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The Commissioners
Securities & Exchange Commission
Washington, DC

Dear Commissioners:

On October 23, 2013, you voted in favor of proposed "crowdfunding" rules required by Title III of the Jumpstart our Business Startups Act of 2012 (the "JOBS Act"). The proposed rules are for the purpose of regulating the offer and sale of securities under the new Section 4(a)(6) of the Securities Act of 1933 (the "Securities Act").

As one who has represented investors, most typically "Mom and Pop" as well as institutional investors, throughout my legal career spanning more than four decades (see attached firm bio), I strongly urge the Commission not to finalize the proposed rules in their present form. In that regard, I have made several recommendations which, I believe, provide appropriate and enhanced investor protection, yet not unduly hinder the legitimate ability for start-up business to raise capital efficiently and relatively cheaply.

While I truly respect the thoughtfulness and diligence the Commission has applied to drafting rules consistent with the laudable mandate of the JOBS Act and the desire to fairly balance capital formation provided for in the Act with the need to protect relatively unsophisticated investors, your efforts fall short in this latter respect.[1] The proposed rules, if enacted, will be for the principal

[1] SEC Chair, Mary Jo White, has been quoted as saying: " We want this market to thrive, in a safe manner for investors."

benefit of proponents of largely unregulated securities sales (e.g. Crowdfund Intermediary Regulatory Advocates, an industry lobbying group) and to the detriment of the broad investing public, particularly unsophisticated investors, who have had, heretofore, no practical access to the type of investments to which the proposed rules are aimed.

Risk Factors for Unsophisticated Investors

The National Venture Capital Association reports that 40% of venture capital investments fail, 40% break about even with moderate returns and only 20% have a decent to high return. "Crowdfunding" will result in connecting unproven, high-risk companies with unsophisticated investors to purchase equity in those companies. Particularly given the potential abuses that will be engendered in making relatively anonymous purchases of securities through internet portals (where there is no broker/customer relationship), it is a virtual certainty that the rules as proposed will likely lead to investors losing money.

At the outset, "crowdfunding" will appeal to those businesses or start-ups deemed too small or risky to attract funding from investment banks or venture capitalists which, presumably, vetted the investment potential of the companies. This is not to suggest that Wall Street's vetting process is uniformly effective or even in the interests of investors. However, under the Commission's proposed rules, "crowdfunding" will attract "Mom and Pop" investors excessively vulnerable to fraud or material losses, especially with the high failure rates of start-up businesses.

The "Crowdfunding" Intermediaries

Under the JOBS Act, prospective issuers of securities must post their offerings on websites operated by brokers registered with the Commission or by "funding portals" similarly registered. Brokers and portals are to be regulated by the SEC and the largely ineffective Financial Industry Regulatory Authority ("FINRA"). While securities brokers have long been regulated, based upon media accounts, the "portals" may be virtual in nature, with little or no actual presence, competent employees or recourse.

Disclosure Requirements

Companies offering equity through "crowdfunding" will be required to

prepare a comprehensive offering statement. In addition to being filed with the SEC no later than 21 days before the first sale and must be provided to the Company's intermediary and made available to investors. The report must be posted on the issuer's website and must contain annually updated financial statements and updates to any information already disclosed by the company. The offering statement must disclose, among other things, the following: (a) information about directors, officers and owners of 20% or more of the issuer's equity; (b) a description of the issuer's business plan and the use of offering proceeds; (c) the price of the security being offered and how the valuation of the securities was determined; (d) the planned goal of the offering in terms of amount to be raised; (e) information regarding related-party transactions; (f) financial statements that are required to be certified by the issuer's chief financial officer if the offering is less than $500,000 in the preceding twelve month period and they must be audited if the issuer's offering is $500,000 or above in the preceding twelve month period; and (g) risk factors in purchasing the securities being offered. In making the offering process as simple and inexpensive as possible, the Commission provides for no real vetting process with regard to the foregoing disclosures. Moreover, given the size of most likely offerings which "crowdfunding" will encourage and the absence of real oversight, the entire process envisioned by the proposed rules has been based upon a "trust me" philosophy. It can reasonably be assumed that absent additional protections, unsophisticated investors will be "shot like fish in a barrel" by illegally motivated issuers and their confederates.

