

February 27, 2014

Via Electronic Mail at rule-comments@sec.gov

Honorable Mary Jo White, Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Comments on SEC Proposed Rule: Crowdfunding; Release Nos. 33.9470, 34-70741; File Number S7-09-13

Dear Chair White:

This letter will supplement my two Title III comment letters to the Commission, dated February 11, 2014, and February 20, 2014, respectively.

This commenter has recently identified a number of risks and burdens faced by a small business issuer seeking to employ the Title III investment crowdfunding regime, which could be significantly mitigated if the Commission were to follow the recommendations of both the SBA Office of Advocacy and the overwhelming consensus of the participants in the 2012 SEC Government-Small Business Forum held in November 2012, both calling for *an optional simplified Title III disclosure format to be provided by the Commission*.

The purpose of this supplemental letter is to suggest a path forward for the Commission to consider, with a view towards making available to small issuers a Commission-sanctioned optional form of disclosure.

“Crowdsourcing” the Task of a Commission-Sanctioned Optional Form of Disclosure

The undersigned is cognizant of the serious resource challenges faced by the Commission, particularly in the rulemaking area. This point was made most recently by Commissioner Gallagher on February 21, 2014, in a letter he penned and presented in a speech to the SEC Staff, at *“The SEC Speaks”* event held that day.¹ The necessity to allocate scarce resources will often impact policy direction and speed, directly or indirectly.

¹ *“An Open Letter to the SEC”*, Commissioner Daniel M. Gallagher, February 21, 2014.
https://www.sec.gov/servlet/Satellite/News/Speech/Detail/Speech/1370540834506#.Uw_GVuaYbcs.

I recognize that the Commission's current position in proposed rulemaking, to leave the disclosure burden entirely with the issuer, intermediaries and third party service providers, may have been motivated in part by a need to ration limited human resources. Regardless of the Commission's motivation, it may very well be that the initial tasking of this disclosure reform project to private bodies, who ultimately report to, and work with, the Commission, could be a decisive factor in a decision by the Commission to adopt an optional form of SEC sanctioned disclosure format.

My suggestion, therefore, and the purpose of this letter, is to encourage the Commission, in conjunction with the issuance of final Title III rules, to move forward with the formation of a task force, partnering the Commission with appropriate individuals and organizations (*e.g.* The American Bar Association, NASAA and other interested, qualified persons and groups), to develop an optional, simplified disclosure format for Title III issuers. This task force, in addition to being tasked with a defined goal, ought to be given specific deadlines.

The result of the formation of this task force would be a path forward that would neither delay implementation of final Title III rules nor place undue burden on the Staff.

There is Ample Legislative Precedent for Partnering With the Private Sector to Advance the Needs of Small Business.

The concept of government partnering with private organizations to develop and implement less burdensome securities disclosure is not new. As noted in my Comment Letter of February 11, 2014, this was *exactly* the approach taken by the states, to facilitate "SCOR" offerings under \$1 million – by partnering with the American Bar Association to come up with a simplified disclosure format tailored to the SCOR exemption. Thus, not only is there precedent, there is a track record of success. Policies embedded in 33 year old federal legislation, still on the books today, point in the same direction.

In 1980 Congress adopted H.R. 7554, the Small Business Investment Incentive Act of 1980 (the "1980 Small Business Act"). President Carter's statement which accompanied the signing of this legislation reflected its primary goal: to "facilitate the financing of small businesses by providing needed reform of the Federal securities laws."²

One of the key provisions of the 1980 Small Business Act directed the Commission to hold an annual forum bringing together interested parties from a variety of constituencies in the government and private sector.³ Perhaps, more importantly, a companion provision directed the SEC to use its "best efforts

² Jimmy Carter: "Small Business Investment Incentive Act of 1980 Statement on Signing H.R. 7554 Into Law.," October 21, 1980. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=45341>

³ 15 U.S. CODE § 80C-1 – "ANNUAL GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION":

