

[DISCUSSION DRAFT]

113TH CONGRESS
2D SESSION

H. R. _____

To amend the Jumpstart Our Business Startups Act to improve the crowdfunding provisions, 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 Jumpstart Our Business Startups Act to improve the crowdfunding provisions, 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 “Equity Crowdfunding
5 Improvement Act of 2014”.

6 **SEC. 2. CROWDFUNDING.**

7 (a) REPEAL OF EXISTING LAW.—The
8 CROWDFUND Act is hereby repealed and the provisions

1 of law amended by such Act are revived or restored as
2 if such Act had not been enacted.

3 (b) NEW CROWDFUNDING LAW.—The Jumpstart
4 Our Business Startups Act is amended—

5 (1) by inserting after title II the following:

6 **“TITLE III—ENTREPRENEUR**
7 **ACCESS TO CAPITAL**

8 **“SEC. 301. CROWDFUNDING EXEMPTION.**

9 “(a) IN GENERAL.—Section 4(a) of the Securities
10 Act of 1933 (15 U.S.C. 77d(a)(6)) is amended by adding
11 at the end the following:

12 ““(6) transactions involving the offer or sale of
13 securities by an issuer, provided that—

14 ““(A) the aggregate amount sold within
15 the previous 12-month period in reliance upon
16 this exemption is—

17 ““(i)) \$3,000,000, as such amount is
18 adjusted by the Commission to reflect the
19 annual change in the Consumer Price
20 Index for All Urban Consumers published
21 by the Bureau of Labor Statistics, or less;
22 or

23 ““(ii) if the issuer provides potential
24 investors with audited financial statements,
25 \$5,000,000, as such amount is adjusted by

1 the Commission to reflect the annual
2 change in the Consumer Price Index for
3 All Urban Consumers published by the Bu-
4 reau of Labor Statistics, or less;

5 “(B) the aggregate amount sold to any
6 investor who is not an accredited investor in re-
7 liance on this exemption within the previous 12-
8 month period does not exceed the greater of—

9 “(i) \$5,000, as such amount is ad-
10 justed by the Commission to reflect the an-
11 nual change in the Consumer Price Index
12 for All Urban Consumers published by the
13 Bureau of Labor Statistics;

14 “(ii) 10 percent of the investor’s an-
15 nual income; or

16 “(iii) 10 percent of the investor’s net
17 worth;

18 “(C) in the case of a transaction involving
19 an intermediary between the issuer and the in-
20 vestor, such intermediary complies with the re-
21 quirements under section 4A(a);

22 “(D) if the aggregate amount sold within
23 the previous 12-month period in reliance upon
24 this exemption is—

1 “(i) \$500,000 or less, the issuer pro-
2 vides potential investors with financial
3 statements that have been certified by the
4 principal executive officer of the issuer to
5 be true and complete in all material re-
6 spects; and

7 “(ii) more than \$500,000 and less
8 than \$3,000,000, the issuer provides po-
9 tential investors with financial statements
10 that have been reviewed by a public ac-
11 countant who is independent of the issuer,
12 using professional standards and proce-
13 dures for such review; and

14 “(E) at the time such securities are
15 issued, the issuer is a corporation.’.

16 “(b) REQUIREMENT ON INTERMEDIARIES.—The Se-
17 curities Act of 1933 (15 U.S.C. 77a et seq.) is amended
18 by inserting after section 4 the following:

19 “**SEC. 4A. REQUIREMENTS ON INTERMEDIARIES WITH RE-**
20 **SPECT TO CROWDFUNDING TRANSACTIONS.**

21 “(a) REQUIREMENTS ON INTERMEDIARIES.—For
22 purposes of section 4(a)(6), a person acting as an inter-
23 mediary in a transaction involving the offer or sale of secu-
24 rities shall comply with the requirements of this subsection
25 if the intermediary—

1 “(1) registers with the Commission as—

2 “(A) a broker; or

3 “(B) a person acting as an intermediary

4 who does not—

5 “(i) offer investment advice or rec-
6 ommendations;

7 “(ii) explicitly solicit purchases,
8 sales, or offers to buy particular securities
9 offered or displayed on its website or por-
10 tal;

11 “(iii) directly compensate employees,
12 agents, or other persons for direct sale of
13 securities displayed or referenced on its
14 website or portal; or

15 “(iv) manage, possess, or otherwise
16 handle investor funds or securities;

17 “(2) warns investors, including on the
18 intermediary’s website used for the offer and sale of
19 such securities, of the speculative nature generally
20 applicable to investments in startups, emerging busi-
21 nesses, and small issuers, including risks in the sec-
22 ondary market related to illiquidity;

23 “(3) warns investors that they are subject to
24 the restriction on sales requirement described under
25 subsection (d);

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

3 “(5) provides the Commission with the
4 intermediary’s physical address, website address,
5 and the names of the intermediary, the chief officer
6 of the intermediary (or person fulfilling a similar
7 role), and any employee of the intermediary respon-
8 sible for the intermediary’s direct compliance with
9 the securities laws (as defined under section 3 of the
10 Securities Exchange Act of 1934), and updates such
11 information with the Commission within 6 business
12 days of such information changing;

