114TH CONGRESS    
2D SESSION

H. R. ______

To improve the operation of United States capital markets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GARRETT introduced the following bill; which was referred to the Committee on _______________________

A BILL

To improve the operation of United States capital markets, 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; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “Creating Financial Prosperity for Businesses and Inves-
5 tors Act”.

6 (b) Table of Contents.—The table of contents for

7 this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—SMALL BUSINESS CAPITAL FORMATION ENHANCEMENT

TITLE II—SEC SMALL BUSINESS ADVOCATE

TITLE III—SUPPORTING AMERICA’S INNOVATORS
Sec. 301. Investor limitation for qualifying venture capital funds.

TITLE IV—FIX CROWDFUNDING
Sec. 401. Crowdfunding vehicles.
Sec. 402. Crowdfunding exemption from registration.

TITLE V—FAIR INVESTMENT OPPORTUNITIES FOR PROFESSIONAL EXPERTS
Sec. 501. Definition of accredited investor.

TITLE VI—U.S. TERRITORIES INVESTOR PROTECTION
Sec. 601. Termination of exemption.
“(A) assessing the finding or recommendation of the forum; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.”.

TITLE II—SEC SMALL BUSINESS ADVOCATE

SEC. 201. ESTABLISHMENT OF OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION AND SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.

(a) Office of the Advocate for Small Business Capital Formation.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(j) Office of the Advocate for Small Business Capital Formation.—

“(1) Office established.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the ‘Office’).

“(2) Advocate for small business capital formation.—
“(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

“(i) report directly to the Commission;

and

“(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

“(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

“(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

“(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital
Formation determines to be necessary to carry out the functions of the Office.

“(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

“(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

“(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

“(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned and women-owned small businesses;

“(D) analyze the potential impact on small businesses and small business investors of—

“(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and
“(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

“(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

“(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

“(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

“(H) advise the Investor Advocate on issues related to small businesses and small business investors.

“(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Busi-
ness Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

“(6) ANNUAL REPORT ON ACTIVITIES.—

“(A) IN GENERAL.—Not later than December 31 of each year after 2016, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

“(B) CONTENTS.—Each report required under subparagraph (A) shall include—

“(i) appropriate statistical information and full and substantive analysis;

“(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;
“(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned and women-owned small businesses and their investors, during the reporting period;

“(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

“(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

“(II) the length of time that each item has remained on such inventory;

and

“(III) for items on which no action has been taken, the reasons for
inaction, and an identification of any
official who is responsible for such ac-
tion;

“(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legisla-
tive actions as may be appropriate to re-
solve problems with the Commission and self-regulatory organizations encountered by small businesses and small business in-
vestors and to encourage small business capital formation; and

“(vi) any other information, as deter-
mined appropriate by the Advocate for Small Business Capital Formation.

“(C) CONFIDENTIALITY.—No report re-
quired by subparagraph (A) may contain con-
fidential information.

“(D) INDEPENDENCE.—Each report re-
quired under subparagraph (A) shall be pro-
vided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of
the Commission, or the Office of Management
and Budget.

“(7) REGULATIONS.—The Commission shall es-

tablish procedures requiring a formal response to all
recommendations submitted to the Commission by
the Advocate for Small Business Capital Formation,
not later than 3 months after the date of such sub-
mission.

“(8) GOVERNMENT-BUSINESS FORUM ON SMALL
BUSINESS CAPITAL FORMATION.—The Advocate for
Small Business Capital Formation shall be respon-
sible for planning, organizing, and executing the an-
nual Government-Business Forum on Small Busi-
ness Capital Formation described in section 503 of
the Small Business Investment Incentive Act of

“(9) RULE OF CONSTRUCTION.—Nothing in
this subsection may be construed as replacing or re-
ducing the responsibilities of the Investor Advocate
with respect to small business investors.”.

(b) SMALL BUSINESS CAPITAL FORMATION ADVI-
SORY COMMITTEE.—Title I of the Securities Exchange
Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding
at the end the following:
SEC. 40. SMALL BUSINESS CAPITAL FORMATION ADVISORY COMMITTEE.

“(a) Establishment and Purpose.—

“(1) Establishment.—There is established within the Commission the Small Business Capital Formation Advisory Committee (hereafter in this section referred to as the ‘Committee’).