(a) Responsibility of Securities Exchange Commission

Pursuant to the consultation called for in section 80c of this title, the Securities and Exchange Commission shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

to identify and reduce the costs of raising capital” by issuers with a market capitalization of \$25 million or less and to report on these activities annually at the Government-Small Business Forum.⁴

The Committee report by Senator Paul Sarbanes, from the Senate Committee on Banking, Housing and Urban Affairs, which accompanied the 1980 Small Business Act, is pertinent:

The Committee is cognizant of the Commission’s past and present efforts in this area [small business capital formation]. It believes this bill will aid and stimulate the Commission in continuing those efforts. *By enlisting the cooperation and expertise of other concerned organizations in the federal, state, and private sectors and by launching a more comprehensive and coordinated effort to achieve meaningful relief for this crucial segment of the nation’s economy, the Committee believes [15 U.S. CODE § 80C–1] can be of great assistance to the reduction of regulatory burdens* [Emphasis added]

Presumably, when Congress enacted this provision, it did not intend to limit the enlistment of the cooperation and expertise of concerned organizations in the government and private sector to an annual discussion of ideas. Though more was not expressly required, the intent of the statute was clear – more was certainly allowed and hoped for.

(b) Participation in forum planning

The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration, organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) Preparation of statements and reports

The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b) of this section, or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

(d) Transmittal of proceedings and findings

A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

⁴ 15 U.S. CODE § 80C–3 - **REDUCTION OF COSTS OF SMALL SECURITIES ISSUES**

(a) The Securities and Exchange Commission shall use its best efforts to identify and reduce the costs of raising capital in connection with the issuance of securities by firms whose aggregate outstanding securities and other indebtedness have a market value of \$25,000,000 or less, through such means as studies, giving appropriate publicity to improved technology developments in fields such as printing, communications, and filing, and giving special attention to the effect of existing and proposed regulatory changes upon the small companies wishing to raise capital and independent broker-dealers which are in a key position with respect to the costs of underwriting and making markets in the securities of smaller companies.

(b) The Commission shall report on these efforts at the annual Government-business forum required by section 80c–1 of this title.

As noted in my Comment Letter of February 11, 2014, proponents of an optional simplified disclosure format for Title III issuers, perhaps in a “Q and A” format, included:

The aggregate consensus of the 2012 SEC Government Small Business Forum held in November 2012.

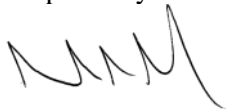
The Commission has an opportunity to put this recommendation into action, by reaching out to private organizations and placing this task initially with well qualified and highly motivated individuals and groups in the private sector. The Commission has an opportunity to not only *listen* to the overwhelming voices speaking on behalf of small business at the Forum every year – but to act on these recommendations. Presumably this is what was intended by the 1980 Small Business Act, which directed the SEC to “use its best efforts to identify and reduce the costs of raising capital” for smaller businesses and report on these events annually at the Government-Small Business Forum.

The SEC has listened – the SEC has spoken in the proposed rules and accompanying release. It is time for the Commission to seriously consider and act upon disclosure reform across the board – with “scaled disclosure” starting where it is most needed - at the lowest end of the capital formation food chain – Title III investment crowdfunding.

The winners of this initiative, if undertaken, will be small issuers, who will face a more user friendly disclosure regime and a lessened risk of liability. One would also expect a reduction of the cost to an issuer of any persons employed by it to assist in the preparation or review of the disclosure. Ultimately, I would expect the Commission to benefit as well – by being able to implement important policy reforms without unduly impinging upon its resources.

And perhaps next year, when Commissioner Gallagher speaks to the Staff at the SEC, he may very well be able to report, as a by-product of implementing an approach envisioned by Congress in 1980 (the SEC not only listening to small business constituents- but partnering with them to implement solutions) - an improvement in employee morale at the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Guzik', with a stylized flourish at the end.

Samuel S. Guzik
Guzik & Associates