



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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February 3, 2014

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NW
Washington, DC 20549

Re: **Crowdfunding; 17 CFR Parts 200, 227, 232, 239, 240 and 249; Release Nos. 33-9470; 34-70741; File No. S7-09-13; RIN 3235-AL37**

Dear Ms. Murphy:

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation, representing the interest of more than 3 million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC welcomes this opportunity to comment on the Securities and Exchange Commission’s (“SEC”) proposal to carry out Title III of the Jumpstart Our Business Startups Act (“JOBS Act”) to permit Crowdfunding (“proposed Crowdfunding regulations”).

The CCMC supports Crowdfunding as a novel means to provide small businesses with the resources needed to grow compete, and if successful, become large businesses. Crowdfunding is an example of the innovation that has provided the United States with the world’s most diverse capital markets and successful economy. While Crowdfunding will provide new opportunities for retail investors to engage with the capital markets, the CCMC also believes that strong investor protections are needed to provide a level playing field grounded in certainty. The CCMC also has concerns that the financial reports envisioned by the proposed Crowdfunding regulations will not provide the decision-useful information needed by crowd-funders and place burdens on businesses contrary to the intent of the JOBS Act and the Blue Ribbon Panel on Standard Setting for Private Companies (“Blue Ribbon Panel”).

Our comments are listed in greater detail below.

Background

Crowdfunding is an evolving method of raising capital that has been used outside of the securities arena to raise funds through the Internet for a variety of projects ranging from innovative product ideas to artistic endeavors like movies or music. Title III of the JOBS Act created an exemption under the securities laws so that this type of funding method can be used to offer and sell securities. It also created a new entity—a “funding portal”—to allow Internet-based platforms or intermediaries to facilitate the offer and sale of securities without having to register with the SEC as brokers.

Consistent with the JOBS Act, the proposed rules would permit individuals to invest subject to certain thresholds, limit the amount of money a company can raise, require companies to disclose certain information about their offers, and create a regulatory framework for the intermediaries that would facilitate the Crowdfunding transactions. Specifically, a company would be able to raise a maximum aggregate amount of \$1 million through Crowdfunding offerings in a 12-month period. Investors, over the course of a 12-month period, would be allowed to invest up to: (1) \$2,000 or 5 percent of their annual income or net worth, whichever is greater, if both their annual income and net worth are less than \$100,000; or (2) 10 percent of their annual income or net worth, whichever is greater, (not to exceed \$100,000 during the 12-month period) if either their annual income or net worth is equal to or more than \$100,000.

Securities purchased in a Crowdfunding transaction could not be resold for a period of one year and holders of these securities would not count toward the threshold that requires a company to register with the SEC under Section 12(g) of the Exchange Act.

Companies ineligible to use the Crowdfunding exception under the proposed rule would include: (1) non-U.S. companies; (2) companies that already are SEC reporting companies; (3) certain investment companies; (4) companies that are disqualified under the proposed disqualification rules; (5) companies that have failed to comply with the annual reporting requirements in the proposed rules; and (6) companies that have no specific business plan or have indicated their business plan is to engage in a merger or acquisition with an unidentified company or companies.

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For companies that are eligible for the exception, the proposed rules would require companies with Crowdfunding offerings to make certain disclosures to the SEC and provide this information to investors, potential investors, and relevant intermediaries. These disclosures would include: (1) information about officers and directors as well as owners of 20 percent or more of the company; (2) a description of the company's business and the use of proceeds from the offering; (3) the price to the public of the securities being offered, the target offering amount, the deadline to reach the target offering amount, and whether the company will accept investments in excess of the target offering amount; (4) certain party-related transactions; (5) a description of the financial condition of the company; and (6) financial statements of the company that must typically be accompanied by a copy of the company's tax returns or reviewed or audited by an independent public accountant or auditor. All companies with a Crowdfunding offering would additionally be required to file an annual report with the SEC and provide the report to investors.

With respect to Crowdfunding exchanges, the proposed rule requires that covered transactions take place through an SEC-registered intermediary, whether a broker-dealer or a funding portal. In addition to facilitating the offer and sale of crowdfunded securities, these intermediaries would be required to: (1) provide investors with educational materials; (2) disseminate information about the issuer and the offering; (3) provide communication channels to permit discussions about offerings on the platform; and (4) take measures to reduce the risk of fraud. The proposed rules would also prohibit funding portals, in particular, from doing any of the following: (1) offering investment advice or making recommendations; (2) soliciting purchases, sales, or offers to buy securities offered through the portal; (3) imposing certain restrictions on compensation for solicitations; and (4) possessing or handling investor funds or securities.

