TITLE III – CROWDFUNDING – COMMENTS

Whether or not Title III of the JOBS Act will be of any benefit to startups and small companies is dependent upon the ability to strike a balance with the applicable rules between basic investor protection and the burden and cost of complex compliance requirements, which must be passed on by the intermediary.

FOR INVESTORS: An individual investor's true ability to manage his risk in the context of investments within the size limits of Section 302(a)(6) relates more closely to his ability to judge the individual business opportunity than to wade through endless boiler plate "risk factors". Other than the information he himself deems necessary, the only risk factor that truly applies is the one found on prospectus covers: "you should purchase these shares only if you can afford a complete loss of your investment."

Unlike any other situation in the investment industry with exchanges, intermediaries, bulletin boards etc, Sec 4A has adopted what could be referred to as the "babysitting rules" requiring not only that the intermediary "ensure" that investors review information but that he or she "understands" the risk of the entire investment. These are clearly repressive within the context of a $2,000 investment. As well, an endless recitation of boiler plate risk factors would assure only one thing in this environment – that they will not be read.

I would urge the Commission to limit rather than expand these disclosures and question and answer requirements.

No other investment or risk at these dollar levels for an investor requires any such regimen. The risk is the investor's, and no amount of increased or overprotective wording will shift that risk or benefit the investor. No additional requirement of questioning can shift the risk to the intermediary. It will only serve to dilute or make irrelevant a truly singular and unique opportunity, one of the only prospective sources of capital for small business that exists in this market.

FOR ISSUERS: The requirements, as they exist in the Act, require issuers to provide for activities totally outside the current disclosure/compliance/enforcement regimen of the Commission and I would urge that they be significantly modified or eliminated by the Commission. Among those which are most outside this line are the requirements for the Commission to collect and we assume hold individual tax returns with private information as well as to make available that information to states under certain circumstances. There is not enough space here to discuss all of the issues that this raises. In addition to the requirement that this information be provided along with financial statements, there is a requirement that the issuer provide this information "not less than annually." Is it reasonable to believe that "Sally's Cupcake Shop" that used crowdfunding to fund new ovens for its kitchen would or should be required to continue to file this personal information with the Commission?

Whether or not crowdfunding under this Act survives the regulatory burden placed upon it is directly impacted by the requirement to obtain third party services. The requirement to obtain a review by a public accountant is not just a review in accordance with standards to which those accountants may be familiar but is also conditioned upon procedures "established by the Commission by rule for such purpose."

We urge the commission to limit this review to existing standards utilized by Public Accountants. To expand these procedures would not only require accountants to acquire a

specialized skill, but may well impact the cost of or their ability to obtain errors and omissions insurance for their practice. You need only to look at the very limited number of accountants available to small public companies because of the requirement to be PCAOB compliant. If the Commission were to consider similar regulatory provisions for accountants to satisfy the provisions Sec. 4A, it would have the effect of making this Act unavailable to small business.

The requirement for audited financial statements for target offerings from $500,000 to $1,000,000 should be eliminated. The same issues set out above not only apply but would be magnified for accounting firms providing audits for financial statements for this type of offering to the public. There would either have to be a totally new "securities light" insurance coverage crafted for these firms, although not a likely possibility, or they would have to go to the trouble and expense to obtain full securities coverage.

These costs, along with other increased similar costs associated with attorneys, as well as costs associated with intermediary compliance and registration with the SEC and self regulatory authority, would have to be passed on to the issuer increasing the upfront costs and the barrier to entry for small business.

INTERMEDIARIES:

The Act requires the SEC to make rules allowing investors to cancel their commitments to invest. Considering that the Bill also requires companies to raise at least their target amount, it is unclear what happens where investors cancel after the offering and reduce the raised funds below the target amount. Can the company re-open their offering? Does the company have to return all of the other investors' money? How does a company know when to close their offering if some investors can cancel, causing them to fall short of the target amount?

We would urge the Commission to either eliminate this right to cancel or to limit the period to three (3) days to be consistent with other securities transactions in some of the states.

The Act places the responsibility on funding portals such as InitialCrowdOffering.com to "ensure" that no investor in a 12 month period would exceed his investment limit. This would require that the Commission establish and administer a costly data base of private investor information in order for there to be any way for a funding portal to "ensure" that these limits were not exceeded.

We would urge the Commission to limit this requirement so that the funding portal need only ensure only that these limits were not exceeded on transactions conducted within its own funding portal or permit the funding portal to rely on a certification by the investor that he or she has not exceeded these limits.

We note that funding portals such as InitialCrowdOffering.com must remain subject to the examination, enforcement, and other rulemaking authority of the SEC and in addition be subject to such other requirements as the SEC determines appropriate.

We urge the Commission to recognize the limited scope of funding portal operations relative to broker dealers, and that the requirements placed on funding portals should reflect their very limited operational scope in an attempt to limit costs associated with crowdfunding consistent with the fundamental concepts initially associated with the idea.