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

15 “(7) requires each potential investor to answer
16 questions demonstrating—

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

20 “(B) an understanding of the risk of
21 illiquidity; and

22 “(C) such other areas as the Commission,
23 in consultation with self-regulatory organiza-
24 tions (as defined in section 3 of the Securities

1 Exchange Act of 1934), may determine appro-
2 priate by rule or regulation;

3 ““(8) requires the issuer to state a target offer-
4 ing amount and a deadline to reach the target offer-
5 ing amount and ensure the third party custodian de-
6 scribed under paragraph (11) withholds offering pro-
7 ceeds until—

8 ““(A) aggregate capital raised from inves-
9 tors other than the issuer is no less than 100
10 percent of the target offering amount; and

11 ““(B) the issuer has complied with all re-
12 quirements under this section;

13 ““(9) carries out a background check on the ex-
14 ecutive officers, directors, and shareholders with 15
15 percent or more voting control of the issuer (or per-
16 sons fulfilling similar roles) to ensure such persons
17 would not meet the disqualification provisions adopt-
18 ed in accordance with section 926 of the Dodd-
19 Frank Wall Street Reform and Consumer Protection
20 Act;

21 ““(10) provides the Commission and potential
22 investors with notice of the offering, not later than
23 the first day securities are offered to potential inves-
24 tors, including—

1 “(A) the issuer’s name, legal status, phys-
2 ical address, and website address;

3 “(B) the names of the executive officers,
4 directors, and shareholders with 15 percent or
5 more voting control of the issuer (or persons
6 fulfilling similar roles);

7 “(C) the intended use of the proceeds of
8 the offering; and

9 “(D) the target offering amount and the
10 deadline to reach the target offering amount;

11 “(11) outsources cash functions to a qualified
12 third party custodian, such as a broker or dealer
13 registered under section 15(b)(1) of the Securities
14 Exchange Act of 1934 or an insured depository in-
15 stitution;

16 “(12) maintains such books and records as the
17 Commission determines appropriate;

18 “(13) makes available on the intermediary’s
19 website a method of communication that permits the
20 issuer and investors to communicate with one an-
21 other;

22 “(14) provides the Commission with a notice
23 upon completion of the offering, which shall include
24 the aggregate offering amount and the number of
25 purchasers; and

1 “(15) does not offer investment advice.

2 “(b) VERIFICATION OF INVESTOR INFORMATION.—

3 For purposes of section 4(a), an intermediary may rely

4 on a certification by an investor as to—

5 “(1) the investor’s status as an accredited in-
6 vestor; and

7 “(2) with respect to an unaccredited investor,
8 the investor’s annual income, net worth, and the ag-
9 gregate amount of securities sold to the investor in
10 reliance on the exemption provided by section 4(a)
11 within the previous 12-month period.

12 “(c) INFORMATION AVAILABLE TO STATES.—The
13 Commission shall make the notices described under sub-
14 sections (a)(10) and (a)(14) and the information described
15 under subsection (a)(5) available to the States.

16 “(d) RESTRICTION ON SALES.—Newly-issued securi-
17 ties purchased in a transaction made in reliance on section
18 4(a)(6) may not be resold by any person during the 1-
19 year period beginning on the date of original purchase,
20 unless such securities are sold to—

21 “(1) the issuer of such securities; or

22 “(2) an accredited investor.

23 “(e) REQUIREMENT FOR USE OF INTERMEDIARIES
24 WHEN SELLING TO UNACCREDITED INVESTORS.—With
25 respect to a transaction described under section 4(a)(6),

1 an issuer may only enter into a transaction with an
2 unaccredited investor through the use of an intermediary,
3 and any resale of a security originally issued in reliance
4 on section 4(a)(6) may only be made with an unaccredited
5 investor through the use of an intermediary.

6 “(f) RULES OF CONSTRUCTION.—

7 “(1) NO REGISTRATION AS BROKER.—With re-
8 spect to a transaction either made pursuant to sec-
9 tion 4(a)(6) or involving the resale of a security
10 originally issued pursuant to section 4(a)(6) and in-
11 volving an intermediary, such intermediary shall not
12 be required to register as a broker under section
13 15(a)(1) of the Securities Exchange Act of 1934
14 solely by reason of participation in such transaction.

15 “(2) RIGHT TO SELECT TRANSACTIONS.—An
16 intermediary may select in which transactions to
17 serve as an intermediary, and such selection shall
18 not be considered investment advice or subject the
19 intermediary to regulation under the Investment Ad-
20 visers Act of 1940.

21 “(3) RIGHT TO TERMINATE TRANSACTION.—
22 An intermediary may review the transaction and ter-
23 minate the transaction at any time if—

24 “(A) in carrying out the intermediary’s
25 due diligence under the transaction, the inter-

1 mediary determines that termination is appro-
2 priate;

3 “(B) the intermediary is able to return all
4 funds provided by potential investors; and

5 “(C) the custodian has not transferred
6 the offering proceeds to the issuer.

