H. R._____

To amend the Securities Act of 1933 to subject crowdfunding vehicles to the jurisdiction of the Securities and Exchange Commission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. McHenry (for himself and Ms. Waters) introduced the following bill; which was referred to the Committee on ______________________

A BILL

To amend the Securities Act of 1933 to subject crowdfunding vehicles to the jurisdiction of the Securities and Exchange Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Crowdfunding Amendments Act”.

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SEC. 2. 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 2(a) (15 U.S.C. 77b(a)), by adding at the end the following:

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

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

(A) in subparagraph (A)—

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

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

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

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

(A) in the matter preceding paragraph (1), by striking “Section 4(6)” and inserting “Section 4(a)(6)”;}
(B) in paragraph (3), by inserting “by any of paragraphs (1) through (14) of” before “section 3(c)”.

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

“(15)(A) Any crowdfunding vehicle.

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

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

“(ii) that issues only 1 class of securities;

“(iii) that receives no compensation in connection with the acquisition, holding, or disposition of securities described in clause (i);

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

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

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

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

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

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

“(II) required to—
“(aa) disclose to the investors of the company any fees charged by the investment adviser; and

“(bb) obtain approval from a majority of the investors of the company with respect to any increase in the fees described in item (aa).”.

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

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

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

(B) by adding at the end the following:

“(32) The term ‘crowdfunding vehicle’ has the meaning given the term in section 3(c)(15)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(15)(B)).

“(33)(A) The term ‘crowdfunding vehicle adviser’ means an investment adviser that acts as an investment adviser solely with respect to crowdfunding vehicles.

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

(2) in section 203 (15 U.S.C. 80b–3), by adding at the end the following:

“(o) CROWDFUNDING VEHICLE ADVISERS.—

“(1) IN GENERAL.—A crowdfunding vehicle adviser shall be required to register under this section.

“(2) TAILORED REQUIREMENTS.—As necessary or appropriate in the public interest and for the protection of investors, and to promote efficiency, competition, and capital formation, the Commission may tailor the requirements under section 275.206(4)–2 of title 17, Code of Federal Regulations, with respect to the application of those requirements to a crowdfunding vehicle adviser.”; and

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

(A) in paragraph (1)—

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

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

(iii) by adding at the end the following:
“(C) is a crowdfunding vehicle adviser.”;

and

(B) in paragraph (2)—

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

(ii) in subparagraph (B)(ii), in the matter preceding subclause (I), by inserting “except with respect to a crowdfunding vehicle adviser,” before “has assets”.

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

(3) by adding at the end the following:

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

“(i) IN GENERAL.—An exemption under subparagraph (A) shall be uncondi-
tional 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 most recently completed semiannual period of the issuer, which shall be calculated in accordance with clause (ii).

“(ii) CALCULATION.—

“(I) IN GENERAL.—A public float described in clause (i) shall be calculated by multiplying the aggregate worldwide number of shares of the common equity securities of an issuer that are held by non-affiliates by the price at which those securities were last sold (or the average bid and asked prices of those securities) in the principal market for those securities.

“(II) CALCULATION OF ZERO.—If a public float calculation under subclause (I) with respect to an issuer is zero, an exemption under subparagraph (A) shall be unconditional for securities offered by the issuer if the issuer had annual revenues of less than $50,000,000, as of the most re-
cently completed fiscal year of the issuer.”.