John P. Williams
[redacted]

February 7th, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Comments on the SEC's Regulatory Initiatives Under Title III of the JOBS Act

Sincerely Ms. Murphy,

I very much appreciate the opportunity to comment on the implementation of the Jumpstart Our Business Startups Act. This letter is limited exclusively to the rulemaking provisions under Title III, Crowdfunding. In drafting the crowdfunding rules, the Commission has the delicate task of protecting investors from the onslaught of dubious crowdfunding entities without undermining the Act's intent of making the public capital markets more accessible.[1][2]

Listed below are a set of ideas that would, I believe, assist in creating a fair and efficient crowdfunding marketplace. For this exercise, I have pictured my mother, a 67-year-old retired real estate agent with no background in finance, and asked what would make it easier for her to understand a crowdfunding offering. I am not suggesting that these ideas could serve as an exhaustive list of rules, but rather as a small part of a larger regulatory scheme. If implemented, I believe they would go a long way towards protecting investors and still allow emerging growth companies to find new investment capital.

Suggested Rule #1: Classify Offerings By Type

To simplify the process for novice investors, and pursuant to its rulemaking powers under §302(b) of the JOBS Act, the Commission should require crowdfunding intermediaries to classify offerings by type. Upon a subjective analysis of the issuer, all offerings should be classified as either Basic Equity (Category I), Basic Corporate Bond Indenture (Category II), or Alternative Securities (Category III).[3]

Category I is exclusively for equity offerings by issuers who possess the most basic of corporate forms. At a minimum, all issued shares must grant the beneficial

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[1] Eaglesham, Jean. "Crowdfunding Efforts Draw Scrutinty." The Wall Street Journal, January 18th, 2013. Page C1. *("Regulators are scrutinizing about 200 websites set up by entrepreneurs to profit from a more lenient law on the sale of shares in small companies." )* Available online at: http://online.wsj.com/article/SB10001424127887323783704578247380848394600.html

[2] JOBS Act, preamble. *("To increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.")*

[3] JOBS Act, §302(b), amending the Securities Act of 1933 by adding §4A(a)(12). *("Requirements on Intermediaries.- 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) shall...meet such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.")*

owner the right to vote for directors, the right to vote on major corporate transactions, the right to receive declared dividends, and preemption rights on any subsequently issued shares. Furthermore, Category I issuers must be single-class stock entities (i.e., owned entirely by common shareholders).

Category II is exclusively for traditional corporate bond issuances. These securities will grant the beneficial owner a contractual right to receive the par value of the bond at maturity, plus semi-annual interest payments. Category II is limited to long-term, non-convertible debt.

Category III is a catch-all category for offerings that do not possess the characteristics of Categories I and II. Examples of Category III offerings will include: equity offerings by dual-class stock issuers; stock susceptible to dilution; short-term debt; convertible debt; securities backed by future streams of income; limited partnership interests; and offerings for single-purpose ventures (such as the production of a motion picture or the recording of a music album).

The goal of the classification system is to make it easier for investors to understand the different kinds of offerings. By giving investors a preliminary analysis of each offering, investors are clued-in on what investments are orthodox in structure (Category I and Category II), and what investments require further review (Category III). The labels will give unsophisticated investors an easy starting point, and will alert all investors to the complexity in the Category III offerings.

A potential downside to classifying offerings is that novice investors may mistakenly assume that the simpler offerings (Category I and Category II) possess less risk. To prevent such confusion, the intermediary must warn investors that the classification is not a financial indicator. It needs to be made clear that the offerings are not classified by their risk but rather by their type (i.e., by the legal rights that attach to the beneficial owner of each security in the offering).

It will be equally important to properly educate investors as to the significance of a Category III classification. By separating more complex offerings from simpler ones, we may inadvertently assign a negative connotation to the complex offerings. It needs to be stressed to investors that Category III offerings are labeled as such because they are slightly more sophisticated, but do not necessarily carry greater risk.

Suggested Rule #2: Standardize the Number of Shares Outstanding

In conjunction with the mandatory labeling requirement, and in an effort to further assist novice investors, the Commission should, pursuant to §302(b), require that all equity issuers possess the same number of shares outstanding. If all the crowdfunding stock issuers have the same number of shares outstanding, then investors can easily compare the ownership ratio, earnings-per-share, and price/earnings ratio between issuers. Such simplification will lead to smarter investor decisions and a more efficient market. (The exact number to be the standard is arbitrary, however I would suggest setting it at 1,000,000 [One Million]).[4]

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[4] JOBS Act, §302(b), amending the Securities Act of 1933 by adding §4A(b)(5). *("Requirements for Issuers.-For purposes of section 4(6), an issuer who offers or sells securities shall...comply with such other requirements as the SEC may, by rule, prescribe, for the protection of investors and in the public interest.")*

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The only drawback to standardizing the number of shares outstanding is that it will restrict issuer's organizational freedom, possibly leading to administrative costs in amending its articles of incorporation to meet the share threshold. However, I believe the rule's benefit to the marketplace will greatly outweigh the comparatively minuscule inconvenience this will have on issuers.

Suggested Rule #3: Require Specificity in the Purpose and Intended Use Disclosure

I believe that the most important part of the crowdfunding offering is the requirement that the issuer state the purpose and intended use of the offering proceeds. The decision to go public is a very radical step for a company and should not be made lightly. Even the skeleton requirements under the statute commit the issuer to considerable disclosure and reporting obligations, compounded by potentially crippling liability for a material misstatement or omission. The purpose and intent disclosure is therefore crucial because it forces the issuer to state why, given the regulatory headaches, going public is the best way to grow the company.[5][6][7]

Pursuant to its power under §302(b), the Commission should mandate that issuers be specific and detailed when disclosing the purpose and intended use of the offering proceeds. The explanation should: state how the issuer arrived at the offering target; include an itemization of expected expenses within the intended use of the proceeds; provide a contingency plan for the use of the proceeds should circumstances change; and state what will be done with any leftover proceeds upon completing the intended use.[8]

Furthermore, I urge the Commission to deny any exemption that does not present a clear and convincing business justification for going public. My apologies for stating the obvious, but it is important that crowdfunding be limited to fundamentally sound companies led by honest management. This is especially true during crowdfunding's infancy. If the issuer is incapable of providing a logical and coherent strategy for the use of the offering proceeds, then they should not have access to the public capital markets.

Suggested Rule #4: Plain English Rule

The Commission should require that all crowdfunding disclosures be written in plain English, in the style advocated by your handbook.[9]

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[5] Id., §4A(b)(1)(E). *("Requirements for Issuers.-For purposes of section 4(6), an issuer who offers or sells securities shall...file with the SEC and provide to investors and the relevant broker or funding portal, and make available to potential investors...a description of the stated purpose and intended use of the proceeds.")*

[6] Id., §4A(b)(4). *("Requirements for Issuers.-For purposes of section 4(6), an issuer who offers or sells securities shall...not less than annually, file with the SEC and provide to investors reports of the results of operations and financial statements of the issuer...")*

[7] Id., §4A(c)(2)(A). *("An issuer shall be liable in an action...if the issuer...by the use of any means...in interstate commerce....makes an untrue statement in the offering or sale of a security in a transactions exempted by the provisions of §4(6).")*

[8] Id., §4A(b)(5).

[9] Office of Investor Education and Assistance, U.S. Securities and Exchange Commission. "A Plain English Handbook. How to create clear SEC disclosure documents." Available online at: http://www.sec.gov/pdf/handbook.pdf

I hope that my comments are helpful to the Commission as it lays out the rules to crowdfunding.

Respectfully yours,

John P. Williams, Esq.