

116TH CONGRESS
1ST SESSION

H. R. 4860

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2019

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Act of 1933 to subject crowdfunding vehicles to the jurisdiction of the Securities and Exchange Commission, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Crowdfunding Amend-
3 ments Act”.

4 **SEC. 2. CROWDFUNDING VEHICLES.**

5 (a) AMENDMENTS TO THE SECURITIES ACT OF
6 1933.—The Securities Act of 1933 (15 U.S.C. 77a et
7 seq.) is amended—

8 (1) in section 2(a) (15 U.S.C. 77b(a)), by add-
9 ing at the end the following:

10 “(20) The term ‘crowdfunding vehicle’ has the
11 meaning given the term in section 3(c)(15)(B) of the
12 Investment Company Act of 1940 (15 U.S.C. 80a–
13 3(c)(15)(B)).”;

14 (2) in section 4(a)(6) (15 U.S.C. 77d(a)(6))—

15 (A) in subparagraph (A)—

16 (i) by inserting “, other than a
17 crowdfunding vehicle,” after “sold to all
18 investors”; and

19 (ii) by inserting “other than a
20 crowdfunding vehicle,” after “the issuer,”;
21 and

22 (B) in subparagraph (B), in the matter
23 preceding clause (i), by inserting “, other than
24 a crowdfunding vehicle,” after “any investor”;
25 and

26 (3) in section 4A(f) (15 U.S.C. 77d–1(f))—

1 (A) in the matter preceding paragraph (1),
2 by striking “Section 4(6)” and inserting “Sec-
3 tion 4(a)(6)”; and

4 (B) in paragraph (3), by inserting “by any
5 of paragraphs (1) through (14) of” before “sec-
6 tion 3(c)”.

7 (b) AMENDMENTS TO THE INVESTMENT COMPANY
8 ACT OF 1940.—Section 3(c) of the Investment Company
9 Act of 1940 (15 U.S.C. 80a–3(c)) is amended by adding
10 at the end the following:

11 “(15)(A) Any crowdfunding vehicle.

12 “(B) For purposes of this paragraph, the term
13 ‘crowdfunding vehicle’ means a company—

14 “(i) the purpose of which (as set forth in
15 the organizational documents of the company)
16 is limited to acquiring, holding, and disposing
17 of securities issued by a single company in one
18 or more transactions made under section
19 4(a)(6) of the Securities Act of 1933 (15
20 U.S.C. 77d(a)(6));

21 “(ii) that issues only one class of securi-
22 ties;

23 “(iii) that receives no compensation in con-
24 nection with the acquisition, holding, or disposi-
25 tion of securities described in clause (i);

1 “(iv) no investment adviser or associated
2 person of which receives any compensation on
3 the basis of a share of capital gains upon, or
4 capital appreciation of, any portion of the funds
5 of an investor of the company;

6 “(v) the securities of which have been
7 issued in a transaction made under section
8 4(a)(6) of the Securities Act of 1933 (15
9 U.S.C. 77d(a)(6)), where both the
10 crowdfunding vehicle and the company whose
11 securities the crowdfunding vehicle holds are co-
12 issuers;

13 “(vi) that is current with respect to ongoing
14 reporting requirements under section
15 227.202 of title 17, Code of Federal Regulations,
16 or any successor regulation;

17 “(vii) that holds securities of a company
18 that is subject to ongoing reporting requirements
19 under section 227.202 of title 17, Code
20 of Federal Regulations, or any successor regulation;
21 tion;

22 “(viii) that is advised by an investment adviser
23 that is—

1 “(I) registered under the Investment
 2 Advisers Act of 1940 (15 U.S.C. 80b–1 et
 3 seq.); and

4 “(II) required to—

5 “(aa) disclose to the investors of
 6 the company any fees charged by the
 7 investment adviser; and

8 “(bb) obtain approval from a ma-
 9 jority of the investors of the company
 10 with respect to any increase in the
 11 fees described in item (aa); and

12 “(ix) that meets such other requirements
 13 as the Commission may, by rule, determine nec-
 14 essary or appropriate in the public interest and
 15 for the protection of investors.”.

16 (c) AMENDMENTS TO THE INVESTMENT ADVISERS
 17 ACT OF 1940.—The Investment Advisers Act of 1940 (15
 18 U.S.C. 80b–1 et seq.) is amended—

19 (1) in section 202(a) (15 U.S.C. 80b–2(a))—

20 (A) by redesignating the second paragraph
 21 (29) as paragraph (31); and

22 (B) by adding at the end the following:

23 “(32) The term ‘crowdfunding vehicle’ has the
 24 meaning given the term in section 3(c)(15)(B) of the

1 Investment Company Act of 1940 (15 U.S.C. 80a–
2 3(c)(15)(B)).

3 “(33)(A) The term ‘crowdfunding vehicle ad-
4 viser’ means an investment adviser that acts as an
5 investment adviser solely with respect to
6 crowdfunding vehicles.

