

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO  
H.R. 2930  
OFFERED BY MR. MCHENRY OF NORTH  
CAROLINA**

*[The following is a reconstruction of the amendment offered by Rep. McHenry “in the nature of a substitute,” integrating three additional amendments, all approved by the House Financial Services Committee on October 26, 2011.]*

**SECTION 1. SHORT TITLE.**

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

**SEC. 2. CROWDFUNDING EXEMPTION.**

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

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

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

        “(i) \$1,000,000 or less; or

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

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

        “(i) \$10,000; and

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

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

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

## (b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING

EXEMPTION.—The Securities Act of 1933 is amended by inserting after section 4 the following:

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

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

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

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

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

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

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

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

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

“(B) risk of illiquidity; and

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

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

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

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

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

“(B) the names of the issuer’s principals;

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

“(D) the target offering amount;

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

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

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

“(13) does not offer investment advice.

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

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

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

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

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

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

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

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

“(B) risk of illiquidity; and

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

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

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

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

“(B) the target offering amount;

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

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

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

“(12) does not offer investment advice; and

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

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

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

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

“(1) the issuer of such securities; or

“(2) an accredited investor.

“(f) CONSTRUCTION.—

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

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

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

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

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

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

(1) by striking “For the purposes” and inserting:

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

(2) by adding at the end the following:

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

**SEC. 4. PREEMPTION OF STATE LAW.**

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

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

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

“(C) section 4(6);”.

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