



March 2, 2015

The Honorable Mary Jo White
Chairman
U.S Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Proposed Regulation Crowdfunding (Release Nos. 33-9470; 34-70741; File No. S7-09-13): Keep Crowdfunding Simple

Dear Chairman White:

We appreciate the opportunity to comment on Proposed Regulation Crowdfunding (“Proposed Rules”) promulgated pursuant to Title III of the Jumpstart Our Business Startups Act (the JOBS Act).

[SeedInvest](#) operates a leading accredited investor funding platform which serves over 25,000 investors and entrepreneurs across the country. Our founders and advisors were involved in the signing of the JOBS Act and we have previously voiced our findings on this topic at the Treasury Department and the White House. SeedInvest was also one of the first three accredited investor platforms accepted into the [Angel Capital Association](#). We interact with startups and small businesses on a daily basis and see a great need to implement a cost-effective equity crowdfunding regime to help create jobs and boost our economy.

This letter serves to follow-up on our previous comment letters in which we requested that the Proposed Rules be modified to (1) [Reduce Costs Burdens in Crowdfunding](#), (2) [Provide for Testing the Waters in Crowdfunding](#) and (3) [Balance Broker-Dealer and Funding Portal Regulatory Regimes](#). These previous letters received over thirty additional follow-on letters in support of these concepts.

In this letter, we re-iterate these requests and ask the Commission to promptly enact final, simple equity crowdfunding rules that (i) remove certain onerous (expensive) requirements and (ii) focus on facilitating main street capital raising rather than creating another Wall Street secondary trading market.

The Intent of the JOBS Act

On April 5, 2012, the President signed the JOBS Act into law with full bi-partisan support and much fanfare. Title III of the JOBS Act called for implementation of Equity Crowdfunding and was full of promise to help startups and main street small businesses raise much needed capital and to help create jobs. As we’ve previously pointed out, Kauffman Foundation research has established that were it not for new businesses, there would be no net job growth in the U.S. economy.¹

Fast forward nearly three years and Title III is yet to be implemented and is virtually dead in the water with zero jobs created.

¹ See Comment Letter from Kauffman Foundation to the Securities and Exchange Commission (July 2, 2014, available at <http://www.sec.gov/comments/s7-06-13/s70613-539.pdf>)

A Look Across the Pond

Meanwhile, the United Kingdom has leapfrogged the U.S. in investment crowdfunding by enacting rules in 2012 with a “light touch” approach. This has resulted in [over 2,000 companies raising over £175 million](#) with no confirmed instances of fraud. Moreover, [according to a recent report](#), 60% of these crowdfunded companies have increased employment following a successful campaign. In its recent evaluation of its crowdfunding regulatory regime, the UK Financial Conduct Authority (FCA) stated that:

“In the months since we introduced our rules, we have seen the crowdfunding market continue to grow rapidly. We recognise that it is still early but, at present, we see no need to change our regulatory approach to crowdfunding, either to strengthen consumer protections or to relax the requirements that apply to firms.”²

Notably, this successful regulatory regime does NOT require the filing of ongoing annual disclosure documents or ongoing annual financial statements and generally has far less stringent requirements than the Proposed Rules.

Misplaced Focus on Secondary Market Trading

While far from perfect, the original bill (Title III of the JOBS Act) outlines a framework for a workable equity crowdfunding industry. The October 2013 Proposed Rules, however, included many new, extremely burdensome (expensive) requirements and restrictions. Most notably, these include requiring extensive ongoing disclosure obligations and ongoing requirements to file financial statements which could cost companies upwards of \$10,000 - \$40,000 per year.

These sorts of additional, ongoing requirements might make sense for large, publicly traded corporations, but they simply don’t make sense for small, private startups and small businesses. We understand that ongoing annual disclosures and audited financial statements help Wall Street more accurately price securities, enhancing both liquidity and market confidence. Regulating startups and small business like they are public companies, however, just will not work. By adding additional requirements similar to those faced by public companies, the Proposed Rules added needless layers of complexity and expense, making Title III equity crowdfunding so complicated, expensive and risky that it is currently unworkable for startups and small businesses.

Further, this line of thinking fails to recognize a key point: ***Small businesses and startups do not want their securities traded and do not want public disclosure obligations.*** This is especially true for main street companies seeking \$1 million or less. These companies are worried about hiring employees, healthcare costs, regulatory burdens and generating revenue - the last thing they are concerned about is their latest stock price, transfer agents, public filings, audited financials and Wall Street financial analysts.

² A review of the regulatory regime for crowdfunding and the promotion of non-readily realisable securities by other media. See <http://www.fca.org.uk/your-fca/documents/crowdfunding-review>.

No matter the law and what secondary markets may emerge, the vast majority small businesses and startups will enter into legally binding contracts with their shareholders that prohibit their stock from being traded. According to Bill Siegal, Interim CEO at SecondMarket:

“I can understand why companies are really reticent [to have their shares traded], and its why we changed our model back in 2011. The companies were being really proactive. We heard from the companies saying, “Quite frankly, [selling shares] should be outlawed because its so distracting. We don’t want anything like [what happened at Facebook] to develop and we’re looking at ways to change the bylaws in our businesses so it can be explicitly outlawed.” Venture firms have said when founders are forming their companies, they’re [outlawing share sales] at that stage. That was when we realized a different solution was going to be required.”³

As a standard practice, virtually every startup has contractual restrictions on the transfer of their securities. These companies want to know who's on their cap table, do not want burdensome administrative obligations, and want to focus on managing their business rather than managing their shareholders.

Shares of startups and small businesses have never been publicly tradable and they do not need to be. Investing in startups and small businesses is risky and anyone who needs access to near term liquidity should not be investing in the asset class.

Refocus on Streamlining the Capital Raising Process

We urge the Commission to revisit the Title III Equity Crowdfunding proposed rules with an assumption that there will be no secondary market and that investors should go in with the understanding that these are a highly illiquid, “buy and hold” investments.

Namely, this means:

- 1) [Limiting ongoing disclosure requirements to the statutory level](#)
- 2) Eliminating ongoing annual financial statement requirements
- 3) Exempting companies with contractually restricted shares from ongoing annual disclosure requirements
- 4) Implementing “[Testing the Waters](#)”

By taking these steps, we believe that a streamlined, effective equity crowdfunding rule could be quickly implemented.

Conclusion

While the secondary market and liquidity is typically great for investors, in this case it harms investors, small businesses, job seekers and the economy as a whole. In short, we urge the Commission to keep Title III crowdfunding simple for main street and save the secondary market and Wall Street trading for Regulation A and larger companies.

³ <http://fortune.com/2014/07/25/secondmarket-pivoted-after-facebooks-ipo-now-volume-is-higher-than-ever/>

We look forward to the ongoing conversation and would welcome the opportunity to provide additional details and market data to the Commission and Staff.

Respectfully,

Sashi Kiran Lingam

Kiran Lingam, Esq.
General Counsel
SeedInvest, LLC
www.seedinvest.com