7 “(B) A determination, for the purposes of sub-
8 paragraph (A), regarding whether an investment ad-
9 viser acts as an investment adviser solely with re-
10 spect to crowdfunding vehicles shall not include any
11 consideration of the activity of any affiliate of the
12 investment adviser.”;

13 (2) in section 203 (15 U.S.C. 80b–3), by add-
14 ing at the end the following:

15 “(o) CROWDFUNDING VEHICLE ADVISERS.—

16 “(1) IN GENERAL.—A crowdfunding vehicle ad-
17 viser shall be required to register under this section.

18 “(2) TAILORED REQUIREMENTS.—As necessary
19 or appropriate in the public interest and for the pro-
20 tection of investors, and to promote efficiency, com-
21 petition, and capital formation, the Commission shall
22 tailor the requirements under section 275.206(4)–2
23 of title 17, Code of Federal Regulations, with re-
24 spect to the application of those requirements to a
25 crowdfunding vehicle adviser.”; and

1 (3) in section 203A(a) (15 U.S.C. 80b-3a(a))—

2 (A) in paragraph (1)—

3 (i) in subparagraph (A), by striking
4 “or” at the end;

5 (ii) in subparagraph (B), by striking
6 the period at the end and inserting “; or”;
7 and

8 (iii) by adding at the end the fol-
9 lowing:

10 “(C) is a crowdfunding vehicle adviser.”;

11 and

12 (B) in paragraph (2)—

13 (i) in subparagraph (A), by inserting
14 “a crowdfunding vehicle adviser,” after
15 “unless the investment adviser is”; and

16 (ii) in subparagraph (B)(ii), in the
17 matter preceding subclause (I), by insert-
18 ing “except with respect to a crowdfunding
19 vehicle adviser,” before “has assets”.

20 **SEC. 3. CROWDFUNDING EXEMPTION FROM REGISTRA-**
21 **TION.**

22 Section 12(g)(6) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78l(g)(6)) is amended—

24 (1) by striking “The Commission” and insert-
25 ing the following:

1 “(A) IN GENERAL.—The Commission”;

2 (2) in subparagraph (A), as so designated, by
3 striking “section 4(6)” and inserting “section
4 4(a)(6)”; and

5 (3) by adding at the end the following:

6 “(B) TREATMENT OF SECURITIES ISSUED
7 BY CERTAIN ISSUERS.—

8 “(i) IN GENERAL.—An exemption
9 under subparagraph (A) shall be uncondi-
10 tional for securities offered by an issuer
11 that had a public float of less than
12 \$75,000,000, as of the last business day of
13 the most recently completed semiannual
14 period of the issuer, which shall be cal-
15 culated in accordance with clause (ii).

16 “(ii) CALCULATION.—

17 “(I) IN GENERAL.—A public
18 float described in clause (i) shall be
19 calculated by multiplying the aggre-
20 gate worldwide number of shares of
21 the common equity securities of an
22 issuer that are held by non-affiliates
23 by the price at which those securities
24 were last sold (or the average bid and

1 asked prices of those securities) in the
2 principal market for those securities.

3 “(II) CALCULATION OF ZERO.—

4 If a public float calculation under sub-
5 clause (I) with respect to an issuer is
6 zero, an exemption under subpara-
7 graph (A) shall be unconditional for
8 securities offered by the issuer if the
9 issuer had annual revenues of less
10 than \$50,000,000, as of the most re-
11 cently completed fiscal year of the
12 issuer.”.

13 **SEC. 4. RULE OF CONSTRUCTION.**

14 Nothing in this Act or the amendments made by this
15 Act may be construed to allow an issuer or a crowdfunding
16 vehicle to offer or sell securities in excess of the limitation
17 described under section 4(a)(6) of the Securities Act of
18 1933 (15 U.S.C. 77d(a)(6)).

19 **SEC. 5. DETERMINATION OF BUDGETARY EFFECTS.**

20 The budgetary effects of this Act, for the purpose of
21 complying with the Statutory Pay-As-You-Go Act of 2010,
22 shall be determined by reference to the latest statement
23 titled “Budgetary Effects of PAYGO Legislation” for this
24 Act, submitted for printing in the Congressional Record
25 by the Chairman of the House Budget Committee, pro-

1 vided that such statement has been submitted prior to the
2 vote on passage.

Passed the House of Representatives October 28,
2019.

Attest: CHERYL L. JOHNSON,
Clerk.