“(2) Functions.—

“(A) In general.—The Committee shall provide the Commission with advice on the Commission’s rules, regulations, and policies with regard to the Commission’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as such rules, regulations, and policies relate to—

“(i) capital raising by emerging, privately held small businesses (‘emerging companies’) and publicly traded companies with less than $250,000,000 in public market capitalization (‘smaller public companies’) through securities offerings, including private and limited offerings and initial and other public offerings;
“(ii) trading in the securities of emerging companies and smaller public companies; and

“(iii) public reporting and corporate governance requirements of emerging companies and smaller public companies.

“(B) LIMITATION.—The Committee shall not provide any advice with respect to any policies, practices, actions, or decisions concerning the Commission’s enforcement program.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The members of the Committee shall be—

“(A) the Advocate for Small Business Capital Formation;

“(B) not fewer than 10, and not more than 20, members appointed by the Commission, from among individuals—

“(i) who represent—

“(I) emerging companies engaging in private and limited securities offerings or considering initial public offerings (‘IPO’) (including the companies’ officers and directors);
“(II) the professional advisors of such companies (including attorneys, accountants, investment bankers, and financial advisors); and

“(III) the investors in such companies (including angel investors, venture capital funds, and family offices);

“(ii) who are officers or directors of minority-owned small businesses or women-owned small businesses;

“(iii) who represent—

“(I) smaller public companies (including the companies’ officers and directors);

“(II) the professional advisors of such companies (including attorneys, auditors, underwriters, and financial advisors); and

“(III) the pre-IPO and post-IPO investors in such companies (both institutional, such as venture capital funds, and individual, such as angel investors); and

“(iv) who represent participants in the marketplace for the securities of emerging
companies and smaller public companies, such as securities exchanges, alternative trading systems, analysts, information processors, and transfer agents; and

“(C) three non-voting members—

“(i) one of whom shall be appointed by the Investor Advocate;

“(ii) one of whom shall be appointed by the North American Securities Administrators Association; and

“(iii) one of whom shall be appointed by the Administrator of the Small Business Administration.

“(2) TERM.—Each member of the Committee appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall serve for a term of 4 years.

“(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under subparagraph (B), (C)(ii), or (C)(iii) of paragraph (1) shall not be treated as employees or agents of the Commission solely because of membership on the Committee.

“(e) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—
“(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a chairman;
“(B) a vice chairman;
“(C) a secretary; and
“(D) an assistant secretary.

“(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

“(d) MEETINGS.—

“(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

“(A) not less frequently than four times annually, at the call of the chairman of the Committee; and
“(B) from time to time, at the call of the Commission.

“(2) NOTICE.—The chairman of the Committee shall give the members of the Committee written notice of each meeting, not later than 2 weeks before the date of the meeting.
“(e) COMPENSATION AND TRAVEL EXPENSES.—

Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member is engaged in the actual performance of the duties of the Committee; and

“(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

“(f) STAFF.—The Commission shall make available to the Committee such staff as the chairman of the Committee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission shall—

“(1) review the findings and recommendations of the Committee; and
“(2) each time the Committee submits a finding or recommendation to the Commission, promptly issue a public statement—

“(A) assessing the finding or recommendation of the Committee; and

“(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

“(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.”.

(c) ANNUAL GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—Section 503(a) of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1(a)) is amended by inserting “(acting through the Office of the Advocate for Small Business Capital Formation and in consultation with the Small Business Capital Formation Advisory Committee)” after “Securities and Exchange Commission”.

**TITLE III—SUPPORTING AMERICA’S INNOVATORS**

**SEC. 301. INVESTOR LIMITATION FOR QUALIFYING VENTURE CAPITAL FUNDS.**

Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)) is amended—
(1) by inserting after “one hundred persons” the following: “(or, with respect to a qualifying venture capital fund, 250 persons)”;

(2) by adding at the end the following:

“(C) The term ‘qualifying venture capital fund’ means any venture capital fund (as defined pursuant to section 203(l)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l)(1)) with no more than $10,000,000 in invested capital, as such dollar amount is annually adjusted by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.”.

TITLE IV—FIX CROWDFUNDING

SEC. 401. CROWDFUNDING VEHICLES.

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

(1) in section 4A(f)(3), by inserting “by any of paragraphs (1) through (14) of” before “section 3(c)”;

(2) in section 4(a)(6)(B), by inserting after “any investor” the following: “, other than a
crowdfunding vehicle (as defined in section 2(a) of the Investment Company Act of 1940),”.

