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TO: SEC

FROM: American Sustainable Business Council (www.asbcouncil.org)

DATE: REVISED July 24, 2012

RE: REVISED- Proposal for a two-tier approach to crowdfunding regulation under the JOBS Act

Consistent with the SEC's rulemaking authority, we propose that the Commission create a two-tier regulatory system for the crowdfunding exemption, with a reduced regulatory burden for small, local offerings.

RATIONALE

Securities law has long recognized that a close relationship between an investor and a business proprietor seeking investment can mitigate some of the risks of fraud and abuse. This logic extends to geographical proximity as well. Close proximity between issuers and investors is likely to allow for greater knowledge and scrutiny by investors prior to making an investment decision. Specifically, an investor can see the products, visit the company's office, meet with management and staff—all of which are difficult for long-distance investments.

Additionally, very small investments need not require as high a level of investor protections as larger ones. The crowdfunding law allows investments of up to five percent of net worth or annual income per investor (ten percent if income or net worth is greater than \$100,000). This is a significant sum for an investor and therefore merits a higher degree of regulation. We propose that much smaller investments – up to \$250 per investor – could be subject to significantly reduced regulation. Few would suggest that \$250 imposes a significant risk on any investor. In our view – and, we believe, in the view of the vast majority of Americans – the risk of investing \$250 in a local company is no greater than the risk most Americans regularly tolerate when they spend \$250 in a fancy restaurant or gamble in one of 1,000 casinos in the country. Yet from the standpoint of many small businesses, getting 1,000 customers each to invest \$250 can make the critical difference between prospering and going out of business.

DEFINITIONS

A “small local offering” is defined as one or more transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that (A) the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12- month period preceding the date of such transaction, is not more than \$100,000; (B) the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-

month period preceding the date of such transaction, does not exceed \$250; and (C) all investors and the issuer shall be residents of a single state or residents of a circle with a radius of 200 miles.

A “small local investment intermediary” is defined as a person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others pursuant to section 4(6) that only offers small local offerings.

REQUIREMENTS FOR SMALL LOCAL OFFERINGS AND SMALL LOCAL INVESTMENT INTERMEDIARIES

a. REQUIREMENTS FOR SMALL LOCAL INVESTMENT INTERMEDIARIES

(1) register with the Commission as—

(A) a broker; or

(B) a funding portal (as defined in section 3(a)(80) of the Securities Exchange Act of 1934);

(2) register with any applicable self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934);

(3) provide a prominent disclosure to all potential investors stating that it is possible for investors to lose their entire investment and provide a list of investor education resources created by nonprofit educational organizations;

(4) require each investor—

(A) to affirm that he/she/it has had the opportunity to review the investor education resources described in section 3;

(B) to positively affirm that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and

(C) to answer simple yes/no questions demonstrating—

(i) an understanding of the level of risk generally applicable to investments in startups, emerging businesses, and small issuers; and

(ii) an understanding of the risk of illiquidity;

(5) obtain a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;

(6) not later than 7 days prior to the first day on which securities are sold to any investor, make available to the Commission and to potential investors any information provided by the issuer pursuant to subsection (b);

(7) ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount set in advance by the issuer, and allow all investors to cancel their commitments to invest on the earlier of (a) five business days following the date of making the commitment to invest or (b) the date upon which the target offering amount is reached;

(8) require each investor to attest that he/she/it has not, in a single 12-month period, purchased securities offered pursuant to section 4(6) that, in the aggregate, from all issuers, exceed a purchase price of \$500;

(9) take reasonable steps to protect the privacy of information collected from investors;

(10) not compensate promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor;

(11) prohibit its directors, officers, or partners (or any person occupying a similar status or performing a

similar function) from having any financial interest in an issuer using its services; and

(12) require all investors to attest to their residence to ensure that all investors meet the geographic limits of each offering.

b. REQUIREMENTS FOR ISSUERS OF SMALL LOCAL OFFERINGS

(1) file with the Commission and provide to investors and the relevant broker or funding portal, and make available to potential investors—

(A) the name, legal status, physical address, and website address of the issuer;

(B) the names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer;

(C) a description of the business of the issuer and the anticipated business plan of the issuer;

(D) a description of the financial condition of the issuer, including the income tax returns filed by the issuer for the most recently completed year (if any) and financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

(E) a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;

(F) the target offering amount, the deadline to reach the target offering amount, and regular, at least monthly, updates regarding the progress of the issuer in meeting the target offering amount;

(G) the price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities, as provided in section a(7) above; and

(H) a description of the ownership and capital structure of the issuer, including—

(i) terms of the securities of the issuer being offered and each other class of security of the issuer, including how such terms may be modified, and a summary of the differences between such securities, including how the rights of the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;

(ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;

(iv) how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties;

(2) not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker;

(3) not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without receiving a written attestation that such person shall clearly disclose the receipt, past or prospective, of such compensation, upon each instance of such promotional communication; and

(4) not less than 12 months nor more than 15 months after the completion of the offering, file with the Commission and provide to investors a report of the results of operations and financial statements of the issuer.

c. INFLATION ADJUSTMENT

Dollar amounts in the rules governing small local offerings shall be adjusted by the Commission not less frequently than once every 5 years, by notice published in the Federal Register to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

d. RESIDENCY REQUIREMENTS

Both Small Local Investment Intermediaries and Issuers of Small Local Offerings shall be entitled to rely on the attestation of an investor for the purpose of determining whether an investor meets the geographical limits of an offering.