

114TH CONGRESS
2D SESSION

H. R. 4855

To amend provisions in the securities laws relating to regulation crowdfunding to raise the dollar amount limit and to clarify certain requirements and exclusions for funding portals established by such Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2016

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

A BILL

To amend provisions in the securities laws relating to regulation crowdfunding to raise the dollar amount limit and to clarify certain requirements and exclusions for funding portals established by such Act.

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 “Fix Crowdfunding
5 Act”.

6 **SEC. 2. QUALIFICATION FOR CROWDFUNDING EXEMPTION.**

7 (1) INCREASE IN LIMIT OF AMOUNT SOLD IN
8 RELIANCE ON THE CROWDFUNDING EXEMPTION.—

1 Section 4(a)(6)(A) of the Securities Act of 1933 (15
2 U.S.C. 77d(6)(A)) is amended by striking
3 “\$1,000,000” and inserting “\$5,000,000”.

4 (2) CLARIFICATION OF TRANSACTION CAPS.—
5 Section 4(a)(6)(B) of such Act is amended—

6 (A) in clause (i), by inserting “the greater
7 of” after “5 percent of”; and

8 (B) in clause (ii), by inserting “the greater
9 of” after “10 percent of”.

10 **SEC. 3. CLARIFICATION OF CERTAIN FUNDING PORTAL RE-**
11 **QUIREMENTS AND EXCLUSIONS FOR REGU-**
12 **LATION CROWDFUNDING.**

13 (a) EXCLUSION OF ISSUERS FROM FUNDING POR-
14 TALS.—

15 (1) CLARIFICATION OF CERTAIN EXCLUSION
16 REQUIREMENTS.—Section 302 of the Jumpstart Our
17 Business Startups Act is amended by adding at the
18 end the following:

19 “(e) CLARIFICATION OF CERTAIN EXCLUSION RE-
20 QUIREMENTS FOR FUNDING PORTALS.—Under the rules
21 issued pursuant to subsection (d), a funding portal shall
22 have a reasonable basis for disqualifying an issuer from
23 offering securities through such funding portal pursuant
24 to section 4(a)(6) of the Securities Act of 1933 if the fund-
25 ing portal, through a background check of the issuer or

1 other means, has found that such issuer, in connection
2 with the offer, purchase, or sale of securities, has know-
3 ingly—

4 “(1) made any untrue statement of a material
5 fact or to omit to state a material fact necessary in
6 order to make the statements made, in the light of
7 the circumstances under which they were made, not
8 misleading; or

9 “(2) engaged in any act, practice, or course of
10 business which operates or would operate as a fraud
11 or deceit upon any person.”.

12 (2) CLARIFICATION OF OTHER OBLIGATIONS TO
13 REDUCE THE RISK OF FRAUD.—Section 4A(a)(5) of
14 the Securities Act of 1933 (15 U.S.C. 77d–1(a)(5))
15 is amended to read as follows:

16 “(5) as a minimum to reduce the risk of fraud
17 with respect to such transactions obtain a back-
18 ground and securities enforcement regulatory history
19 check on each officer, director, and person holding
20 more than 20 percent of the outstanding equity of
21 every issuer whose securities are offered by such per-
22 son;”.

23 (3) CLARIFICATION OF LIABILITY OF FUNDING
24 PORTALS FOR MATERIAL MISSTATEMENTS AND
25 OMISSIONS.—Section 4A(c) of such Act (15 U.S.C.

1 77d–1(c)) is amended by adding the end the fol-
2 lowing:

3 “(4) LIABILITY OF FUNDING PORTALS.—For
4 purposes of this subsection, an intermediary shall
5 not be considered an issuer unless, in connection
6 with the offer or sale of a security, it knowingly—

7 “(A) made any untrue statement of a ma-
8 terial fact or omitted to state a material fact
9 necessary in order to make the statements
10 made, in the light of the circumstances under
11 which they were made, not misleading; or

12 “(B) engaged in any act, practice, or
13 course of business which operates or would op-
14 erate as a fraud or deceit upon any person.”.