Discussion

1. Investor Protections

The CCMC believes that the proposed Crowdfunding regulations should be the same for all investors and not a multi-tier regulatory system for investments of \$500 or \$250 and below. Such a multi-tier system will create confusion for investors and

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regulators alike, and ultimately harm companies by increasing burdens and creating an uneven playing field. Such a multi-tier system sets a dangerous precedent and may create a chilling effect on Crowdfunding as a capital raising device harming both investors and businesses.

Furthermore, the CCMC believes that the SEC must provide certain safeguards to allow Crowdfunding to achieve its potential.

First, the CCMC believes that appropriate investor protections must be put in place to prevent fraud, provide certainty to investors, and establish processes to facilitate investment and investor confidence. Reasonable expectations must be established that investors bear a risk of loss and reap the benefits of potential returns, and that the possibilities of fraud are reduced as much as possible.

Second, transparency and disclosure of information are paramount to informed decision-making by investors and must be established for Crowdfunding to be a reliable source of capital for small businesses. Having the appropriate disclosures of the company and associated investment risks will provide clarity and confidence to investors.

Third, the SEC believes that oversight and monitoring are essential to insure that appropriate levels of investor protection are achieved and that Crowdfunding is an efficient means of capital formation for start-ups.

The CCMC recognizes that the SEC shares many of the same concerns and discusses in the release the need for monitoring of activities after the proposed Crowdfunding regulations have been finalized. The CCMC believes that a monitoring process should be built into the regulations to ensure a thorough review takes place and for changes to be made if necessary to protect investors and promote Crowdfunding as an efficient means of capital formation. Accordingly, the CCMC recommends that the SEC conduct a review two years after the proposed Crowdfunding rules are promulgated. In addition to assessing if these goals have been achieved, the SEC can identify unforeseen consequences and make any necessary changes to address them.

Furthermore, Crowdfunding is an important means of re-engaging retail shareholders as direct participants in America's capital markets. Balanced investor protections and clear rules of the road will give retail investors the certainty and confidence to be Crowdfunders. As the CCMC has been a strong proponent of retail

shareholder rights, we believe that the two year retrospective review proposed above can also be another means for the SEC to explore giving retail shareholders the same tools as institutional investors and allow them to be more active participants in the capital markets and facilitating capital formation for businesses.¹

2. Accounting rules

The proposed Crowdfunding regulations would have businesses that use Crowdfunding to use Generally Accepted Accounting Principles (“GAAP”) accounting in disseminating financial reports and information to potential Crowdfunding investors. The CCMC believes this is contrary to the needs of investors in small businesses and the intent of the JOBS Act.

The CCMC was a member and active participant in the Blue Ribbon Panel on Standard Setting for Private Companies (“Blue Ribbon Panel”). The Blue Ribbon Panel, after much deliberation and study, determined that financial information users for private companies, which is the same group of businesses that will use Crowdfunding, have different needs and uses of financial information than public company users. Indeed, private company financial statement users may only be interested in cash flows, or in most cases are not interested in financial statements at all, since investors may be more interested in the success of the product or idea that led to the formation of a company.

So while accounting should have GAAP as a foundation, the standards and needs of private company users will be much different and will require tailored accounting standards to meet those needs. This would require private companies to use pared down GAAP standards or exempt them from standards irrelevant to their financial statement users. This led to the Blue Ribbon Panel recommending the creation of the Private Company Council (“PCC”) to deal with private company accounting. Similarly, the JOBS Act exempted Emerging Growth Companies from new accounting and auditing standards. Both the Blue Ribbon Panel and the JOBS Act sought to have accounting fit the needs of small businesses and their investors, while relieving businesses of unnecessary costs and burdens.

¹ See letter of September 16, 2009 from the CCMC to SEC Chair Mary Schapiro on Enfranchising Retail Shareholders in the Corporate Voting Process.

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The CCMC believes that the proposed Crowdfunding regulations impose financial reporting requirements that obviate the intent of the JOBS Act, impose unnecessary costs for businesses, and fail to provide investors with decision useful information. We believe that these accounting requirements should be changed to make Crowdfunding an efficient capital formation device for businesses and opportunity for investors.

