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Housing Finance & Regulatory Affairs

David L. Ledford
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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number S7-09-13

Crowdfunding; Proposed Rules

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

Dear Ms. Murphy,

On behalf of the National Association of Home Builders (NAHB), I appreciate the opportunity to submit comments on the Security and Exchange Commission's (SEC) proposed regulation on crowdfunding to implement the requirements of Title III of the Jumpstart Our Business Startups Act.

NAHB is a Washington-based trade association representing more than 140,000 members involved in all aspects of single-family and multifamily residential construction. NAHB and its members have a strong interest in creating opportunities to access capital for the financing of residential construction activities.

Background

Crowdfunding provisions were included in the Jumpstart Our Business Startups (JOBS) Act, which was adopted in April 2012. The JOBS Act was intended to help startup companies and small businesses raise capital. Among other provisions favorable to small companies, the JOBS Act facilitates equity crowdfunding by allowing for a wider pool of small investors with fewer restrictions than were in place under the existing securities statutes and to permit internet-based platforms to facilitate the offering and sale of securities.

The SEC has oversight over the regulations that govern these securities transactions. On Nov. 5, 2013 the SEC released a proposed rule to implement the crowdfunding provisions of the JOBS Act, under Section 4(a)(6) of the Securities Act of 1933.

Proposed Regulation

As provided in the statute, the proposed rule provides an exemption from the registration requirements of the Securities Act, under new Section 4(a)(6), for certain crowdfunding transactions that must meet the following criteria:

- The issuer of the security may sell up to $1 million of securities in a 12-month period.

- The aggregate amount sold to an individual investor does not exceed the greater of: $2,000 or 5 percent of an investor's annual income or net worth, whichever is greater, if both the annual income and net worth are less than $100,000; or 10 percent of investor's annual income or net worth, if net worth or annual income is above $100,000. The amount cannot exceed $100,000 in any 12-month period.

    - The proposed rule outlines the calculations for annual income and net worth; allows issuers to rely on the intermediaries to determine the aggregate amount of securities obtained by investors; and sets forth that the rules apply to all investors.

- Transactions must be conducted through an intermediary that is registered as a broker or is registered as a "funding portal."

The proposed rule lays out very specific disclosure and reporting requirements for the issuer, including:

- Name, address, web address
- Names of directors and officers, including their position, length of time with the company, business experience, other employment
- Names of owners (20 percent or more equity)
- Information on the business, including: description, number of employees, material factors, capital ownership structure, financial statements
- Target offering amount, pricing and other terms
- Standard description of the offering process, including right to cancel and notifications
- Information on prior offerings and the intention of further offerings
- Financial condition of the issuer, including historical performance, projections and any outstanding debt
    - For target offerings of $100,000 or less, issuers income tax return and financial statements, certified by the principal executive officer
    - For target offerings between $100,000 and $500,000, financial statements reviewed by an independent public accountant
    - For target offerings of $500,000 or more, financial statements audited by an independent public accountant
- File progress reports at certain specific intervals
- File amendments to disclose any material changes

In addition, the proposed rule includes ongoing reporting requirements that the issuer must file, such as annual reports, along with specific rules on advertising and compensation of persons promoting the offering.

The proposed rule defines and provides specific requirements for intermediaries and funding portals.

Intermediaries must be registered with the SEC, be a member of the Financial Industry Regulatory Authority (FIRA) or another applicable association, may not have a financial interest in the issuer or receive an ownership stake, and must take certain steps to reduce risk of fraud, cannot facilitate a securities sale until the issuer opens an account with the intermediary and provides certain information. The intermediary must accept and make public information from the issuer; must obtain certain information to ascertain the qualifications of the investor; must facilitate electronic communications; and manage the completion of offerings, cancellations and reconfirmations.

Funding portal must also register with the SEC and, in general:

- Cannot offer investment advice; solicit purchases, sales or offers to buy the securities offered on its platform; or compensate employees for such sales
- May establish objective criteria to the securities offered on its platform
- Can provide communication channels between issuer and investor, but may not participate in these communications
- Cannot offer advice or compensate any third-parties for referring issuers/investors to the platform
- Must develop written policies regarding money-laundering, privacy, inspections and examinations
- Manage record keeping for specific time periods

The rule also addresses limits on investors, disqualification provisions and other issues.

Economic Benefits of Home Building

Housing is an important source of economic growth. As of the third quarter of 2013, housing's share of gross domestic product (GDP) was 15.6 percent, with home building yielding 3.2 percentage points of that total. Home building generates substantial economic benefits. NAHB estimates that constructing 100 typical single-family homes generates: 305 jobs; $14.5 million in wages; $8.6 million in business income; $6.6 million in federal income tax revenue; and $2.3 million in state and local taxes and fees.

The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, and contribute significantly to the nation's economic growth is dependent on home builders' access to affordable credit. NAHB members are poised to contribute to a strong economic recovery, but are facing a tight lending environment. Small to mid-size home builders, who have traditionally relied on financing from banks to acquire land, develop lots and build homes, continue to have difficulty funding their home construction activities and need alternative sources of capital.

AD&C Financing

Acquisition, development and construction (AD&C) financing is required to purchase land; develop home lots; install infrastructure such as streets, curbs, sidewalks, lighting, and sewer and utility connections; and build homes on the improved lots.

Commercial banks and savings and loan institutions have traditionally provided the lion's share of housing production credit for the residential construction industry and NAHB members. But even as housing markets recover across the country, financial and regulatory constraints are preventing these lenders from providing the amount of credit that would be typical given current economic conditions. NAHB estimates that bank lending for 1-4 unit home building is down 79 percent from mid-2008.

Because of this shortfall of credit from traditional builder funding channels, NAHB members are seeking alternative sources of financing for all aspects of business activities. Crowdfunding could be a source of capital for small to medium-sized builders. NAHB members are predominately small businesses: 85 percent of NAHB's builder members build less than 25 homes per year and 83 percent of NAHB builder members generate revenues of less than $5 million per year.

NAHB Comments

NAHB views crowdfunding as an exciting new opportunity to raise capital for home building projects. NAHB urges the SEC to develop regulations that are workable for small to mid-sized business, such as home builders, remodelers and other housing market participants.

NAHB appreciates the steps that the SEC has taken to address the need to protect investors while providing opportunities for small businesses to access capital through a new financing tool. However, NAHB believes that the proposed rule's intense focus on investor protection does not follow the intent of Congress to ease capital access for small businesses. NAHB feels a more appropriate balance can be achieved. NAHB urges the SEC to take into consideration the comments submitted by the Small Business Administration's Office of Advocacy (Advocacy) and to address Advocacy's concerns with the cost of the proposed rule on small entities.

According to its comment letter, Advocacy expressed concern that the Initial Regulatory Flexibility Analysis (IRFA) contained in the proposed rule does not adequately describe the costs of the proposed rule on small entities, and the IRFA does not set forth significant alternatives which accomplish the stated SEC objectives and which minimize the significant economic impact of the proposal on small entities. NAHB concurs with Advocacy's recommendation that the SEC republish for public comment a Supplemental IRFA before proceeding with this rulemaking and take into consideration small business representatives' suggested alternatives to minimize the proposed rule's potential impact.

Thank you for your consideration of NAHB's comments. If you have questions, please contact Jessica Lynch, Assistant Vice President, Housing Finance & Regulatory Affairs at [redacted] or email at [redacted].

Sincerely,

David L. Ledford

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Housing Finance & Regulatory Affairs