



February 3, 2014

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

Re: Comments of NSBA in Connection with the U.S. Securities and Exchange Commission's (SEC's) Proposed Rule: Crowdfunding, File Number S7-09-13

Dear Ms. Murphy:

The National Small Business Association (NSBA) is the nation's oldest nonpartisan small business advocacy organization, with more than 65,000 small business members in virtually every industry and state across the country. On behalf of the NSBA, I would like to submit the following comments on the U.S. Securities and Exchange Commission's (SEC's) Rule: Crowdfunding, File Number S7-09-13.

On April 5, 2012, President Barack Obama signed into law the Jumpstart Our Business Startups (JOBS) Act [Public Law 112-106], which was designed to transform the ability of startups and small businesses to access the capital they need to grow their businesses. Having strongly advocated for this legislation, NSBA was extremely pleased to see that Congress realized the dramatic impact that these provisions could have on America's small business community and quickly passed the bill. Unfortunately, the SEC chose not to follow in Congress's footsteps and act with the same urgency.

Under the JOBS Act, the SEC was required to promulgate final regulations implementing Title III (relating to crowdfunding) by December 31, 2012. However, the SEC did not even publish proposed rules until November 5, 2013. Therefore, we believe that it is highly unlikely that debt/equity-based crowdfunding (as envisioned by Congress and the many supporters of the JOBS Act) will be a viable alternative for startups and small businesses in the near future. Moreover, the regulatory impediments included in the SEC's proposed rules, such as the recommended disclosure requirements, will substantially reduce the potential impact that these provisions could have on improving small business's access to capital.

Therefore, while NSBA appreciates the SEC's efforts to promulgate regulations that could, in theory, promote and facilitate greater access to capital for America's small business community and protect and inform the average investor, NSBA believes that as currently written (and if not revised), several of the proposed provisions would unnecessarily impede both issuers and funding portals, making it more difficult for startups and small businesses to access much-needed capital.

Accordingly, in response to the SECs request for comments on its proposed rule: Crowdfunding, File Number S7-09-13, the NSBA is pleased to submit the following general comments as examples of how several of the provisions included in the proposed rule would both facilitate and unnecessarily impede small businesses' ability to raise capital.

### **Crowdfunding Exemption**

Title III of the JOBS Act was drafted and enacted to help small, entrepreneurial firms raise enough capital to expand their companies, create jobs and maintain sustainable economic growth. Any provision that unnecessarily limits the amount that an issuer can raise in reliance on Section 4(a)(6) would undermine Congressional intent and have a significant, negative impact on small firms seeking to utilize the crowdfunding exemption. Accordingly, NSBA was very pleased to see that the SEC proposed a rule that excludes amounts raised in offerings made pursuant to other exemptions when determining the \$1 million limit under Section 4(a)(6) as well as a rule that allows annual income and net worth to be calculated jointly. These are two examples of how, if not subjected to over regulation, crowdfunding could be successful.

### **Requirements on Issuers**

Similar to the above, any regulatory provision that makes it more difficult or expensive for an issuer - whether it is a compliance/disclosure requirement or a registration requirement – to raise capital in relatively small amounts from average investors should be revised accordingly to ensure that such requirements do not impede the ability of issuers to raise capital and the ability of investors to make the desired investments. For example, NSBA was not pleased to see provisions included in the proposed rule regarding the requirement that an issuer seeking to utilize the crowdfunding exemption have three years of their financial statements audited as well as the requirement that all officers, directors and those with greater than a 20% ownership stake in the businesses subject themselves to a 3-year look back provision regarding their tax returns. The aforementioned requirements, among others, would place a significant burden on small, entrepreneurial firms who are just starting out and would serve as a deterrent for those wishing to participate in such an offering and attract the talent they need to grow their companies. Accordingly, NSBA recommends significantly revising the proposed rule to address these concerns.

### **Requirements on Intermediaries**

Under the proposed rule and pursuant to the JOBS Act, intermediaries will play a crucial role in crowdfunding and as such should not be subjected to unnecessary and unwarranted regulation. If the regulations are too unclear or burdensome or the costs too high, then intermediaries will choose not to participate and the ability of issuers to raise much-needed capital from investors will coincidentally suffer. Accordingly, the SEC should also provide intermediaries with better guidance regarding the requisite

background checks they should conduct and specific educational materials that should be provided on/to investors.

### **Economic Analysis**

While NSBA appreciates the economic analysis provided by the SEC, it believes that the SEC has miscalculated the economic costs and administrative burdens associated with the proposed rule and would urge the SEC to reevaluate its analysis to more accurately reflect the financial and administrative burdens that issuers and intermediaries would have to shoulder should they choose to participate in a crowdfunding offering, pursuant to Section 4(a)(6). NSBA suggests that the SEC consider factors such as attorneys and accounting fees as well as more realistic estimates of the amount of time and money it will cost issuers and intermediaries to perform the proposed background screening and ongoing compliance requirements.

### **Conclusion**

Title III of the JOBS Act was designed to transform the ability of startups and small businesses to access the capital they need to grow their businesses. So long as the proposed rule is revised by the SEC to reflect this objective and to account for a more realistic estimate of the administrative and financial burdens placed on issuers, intermediaries and funding portals, then Congress's goal of making it easier on small businesses to raise much-needed capital will be realized. Again, we appreciate the SEC's continuing effort to formulate a rule that reflects the unique needs and limitations of small businesses and that seeks to adequately protect and inform the average investor, and look forward to working with you as this process moves forward.

Sincerely,



Todd O. McCracken  
President