Conclusion

Thank you for considering our views on the proposed Crowdfunding regulations. The CCMC believes that constant innovation is needed for the capital markets to meet the needs of investors and businesses. Crowdfunding is such an innovation that should be nurtured for success rather than set up for failure. The CCMC believes that our concerns with the proposed Crowdfunding regulations can be addressed and that the SEC can be a proactive participant in this nurturing process so Crowdfunding can be a tool to allow capital markets to be vibrant and grow.

We stand ready to assist in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quaadman', with a long horizontal flourish extending to the right.

Tom Quaadman

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

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September 16, 2009

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Enfranchising Retail Shareholders in the Corporate Voting Process

Dear Chairman Schapiro:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing over three million companies of every size, sector, and region. The Chamber's Center for Capital Markets Competitiveness ("CCMC") works to ensure that our nation's capital markets are the most fair, efficient, and innovative in the world. The CCMC supports the recently announced commitment of the U.S. Securities and Exchange Commission ("SEC" or "Commission") to review the proxy voting system.

Although there are numerous aspects of this system to consider, increasing retail shareholder voting should be an immediate priority for the SEC and all participants in the proxy voting system. To this end, we support the implementation of the proposed Client Directed Voting ("CDV") model in which investors would be permitted to provide brokers and custodians with standing instructions on matters to be voted on at companies in which they own stock. This model can be complemented by greater use of Web-based communication tools and enhanced educational resources to engage shareholders. We believe these changes would increase retail participation in corporate voting to benefit the proxy process, corporate governance, and our capital markets.

Historically, less than half of retail shareholders vote their proxies while institutional shareholders tend to vote at a rate of 90% or more. While we have supported the use of technology to modernize the process for delivering information

to shareholders and decrease costs for companies, the Notice and Access model instituted in recent years has decreased retail shareholder participation. This trend will be further accentuated by the recent amendments to New York Stock Exchange (“NYSE”) Rule 452 that eliminated the ability of brokers to vote uninstructed shares in uncontested election of directors.

Retail shareholders generally invest in companies with an interest in building long-term growth in their investment. The necessity for this undertaking is further emphasized by the increased divergence of interests between activist investors and retail shareholders seeking long-term value in a company. There should be a level playing field between institutional and retail investors to ensure that the interests of retail investors are adequately represented, and to guard against activist investors with particular short-term agendas having an unfair advantage. The CCMC believes that a coordinated initiative, with the participation of public and private constituents, could leverage Web-based communications technology to increase retail shareholder participation in the near term.

Many reforms suggested in recent years involve several changes to the proxy system and would require SEC rulemaking that would be conducted through a deliberative process. These incremental changes would require months and years to implement. Improving retail shareholder participation can and should follow a separate and accelerated track to completion. Consistent with the other steps the SEC has recently taken in the corporate voting arena, we urge the SEC to move with the same urgency this year to provide the necessary guidance to facilitate implementation of the CDV model.

I. The Commission should provide interpretive guidance to support the Client Directed Voting model

The Proxy Working Group (“PWG”) to the NYSE studied a range of recommendations to enhance efficiencies in the proxy voting system. The PWG reviewed the CDV model in which investors would be permitted to provide brokers and custodians with standing instructions on matters to be voted on at companies in which they own stock.

Attributes of this model include:

- Brokers and custodians using standardized forms to elicit standing voting instructions from their clients on certain appropriate proposals.
- At the time of proxy solicitation each investor would receive a voting instruction form pre-marked with standing instructions.
- The standing instructions would only be applicable in the absence of specific voting instructions marked on the voting instruction form, which may override previously provided standing instructions.
- Investors would always have the ability to override the standing instructions and give different voting instruction to the broker.

There are several advantages to using the CDV model. It would certainly decrease the related time and other costs of retail participation in the proxy voting process. This would allow retail shareholders to invest a portion of time upon opening a brokerage account to set their standing instructions in accordance with their investment strategy. Shareholders could then devote additional time on a case-by-case basis should the circumstances warrant special attention.

Skeptics contend that the CDV model would dissuade shareholders from making “informed” investment decisions by allowing them to submit standing instructions in advance without full information of the matters to be voted on. In contrast, we believe that the CDV system will actually encourage participation for those retail shareholders that would vote their shares but for lack of time required to respond to multiple proxy solicitations within the allotted time frame. The CDV model would allow such shareholders to set standing instructions once and then devote additional time on a case-by-case basis to overrule prior instructions as they see fit.