15 (b) EXEMPTION FROM REGISTRATION.—Section
16 12(g)(6) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78l(g)(6)) is amended—

18 (1) by striking “The Commission” and all that
19 follows through “securities” and inserting “Securi-
20 ties”; and

21 (2) by inserting “shall be exempt” after “Secu-
22 rities Act of 1933”.

23 (c) ALLOWING SINGLE-PURPOSE FUNDS.—

1 (1) AMENDMENT TO THE SECURITIES ACT OF
2 1933.—Section 4A(f) of the Securities Act of 1933
3 (15 U.S.C. 77d–1(f)) is amended—

4 (A) by striking paragraph (2); and

5 (B) by redesignating paragraph (3) as
6 paragraph (2) and in such paragraph, by in-
7 serting “paragraphs (1) to (14) of” after “sec-
8 tion 3(b) or”.

9 (2) AMENDMENT TO THE INVESTMENT COM-
10 PANY ACT OF 1940.—Section 3(c) of the Investment
11 Company Act of 1940 (15 U.S.C. 80a–3(c)) is
12 amended by adding at the end the following:

13 “(15) any issuer that holds, for the purpose of
14 making an offering pursuant to section 4(a)(6) of
15 the Securities Act of 1933 and the rules issued pur-
16 suant to such section, the securities of not more
17 than one issuer eligible to offer securities pursuant
18 to such section and such rules.”.

19 (3) APPLICATION OF RULES.—Single-purpose
20 funds that are excluded from the definition of invest-
21 ment company under paragraph (15) of section 3(c)
22 of the Investment Company Act (15 U.S.C. 80a–
23 3(c))—

24 (A) shall be allowed to sell and offer for
25 sale securities under section 4(a)(6) of the Se-

1 securities Act of 1933 (15 U.S.C. 77d(a)(6))
2 under the rules adopted on October 30, 2015,
3 pursuant to title III of the JOBS Act (Public
4 Law 112–106); and

5 (B) shall be considered venture capital
6 funds for purposes of section 275.203(l)–1 of
7 title 17, Code of Federal Regulations.

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

11 (1) by redesignating subsections (f) (as amend-
12 ed by subsection (c)(1)), (g), and (h) as subsections
13 (g), (h), and (i), respectively; and

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

16 “(f) SOLICITATION OF INTEREST.—

17 “(1) IN GENERAL.—At any time prior to the
18 filing of information with the Commission and the
19 commencement of an offering made in reliance on
20 section 4(a)(6), an issuer may solicit non-binding in-
21 dications of interest from potential investors in a
22 prospective offering using the same means and pur-
23 suant to the same regulations (other than the filing
24 of information with the Commission) as if con-
25 ducting an offering pursuant to such section if—

1 “(A) no investor funds are accepted by
2 such issuer; and

3 “(B) any material change in the informa-
4 tion provided to potential investors during the
5 actual offering pursuant to such section from
6 the information provided to potential investors
7 during such solicitation of interest are high-
8 lighted to potential investors in the information
9 filed with the Commission.

10 “(2) STATUS.—Such solicitation of interest
11 shall not be considered an offer or sale of securities
12 under this Act or the Securities Exchange Act of
13 1934, regardless of whether or not the issuer actu-
14 ally conducts an offering pursuant to such section
15 4(a)(6).”.

16 (e) GRACE PERIOD.—Consistent with the effective
17 date of the final rules on regulation crowdfunding adopted
18 by the Securities and Exchange Commission on October
19 30, 2015, pursuant to title III of the JOBS Act (Public
20 Law 112–106), funding portals established under such
21 Act shall make a good faith effort to comply with all such
22 rules. Notwithstanding such effective date, no enforcement
23 action may be brought against a funding portal before
24 May 16, 2021.

○