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January 30, 2014

Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
VIA EMAIL: rule-comments@sec.gov

Re: File No. S7-09-13, Release Nos. 33-9470; 34-70741
Comments regarding Proposed Rules on Crowdfunding
Title III, The JOBS ACT

Dear Ms. Murphy:

First: a compliment. Although there has been a great deal of criticism relating to the specifics of the proposed rules and their extensive breadth, the Commission has done an admirable job of developing a framework for Title III of the JOBS Act which is true to the law itself. Of course this has been an enormously complicated undertaking. It is an ongoing challenge resolving the tension between unlocking capital while ensuring transparency.

However, we must remember that less than 20 years ago, a small Internet start-up named eBay successfully convinced us that people could trust each other when paying for auction items – payments made for a product sight unseen and to a stranger somewhere around the world. A person's character is now judged by each and every transaction, and eBay proved that while fraud could never be eliminated. But fraud is disappearing in a world where trust is earned one online transaction at a time.

A great number of comment letters have already been submitted, focusing on various parts of the hundreds of pages of proposed rules. But there is one area of particular concern: what happens the "day after"?

Last year, I wrote the book *Equity Crowdfunding: Transforming Customers into Loyal Owners.* There is widespread opinion that equity crowdfunding will be a powerful tool to raise funding for start-up businesses. However, my belief is that crowdfunding is a great opportunity for profitable local businesses. Equity crowdfunding turns customers into super-customers, becoming marketing evangelicals that help drive revenue. In exchange, investors will receive dividends, their share of the profits which hopefully increase over time due to the new enthusiasm for their company. With that backdrop, I have thoroughly reviewed the Commission's proposed rules.[1] And while I obviously have opinions about many aspects of the proposed rules, I focus my comments on this one relatively narrow area.

Of significant concern is the proposed requirement, found nowhere in the JOBS Act itself, that issuers raising more than $500,000 must have an audit performed each and every year moving forward.[2] Because of the transaction costs associated with raising equity crowdfunding, I posit that nearly all of the successful rounds of funding will be in this $500,000+ category. However, the ongoing cost of annual audits is such a significant deterrent that it needs to be reconsidered prior to the finalization of the rules.

So consider a successful company; one generating a return of 12% on capital. Most investors would be satisfied with a return that is considerably greater than the average return provide by public companies. Using the mid-point of $750,000 total investment, a 12% return on capital would mean $90,000 annually to those investors. But using the rough estimate of $30,000 per audit[3], this means that fully 1/3rd of the investors return would be eaten up by an audit – every single year. This audit is in addition to whatever other compliance costs come along with the annual reporting requirements.

In short, requiring an officer's signature under the penalty of perjury, indicating that the financial statements provided to the Commission and the investors are true and correct, is sufficient to promise punishment where fraud exists. And it prevents a solid return

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[1] I am also the CEO of Cricca Funding, LLC. More information about our crowdfunding advisory services and commentary are available at www.criccafunding.com.

[2] *See* Crowdfunding; Proposed Rules, Release Nos. 33-9470; 34-70741 ("Proposed Rules") at p. 92-3; §227.202 *(referencing* §227.201(t)).

[3] The proposed rules estimates the amount to be $28,700 which may be on the conservative side for a restaurant, car wash, landscaping company or other local business which has extensive operations and cash flows. *See generally* Proposed Rules at p. 368.

from being greatly depleted because of the existence of a rule that is nowhere to be found in the law.[4]

Next, I have great concern about requiring publication of an issuer's financial reports on the company's website[5]. Certainly there is no disagreement that this information should be public. The proposed rules contain the commonsense requirement that a Form C-AR be filed and accessible online through EDGAR. It is unquestionably reasonable for the public to be able to easily access these reports, and it is paramount that prospective investors in the secondary market can receive this information.

To comply with the law's mandate that the investors receive these reports, an issuer can be required to provide that information directly. A company could utilize one of many alternative methods. For example, the rules could require that the issuer provide the report via email, on a website that is password protected with the login information distributed to investors, or simply by mailing using first-class mail to the investor's preferred mailing address.

The idea that financial information is going to be prominently displayed on a company website is distasteful. Whether the company is having an up or down year, this information is irrelevant to the 99% of the visitors to their website. While looking for hours of operation, key employee bios and contact information, web visitors should not be instantly privy to financial information simply because the company at some distant point in the past utilized Title III.

And the resulting impact would be unfortunate. Companies that are extremely successful may be tempted to redeem their crowdfunders ownership interest just to avoid publishing information right on their website. Or worse, companies that may be suffering from short term issues may have less customers because of the publication of the information – resulting in a deadly sales tailspin.

The Commission would be correct to require that financial reports be distributed to crowdfunders (at least to those that the issuer has current contact information). Publication on the web through EDGAR is a must. But it is counter-productive for those financial statements to be on the issuer's website. Just like publicly traded companies

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[4] Section 4A(b)(4) requires financial statements to be filed at least annually pursuant to rule of the Commission. It does not intimate that these financial statements should be audited or reviewed. To the contrary Section 4A(b)(1)(D), explicitly references audited and reviewed financial statements depending on the size of the offering.

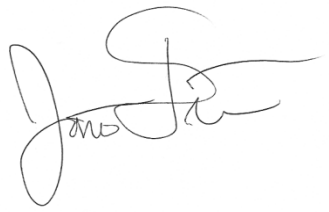
[5] *Proposed Rules* at p. 94.

now, information should be obtainable. However, forcing financial reporting on an issuer's main website is a mistake.

Although not required by the proposed rules, the Commission should carefully monitor the necessity of requiring crowdfunded companies to engage the services of a registered transfer agent.[6] Although for some companies it may not be problematic, one can imagine the mayhem that could be created once hundreds (and sometimes thousands) of new investors are trading stock on some secondary markets. The mechanisms for tracking capitalization tables (and investor contact information) are available for more sophisticated and organized business managers. But it is potentially a disaster where the company would be unable to pay dividends or make distribution of assets after selling or dissolving the company.[7]

I join with the incredibly energetic people who are actively involved in the equity crowdfunding community in offering our help. We all recognize that rule-making and enforcement cannot happen in a vacuum. And I remain available to provide further information and opinion to the Commission as crowdfunding becomes a commonly used tool to help grow and promote American business.

Sincerely,



Jonathan Frutkin

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[6] *Proposed Rules* at p. 145.

[7] The Commission has expressed concern that because of the secondary market, the company may not know the identity or email address of the investors. *Proposed Rules* at p. 94-5. Ultimately, the issuer needs to know who owns the shares. The portal or broker could give this information to the issuer and/or its transfer agent upon closing. Any transferring shareholder could certainly be required to communicate the new contact information to the issuer.