We are also concerned that an “informed shareholder” standard is an overly subjective standard that would be impractical to administer. There can never be assurances that voters in any electoral process will be completely “informed” as to their favored candidate’s position on each and every policy issue. We are strongly

opposed to the SEC setting a higher “informed shareholder” standard for retail investors than for institutional investors who already rely on third party recommendations to vote their shares. Furthermore, the CDV model could also generate services and other efforts to inform investors, in the same way that third party proxy advisory services seek to inform institutional investors. Requiring different standards for retail and institutional investors would further disenfranchise the retail investor community and create greater imbalance in the proxy voting system.

II. Institution of the CDV model should be complemented by enhanced communications technology

In recent years, companies have increasingly leveraged Web-based technology to improve communications with shareholders and provide greater access to information through corporate Websites. We support these tools and believe that they can and will facilitate greater communication between public companies and their retail shareholders.

We believe that the CDV model could be complemented by additional Web-based tools to enhance the interaction between companies and their retail shareholders. Developers of these software solutions would drive innovation in a competitive marketplace to increase the effectiveness of these tools and improve the ease and efficiency by which retail shareholders analyze company information and vote their shares. These emerging tools include:

- **Shareholder forums** – A shareholder forum would serve as the central platform that supports the CDV model. Such a forum would be the hub of retail investor communication through which retail shareholders could set or change their standing instructions and access other communications or educational tools.
- **Virtual meetings** – Companies could make greater use of virtual shareholder meetings to complement their physical meeting. Annual meetings are broadcast via the internet and validated shareholders can participate in real-time.

- **Investor networks** – Investor networks could offer a forum for virtual communication between shareholders and management, directors, and validated shareholders. This could serve as a venue for discussing views and information found in company filings or events that occur between filings.
- **Educational resources** – Retail shareholders could access educational resources through the shareholder forum to inform them about their role in the proxy voting system. User-friendly tutorials could guide shareholders through the voting process and instruct them on other available tools.

III. A robust investor education initiative is needed to integrate the CDV model in the market and improve retail shareholder participation

Increased tools and resources must be complemented by a robust outreach program to educate individual investors about their role in the proxy voting system and the multiple vehicles available to facilitate their participation. In addition to recognizing the general lack of retail investor familiarity with the proxy voting system, the PWG also recommended that any changes to the proxy voting system, including the recent amendment to Rule 452, must include as a critical component a large scale education effort to inform shareholders about the mechanics of the proxy voting process.

In 2006, the PWG recommended that the SEC, the listed company community, and other appropriate groups coordinate to develop a significant investor education effort to inform investors about the proxy voting process and the importance of voting. Four years later, the need to improve retail participation has never been stronger.

* * *

The CCMC supports a holistic review of the proxy voting system and we look forward to engaging the relevant groups in this important dialogue. However, it is necessary to increase retail investor participation and ensure that the proxy voting system is working efficiently for all participants in the 21st century marketplace. To this end, we urge the SEC to move quickly this year to provide the necessary guidance to facilitate implementation of the CDV model and support and encourage other

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initiatives that will improve retail shareholder voting. The recent amendment to Rule 452 will further distort the imbalance between retail and institutional voices and it is now critical that the SEC work with deliberate speed to ensure that retail interests are not marginalized by this and other changes.

The CCMC is committed to working with the Chamber's diverse membership to provide the SEC with broad-based input to facilitate this goal. Individual shareholders can and should be enfranchised with the tools and resources necessary to adequately represent their interest in growing the long-term value of the corporations in which they invest.

We would be happy to discuss these issues further with you or the appropriate SEC staff.

Sincerely,



David T. Hirschmann

cc: The Honorable Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission
The Honorable Elisse B. Walter, Commissioner, U.S. Securities and Exchange Commission
The Honorable Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission
The Honorable Troy A. Paredes, Commissioner, U.S. Securities and Exchange Commission
Richard Hisey, President, AARP Financial Incorporated and AARP Funds, Co-chair, SEC Investor Advisory Committee
Hye-Won Choi, Senior Vice President and Head of Corporate Governance, TIAA-CREF, Co-chair, SEC Investor Advisory Committee