7 “(4) NO PRECLUSION OF OTHER CAPITAL
8 RAISING.—Nothing in this section or section 4(a)(6)
9 shall be construed as preventing an issuer from rais-
10 ing capital through securities offerings made in reli-
11 ance on other exemptions from registration.’.

12 “(c) RULEMAKING.—Not later than 120 days after
13 the date of the enactment of this title, the Securities and
14 Exchange Commission shall issue such rules as may be
15 necessary to carry out section 4A of the Securities Act
16 of 1933. In issuing such rules, the Commission shall con-
17 sider the costs and benefits of the action.

18 “(d) DISQUALIFICATION.—Not later than 120 days
19 after the date of the enactment of this title, the Securities
20 and Exchange Commission shall by rule or regulation es-
21 tablish disqualification provisions under which an issuer
22 shall not be eligible to utilize the exemption under section
23 4(a)(6) of the Securities Act of 1933 based on the discipli-
24 nary history of the issuer or its predecessors, affiliates,
25 officers, directors, or persons fulfilling similar roles. The

1 Commission shall also establish disqualification provisions
2 under which an intermediary shall not be eligible to act
3 as an intermediary in connection with an offering utilizing
4 the exemption under section 4(a)(6) of the Securities Act
5 of 1933 based on the disciplinary history of the inter-
6 mediary or its predecessors, affiliates, officers, directors,
7 or persons fulfilling similar roles. Such provisions shall be
8 substantially similar to the disqualification provisions con-
9 tained in the regulations adopted in accordance with sec-
10 tion 926 of the Dodd-Frank Wall Street Reform and Con-
11 sumer Protection Act (15 U.S.C. 77d note).

12 “(e) TREATMENT OF CROWDFUNDING INVESTMENT
13 COMPANIES.—Section 3(c) of the Investment Company
14 Act of 1940 (15 U.S.C. 80a-3(c)) is amended by adding
15 at the end the following:

16 ““(15) Any person substantially all of whose
17 business is confined to investing in securities pur-
18 chased in a transaction made in reliance on section
19 4(a)(6) of the Securities Act of 1933.’.

20 **“SEC. 302. EXCLUSION OF CROWDFUNDING INVESTORS**
21 **FROM SHAREHOLDER CAP.**

22 “Section 12(g)(5) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78l(g)(5)) is amended—

24 “(1) by striking ‘(5) For the purposes’; and in-
25 serting the following:

1 “(5) DEFINITIONS.—

2 “(A) IN GENERAL.—For the purposes’;

3 and

4 “(2) by adding at the end the following:

5 “(B) EXCLUSION FOR PERSONS HOLDING

6 CERTAIN SECURITIES.—For purposes of this

7 subsection, securities originally issued in trans-

8 actions described under section 4(a)(6) of the

9 Securities Act of 1933 shall neither be deemed

10 to be nor counted towards the definition of

11 “held of record”’.

12 **“SEC. 303. PREEMPTION OF STATE LAW.**

13 “(a) IN GENERAL.—Section 18(b)(4) of the Securi-

14 ties Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

15 “(1) by redesignating subparagraphs (C) and

16 (D) as subparagraphs (D) and (E), respectively; and

17 “(2) by inserting after subparagraph (B) the

18 following:

19 “(C) section 4(a)(6);’.

20 “(b) CLARIFICATION OF THE PRESERVATION OF

21 STATE ENFORCEMENT AUTHORITY.—

22 “(1) IN GENERAL.—The amendments made by

23 subsection (a) relate solely to State registration, doc-

24 umentation, and offering requirements, as described

25 under section 18(a) of Securities Act of 1933 (15

1 U.S.C. 77r(a)), and shall have no impact or limita-
2 tion on other State authority to take enforcement
3 action with regard to an issuer, intermediary, or any
4 other person or entity using the exemption from reg-
5 istration provided by section 4(a)(6) of such Act.

6 “(2) CLARIFICATION OF STATE JURISDICTION
7 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,
8 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the
9 Securities Act of 1933 is amended by striking ‘with
10 respect to fraud or deceit, or unlawful conduct by a
11 broker or dealer, in connection with securities or se-
12 curities transactions.’ and inserting the following: ‘,
13 in connection with securities or securities trans-
14 actions, with respect to—

15 “(A) fraud or deceit;

16 “(B) unlawful conduct by a broker or
17 dealer; and

18 “(C) with respect to a transaction de-
19 scribed under section 4(a)(6), unlawful conduct
20 by an intermediary, issuer, or custodian.’.”; and

21 (2) in the table of contents for such Act by
22 amending the items relating to title III to read as
23 follows:

“TITLE III—Entrepreneur Access to Capital

“SEC. 301. CROWDFUNDING EXEMPTION

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

“SEC. 303. PREEMPTION OF STATE LAW”.