Submitted via E-mail to rule-comments@sec.gov

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To: Ms. Elizabeth M. Murphy
Secretary Securities and Exchange Commission
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Re: Implementation of the Jumpstart Our Business Startups Act, particularly as it pertains to the crowdfunding market

Introduction

We are pleased to have the opportunity to respond to the request for comment by the Securities and Exchange Commission (the ***SEC***) on the Jumpstart Our Business Startups Act (the ***JOBS Act***) and, specifically, how the JOBS Act impacts the development of the 'crowdfunding' market in the United States. We appreciate that the mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. As an active participant in the crowdfunding market outside of the United States and a member of a number of the new industry organizations formed in the United States following the JOBS Act, we share these goals as it pertains to this growing segment of the industry. We encourage the SEC to implement the JOBS Act in a manner that emphasizes transparency and stability while also leaving room for the growth, evolution and vibrancy that has been a driver of the crowdfunding market to date.

We commend the decision by the SEC to request comments early in the rule writing process and the willingness to take notice of the thoughts and concerns of industry participants. In this spirit, please find below our thoughts on how the JOBS Act might be implemented in order to ensure fair, orderly and efficient crowdfunding market that encourages capital formation by start-ups throughout the United States.

1. **The prohibition of "directed selling efforts" set out in Regulation S under the Securities Act of 1933, as amended (the *Securities Act*) should be reconciled with the lifting of the prohibition of "general solicitation and general advertising" set out in Rule 506 and Rule 144A under the Securities Act.**

As you are no doubt aware, the JOBS Act does not require the revision of the restrictions on directed selling efforts. Regulation S prevents issuers from engaging in marketing activities in the United States with respect to an offering made pursuant to Regulation S under the Securities Act (***Regulation S***). Although this is perhaps appropriate for offerings that are made pursuant to Regulation S only, it would, essentially, render the lifting of the general solicitation and advertising prohibitions ineffectual for offerings with two tranches: (i) the first made to investors outside of the United States pursuant to Regulation S; and (ii) the second made to investors in the United States pursuant to an exemption from the registration requirements set forth in the Securities Act (for example, Rule 506, 144A or the

crowdfunding exemption contemplated by the JOBS Act).

As such, unless an issuer offers two classes of securities that are not fungible (which would be too expensive and cumbersome in the crowdfunding context), it would effectively be prohibited from pursuing investors both inside and outside of the United States through Grow VC or another funding portal. As stated, Congress and the President presented the JOBS Act as a tool to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies and start-ups. Although much of the focus has been on providing an efficient route for start-ups to raise capital from US investors, providing for "global offerings" will enable US companies to also seek non-US investors. This has the potential to increase foreign investment in the US and grow the overall capital base but it will not be possible if start-up companies are unable to conduct offerings that are open to both US and non-US investors.

We believe restricting issuers from engaging in global offerings, because of the conflict between the prohibition on directed selling efforts and the new publicity or marketing regime governing private placements in the United States, will severely limit the utility of the JOBS Act and also inhibit the growth and maturation of this segment of the capital markets in the United States.

Although it is our belief that the most effective form of reconciliation would be to lift the prohibition on directed selling efforts entirely, if this is not the intention of the SEC, it will be essential that, at a minimum, clear guidance is provided as to how issuers (and funding portals) will be able to pursue global offerings without violation of Regulation S.

2. **Offers and sales of securities to qualified institutional buyers pursuant to Rule 144A and/or accredited investors pursuant to Rule 506 should not be included in the $1 million limit on the aggregate amount of securities sold by an issuer to investors over a 12 month period (set out in Title III, Section 302(a)).**

As noted, the JOBS Act is intended to increase American job creation and economic growth by improving access to the public capital markets for emerging growth and start-up companies. Although such companies will certainly benefit from the ability to raise capital pursuant to the new exemption from registration created by Title III of the JOBS Act, it will be vital for many companies to have the ability to raise capital via this new crowdfunding exemption, while leaving open the possibility of a private offering to accredited investors or qualified institutional buyers pursuant to Rule 506 and Rule 144A, respectively.

