuer offering or selling securi-

1 ties in reliance on section 4(a)(6) of the Securities Act
2 of 1933 (15 U.S.C. 77d(a)(6)) if—

3 (1) the offerings of such issuer, together with
4 all other amounts sold under such section 4(a)(6)
5 within the preceding 12-month period, have, in the
6 aggregate, a target amount of more than \$124,000
7 but not more than \$250,000;

8 (2) the financial statements of such issuer that
9 have either been reviewed or audited by a public ac-
10 countant that is independent of the issuer are un-
11 available at the time of filing; and

12 (3) such issuer provides a statement that finan-
13 cial information certified by the principal executive
14 officer of the issuer has been provided instead of fi-
15 nancial statements reviewed by a public accountant
16 that is independent of the issuer.

17 (f) EXEMPTION AVAILABLE TO INVESTMENT COMPA-
18 NIES.—Section 4A(f) of the Securities Act of 1933 (15
19 U.S.C. 77d–1(f)) is amended—

20 (1) in paragraph (2), by inserting “or” after
21 the semicolon;

22 (2) by striking paragraph (3); and

23 (3) by redesignating paragraph (4) as para-
24 graph (3).

1 (g) NON-ACCREDITED INVESTOR REQUIREMENTS.—
2 Section 4(a)(6) of the Securities Act of 1933 (15 U.S.C.
3 77d(a)(6))) is amended—

4 (1) in subparagraph (A), by striking
5 “\$1,000,000” and inserting “\$10,000,000”; and

6 (2) in subparagraph (B), by striking “does not
7 exceed” and all that follows through “more than
8 \$100,000” and inserting “does not exceed 10 per-
9 cent of the annual income or net worth of such in-
10 vestor”.

11 (h) TECHNICAL CORRECTION.—The Securities Act of
12 1933 (15 U.S.C. 77a et seq.) is amended—

13 (1) by striking the term “section 4(6)” each
14 place such term appears and inserting “section
15 4(a)(6)”; and

16 (2) by striking the term “section 4(6)(B)” each
17 place such term appears and inserting “section
18 4(a)(6)(B)”.