

Corporate & Financial Weekly Digest

November 11, 2011 by [Robert L. Kohl](#)

House Approves Bills Providing Crowdfunding and Solicitation Exemptions

Co-authored by [Kari E. Hoelting](#)

On November 3 the U.S. House of Representatives passed H.R. 2930 (the “Entrepreneur Access to Capital Act”) and H.R. 2940 (the “Access to Capital for Job Creators Act”).

H.R. 2930, the “crowdfunding” bill, would amend the Securities Act of 1933 (the Act) to add new Sections 4(6) and 4A which would exempt from the registration requirements of Section 5 of the Act transactions where the aggregate amount of securities sold by an issuer in a 12 month period does not exceed (a) \$1,000,000 or (b) \$2,000,000 if the issuer provides potential investors with audited financial statements. However, an offering would not qualify for the foregoing exemption if the amount sold to any individual investor in reliance on the exemption exceeds the lesser of (i) \$10,000 and (ii) 10% of such investor’s annual income. Securities sold pursuant to the exemption may not be resold for one year unless such securities are sold to the issuer or to an “accredited investor”, as defined in Rule 501(a) under the Act.

H.R. 2930 would also establish requirements for intermediaries and issuers who rely on the newly created exemption. Intermediaries, or issuers who do not utilize intermediaries, are required, among other things, to: (a) warn investors of (i) the speculative nature of the investment and (ii) the restrictions on sales of the securities, (b) take measures to reduce the risk of fraud with regards to the transaction, (d) provide the Securities and Exchange Commission with the name, address, website address and employees of the intermediary or issuer, as applicable, (e) provide the SEC with investor level access to the intermediary’s or issuer’s, as applicable, website, (f) require each potential investor to answer questions that demonstrate an understanding of the level of risk applicable to investments in small issuers and the risks of illiquidity, (g) state a target offering amount and deadline and provide for a third party custodian to withhold proceeds until the aggregate capital raised is no less than 60% of the target amount, (h) carry out a background check on the issuer’s principals, (i) provide the SEC and potential investors with notice of the offering and specified other information not later than the first day securities are offered to potential investors, (j) outsource cash-management functions to a qualified third party custodian and (k) provide the SEC with

a notice upon completion of the offering. Issuers who do not utilize intermediaries are not required to satisfy (h) above. Neither issuers nor intermediaries are permitted to offer investment advice. In addition, the bill would amend Section 12(g)(5) of the Securities Exchange Act of 1934 (the Exchange Act) to exclude from the calculation of the number of stockholders of record of a company for purposes of required company registration under the Exchange Act, persons who purchase securities under the new Section 4(6) exemption.

H.R. 2940 would amend Section 4(2) of the Act and require the SEC to amend Rule 506 of Regulation D under the Act to provide that the prohibition against general solicitation or general advertising shall not apply to sales made pursuant to Rule 506, provided that all purchasers of the securities are “accredited investors”, as defined in Rule 501(a) under the Act.

Click [here](#) to read H.R. 2930.

Click [here](#) to read H.R. 2940.

Read through and enter the discussion with the form at the end

Katten Muchin Rosenman LLP

Charlotte Chicago Irving London Los Angeles New York Washington, DC