It appears that Section 302 of Title III is currently written in such a way that issuers may be unable to raise more than $1 million in any 12 month period if, at some point during that period, they have raised capital pursuant to the "crowdfunding exemption" detailed in Section 302. While a limitation on the amount of capital that can be raised from non-sophisticated investors is reasonable, prohibiting such companies from also raising capital via private offerings (including, for example, venture capital funding) will severely limit the utility of the new exemption and the ability of start-up companies to grow.

To the extent that the SEC would seek to protect non-sophisticated investors from dilution or other issues that might arise from an issuer raising capital via private offerings to sophisticated investors, we believe that clear, fulsome and user-friendly disclosure to the market regarding the terms of the securities and the rights of investors should be sufficient to

educate current and prospective purchasers. To prohibit small and medium sized companies from seeking all funding options would severely limit their ability to grow and may, in fact, threaten their solvency in some circumstances. Such limitations may therefore scare many start-up companies away from engaging in and growing the crowdfunding market in the United States.

3. **The requirements set out in Section 302(b) with respect to the actions required to be taken by intermediaries to ensure investors do not exceed the investment limits (set out in 302(a)) should be drafted in a manner which clearly addresses what steps should be taken both within a funding portal and between funding portals, and should reflect the limitations inherent in policing a vast number of users.**

As provided in Section 302(b), intermediaries will be required to "make such efforts as the Commission determines appropriate, by rule, to ensure that no investor in a 12-month period has purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed the investment limits set forth in section 4(6)(B)".

We believe it is important that the SEC clearly sets out what measures are reasonably expected from funding portals in order to ensure that investors do not exceed the investment limits set out in the JOBS Act, both with respect to an individual funding portal and between funding portals.

Our concern here is twofold: (i) investors may be able to establish multiple user accounts in a single funding portal and thereby exceed the maximum investment limit, despite the best efforts of the funding portals; and (ii) investors will be able to establish user accounts with multiple funding portals and, in the aggregate, exceed the maximum investment limit.

With respect to the first issue raised, there are steps that can be taken (and will be taken by Grow VC) to attempt to ensure that investors do not exceed the maximum investment limits. Such measure include: closely monitoring investment activity in any user account; requiring each user account to provide unique bank account details which are not used by any other user account; and requiring the investor to represent and warrant that such investor understands the maximum investment limit and will not exceed such limits either through the relevant user account or other user accounts.

Furthermore, Grow VC would be comfortable with limiting the amount that any single investor could invest in a particular offering. If this number were sufficiently low, for example between $200-$400 at the lowest level and graduated according to any individual's maximum investment amount as set out in the JOBS Act, it would both reduce the risk that the investor would lose a significant amount of money on any single investment and make it more difficult for an investor to exceed the maximum investment amount.

With respect to the second point raised above, we urge the SEC to clarify whether individual funding portals will be required to take steps to limit investor activity between funding portals that are not connected or owned/operated in a shared corporate entity. In addition to being extremely difficult to implement, such a requirement may implicate the privacy rights of investors and a host of other legal, ethical and professional issues. We believe this would retard the growth of this segment of the capital markets in the United States and ultimately frustrate the intention of the bill as enacted by Congress and signed by President Obama.

Regardless, however, it is likely that certain investors will seek to exceed the maximum investment limits and it will be virtually impossible for funding portals to prevent this in its entirety. It is therefore important to understand what steps will be considered "appropriate…to ensure that no investor" exceeds the maximum investment amount on any individual funding portal and we encourage the SEC to set out the requirements in a very clear fashion so that the funding portals and other market actors can participate in confidence.

4. **With respect to resales of securities that were originally offered via a funding portal pursuant to the new exemption, what steps must issuers and funding portals take to establish that an investor is an "accredited investor" and may therefore purchase the securities within 12 months of the original sale?**

Title III, Section 302(e) effectively creates a one year holding or restricted period for securities issues pursuant to the new crowdfunding exemption, unless the securities are sold to an accredited investor. Although we have no serious objection to this requirement, it will be important for sellers to be able to understand: (i) what steps they will be expected to take to confirm or reasonably believe that the buyer is an accredited investor, and (ii) whether, should the sale be facilitated by a funding portal, such funding portal will be required to similarly confirm the buyer's status as an accredited investor and, if so, what steps the funding portal will be expected to take.

