

## **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 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 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 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. 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 271 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”.

## **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.