(b) Amendments to the Investment Company Act of 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a), by adding at the end the following:

“(55) The term ‘crowdfunding vehicle’ means a company—

“(A) whose purpose (as set forth in its organizational documents) is limited to acquiring, holding, and disposing securities issued by a single company in one or more transactions and made pursuant to section 4(a)(6) of the Securities Act of 1933;

“(B) which issues only one class of securities;

“(C) which receives no compensation in connection with such acquisition, holding, or disposition of securities;

“(D) no associated person of which receives any compensation in connection with such acquisition, holding or disposition of securities unless such person is acting as or on behalf of an investment adviser registered under
the Investment Advisers Act of 1940 or registered as an investment adviser in the State in which the investment adviser maintains its principal office and place of business;

“(E) the securities of which have been issued in a transaction made pursuant to section 4(a)(6) of the Securities Act of 1933, where both the crowdfunding vehicle and the company whose securities it holds are co-issuers;

“(F) which is current in its ongoing disclosure obligations under Rule 202 of Regulation Crowdfunding (17 C.F.R. 227.202);

“(G) the company whose securities it holds is current in its ongoing disclosure obligations under Rule 202 of Regulation Crowdfunding (17 C.F.R. 227.202); and

“(H) is advised by an investment adviser registered under the Investment Advisers Act of 1940 or registered as an investment adviser in the State in which the investment adviser maintains its principal office and place of business.”;

and

(2) in section 3(c), by adding at the end the following:
“(15) Any crowdfunding vehicle.”.

SEC. 402. CROWDFUNDING EXEMPTION FROM REGISTRATION.

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

(1) by striking “The Commission” and inserting the following:

“(A) IN GENERAL.—The Commission”;

(2) by striking “section 4(6)” and inserting “section 4(a)(6)”;

(3) by adding at the end the following:

“(B) TREATMENT OF SECURITIES ISSUED BY CERTAIN ISSUERS.—An exemption under subparagraph (A) shall be unconditional for securities offered by an issuer that had a public float of less than $75,000,000 as of the last business day of the issuer’s most recently completed semianual period, computed by multiplying the aggregate worldwide number of shares of the issuer’s common equity securities held by non-affiliates by the price at which such securities were last sold (or the average bid and asked prices of such securities) in the principal market for such securities or, in the event the result of such public float calculation is zero,
had annual revenues of less than $50,000,000 as of the issuer’s most recently completed fiscal year.”

TITLE V—FAIR INVESTMENT OPPORTUNITIES FOR PROFESSIONAL EXPERTS

SEC. 501. DEFINITION OF ACCREDITED INVESTOR.

Section 2(a)(15) of the Securities Act of 1933 (15 U.S.C. 77b(a)(15) is amended—

(1) by redesignating clauses (i) and (ii) as subparagraphs (A) and (F), respectively; and

(2) in subparagraph (A) (as so redesignated), by striking “; or” and inserting a semicolon, and inserting after such subparagraph the following:

“(B) any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds $1,000,000 (which amount, along with the amounts set forth in subparagraph (C), shall be adjusted for inflation by the Commission every 5 years to the nearest $10,000 to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics) where, for purposes of calculating net worth under this subparagraph—
“(i) the person’s primary residence shall not be included as an asset;

“(ii) indebtedness that is secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

“(iii) indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of securities shall be included as a liability;

“(C) any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person’s spouse in excess of $300,000 in each of those years and has a reasonable expec-
ration of reaching the same income level in the current year;

“(D) any natural person who is currently licensed or registered as a broker or investment adviser by the Commission, the Financial Industry Regulatory Authority, or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), or the securities division of a State or the equivalent State division responsible for licensing or registration of individuals in connection with securities activities;

“(E) any natural person the Commission determines, by regulation, to have demonstrable education or job experience to qualify such person as having professional knowledge of a subject related to a particular investment, and whose education or job experience is verified by the Financial Industry Regulatory Authority or an equivalent self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934); or”.
TITLE VI—U.S. TERRITORIES
INVESTOR PROTECTION

SEC. 601. TERMINATION OF EXEMPTION.

(a) In general.—Section 6(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)) is amended by striking paragraph (1).

(b) Effective date and safe harbor.—

(1) Effective date.—Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Safe harbor.—With respect to a company that is exempt under section 6(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(1)) on the day before the date of the enactment of this Act, the amendment made by subsection (a) shall take effect on the date that is 3 years after the date of the enactment of this Act.

(3) Extension of safe harbor.—The Securities and Exchange Commission, by rule and regulation upon its own motion, or by order upon application, may conditionally or unconditionally, under section 6(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–6(c)), further delay the effective date for a company described in paragraph (2) for
a maximum of 3 years following the initial 3-year period if, before the end of the initial 3-year period, the Commission determines that such a rule, regulation, motion, or order is necessary or appropriate in the public interest and for the protection of investors.