We note that private placements of securities pursuant to well established exemptions from registration which require the issuer to establish a reasonable belief that the investor is an accredited investor, including Rule 506 of Regulation D, often rely on investor questionnaires and representations in order to establish the status of the issuer. We believe that similar measures can be implemented by participants in the crowdfunding market and should provide for consistent and reliable market practice.

5. **Although "funding portals" should remain independent, disinterested parties and should not be permitted to provide investment advice or recommendations, funding portals should be permitted to provide, and users will benefit from, user generated content, opinions and data.**

Title III, Section 304(b) defines "funding portal" in a manner which excludes organizations that "offer investment advice or recommendations". While we believe this is an appropriate restriction that will limit the ability of less-scrupulous funding portals with conflicts of interest to inappropriately hype an offering or encourage investment in offerings for reasons other than the value of the investment, we believe that this restriction should not inhibit the ability of a community of users within a funding portal to discuss the merits of an offering or, independent of the funding portal, express an opinion or recommendation.

The crowdfunding market is premised not only on the idea that relatively small investments of capital by a large number of people can drive efficient capital formation and value for the investors, but also that a large community of users can, in the aggregate or through various areas of individual expertise, provide valuable insight and information. We would therefore urge the SEC to make a distinction between "investment advice" and "recommendations" generated by a funding portal and information that is derived from user contributions or activity. Note that we also believe that prohibited "investment advice or recommendations" could include user generated information which is then manipulated or altered by the funding

portal with respect to a specific investment in which the funding portal has some interest or would otherwise benefit.

6. **In order to properly clear and settle a securities transaction, a funding portal will need the ability to temporarily hold customer funds and, with respect to an equity offering, in order to ensure that issuers are not overwhelmed with thousands of new shareholders, third parties (including funding portals) should be able to act as a nominee while the new investors are considered beneficial owners of the securities.**

Title III, Section 304(b) defines "funding portal" in a manner which excludes organizations that "hold, manage, possess, or otherwise handle investor funds or securities". We believe that the JOBS Act seeks to prevent funding portals from functioning as or holding themselves out as banking or financial institutions, as such funding portals may not be subject to the various regulations governing banking and financial institutions.

Although we agree with this in principle, in practice it will be important that funding portals are able to clear and settle securities transactions offered and executed on the respective funding portal's platform. Grow VC's activities outside of the United States require that an investor hold its funds in a discretionary account in the investor's name, from which funds will be debited when an offering closes. These funds do, however, pass through Grow VC for purposes of clearing and settling the transactions before the funds are delivered to the issuer. It will be vital that, to ensure safe, efficient and effective clearance and settlement, funding portals are able to gain control of the funds temporarily, only once the obligations have become final, in order to clear and settle the transactions.

Similarly, in order to clear and settle the initial offering, as well as to facilitate secondary trading (once any applicable holding or restricted period has expired), funding portals should be able to provide issuers and investors with a service whereby the funding portals operates a book-entry system in which dematerialized securities are held. This will be not only be important for secondary trading, it will also provide companies with an instrument with which they can track their shareholder roles and ensure that such shareholders are provided with any material information in a timely manner.

Furthermore, in order to maintain a simple shareholder structure for companies that raise capital through an offering pursuant to the new exemption, funding portals should be able to act as a single shareholder (or holder of record) for purposes of the company's register/shareholder structure. This can be easily accomplished via the book-entry system discussed immediately above. As is currently the case in many crowdfunding transactions outside of the United States, the funding portal will then communicate with the individual shareholders (or beneficial holders). To saddle small start-ups with potentially thousands of new shareholders would require enormous administrative costs, ultimately limit the quality of communication between the company and the shareholders, and make the new exemption completely unwieldy.

We therefore urge the SEC to recognize the importance of maintaining a streamlined, efficient capital raising process and a similarly efficient post-capital raising existence for companies, while ensuring high quality and consistent communication between companies and investors, by allowing funding portals to act as a holder of record and operate dematerialized, book-entry systems.

Conclusion

Grow VC strongly believes that the JOBS Act sets out the foundation of a crowdfunding market that can encourage capital formation, help grow small and medium sized companies and create jobs in the United States, all in a manner which protects investors from unnecessary or unexpected risks. Fundamental to these goals will be clear and consistent rules and regulations and we appreciate the opportunity to contribute to the development of these rules and regulations and to the discourse in general.