Conclusion and Recommendations

According to the Commission's former Chief Accountant, Lynn Turner:

> "Compliance checks are especially important in crowdfunding because the companies using it are unproven and risky...What we are talking about are companies that in all likelihood are not going to be winners, and they are being invested in by people who clearly don't have the expertise and financial smarts of venture capitalists...So you put those together and you are creating a real opportunity for scams and fraud and significant losses."

While "crowdfunding" is an idea whose time has come, at least according to Congress, the laudable goal of relatively simple and cheap capital raising for start-up business should not overcome investor protections under existing law. Indeed, given the largely unregulated "new frontier" of "crowdfunding,"

greater investor protection is warranted. Accordingly, in my opinion, the proposed rules need to be modified as follows:

1. The offering statement required to be prepared and posted on the website of the issuers of securities, should be provided to each prospective investor **concurrently** upon the first communication from or to such investor and should be signed by such issuers' chief executive and chief financial officers **under penalty of perjury**. This protection is particularly warranted given the inherent trust afforded "crowdfunding" intermediaries, issuers and others involved in the sale of securities, and the likely lack of effective oversight by both the Commission and FINRA.
2. There should be **mandatory and substantial fines and other penalties** for (a) **misrepresentations in and/or omissions** of material facts from the offering statement provided to prospective investors; (b) sale of securities to **unqualified investors**; and/or (c) **non-compliance with the investor verification** (discussed below) and other aspects of the securities sale process as set forth in the proposed rules. Such fines and penalties need to be substantial and mandatory because, given the likely size of most securities offerings pursuant to the proposed rules, there will be minimal or no economic incentives for victims and their attorneys to commence individual or class actions to recover damages when claims are warranted.
3. Completed and signed **Subscription Forms** should be required of prospective investors which sets forth, in summary form, the level of investment experience they possess; an acknowledgement that they have read and understand a warning prominently displayed thereupon which discloses the risks of investing in a start-up and that the entirety of their investment may be lost; the identity of any person from whom the prospective investor has acquired any information regarding the proposed investment and the percentage of their liquid net worth represented by the proposed investment.
4. Upon the receipt of the completed and duly executed Subscription Forms referred to above, as an integral part of a **verification process**, the forms should be countersigned by the broker or portal operator with a copy returned to the prospective investor. Such copies should include a statement from the broker or portal operator stating its good faith belief that the prospective investor is qualified to make the investment.
5. All **funds paid by a prospective investor** pursuant to a "crowdfunding" offering should be required to be paid solely into an

escrow account maintained for the benefit of the issuer at a United States-based clearing bank. No funds should be paid out to the issuer until it certifies in writing under penalty of perjury to such escrow bank that the offering has been completed pursuant to its terms as set forth in the offering statement and that there have been no material changes of circumstances that would render the representations in the offering statement false or misleading.

6. The Commission, because it is venturing into largely unknown investment territory in providing for mass "crowdfunding," should establish either internally or otherwise, a body to evaluate "crowdfunding" offerings and the conduct of those who sponsor them. Close oversight is needed upon the effective date of the rules to protect against non-compliance with the rules and/or other abuses and, to the extent necessary, to be prepared to commence appropriate enforcement proceedings.
7. "Crowdfunding" intermediaries, particularly "portals," as an integral part of the process by which they register with the Commission and FINRA, should be required to provide satisfactory evidence of substance, competence and recourse, as well as the ability to provide appropriate assistance to investors should it be warranted by circumstances.

Respectfully submitted,

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Enclosure

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Firm Biography

The Firm concentrates its practice in complex financial litigation internationally and, particularly, in corporate governance, banking, consumer rights and shareholder litigation. As a direct result of the efforts of the Firm and its predecessors, many millions of dollars have been recovered for defrauded investors and other persons injured by illegal corporate activities and obtained fundamental changes in corporate governance, particularly in the areas of control procedures and risk management. The Firm and its predecessors have also been responsible for obtaining a number of particularly noteworthy judicial opinions which have not only strengthened consumer and investor rights generally, but substantially aided in the prosecution of complex litigation to preserve such rights.

The Firm has served as Lead Counsel or Co-Lead Counsel for plaintiffs in major shareholder litigation including class actions pending in courts located in, inter alia, Pennsylvania, New Jersey, Indiana, New York, California and Washington, DC. In addition, the Firm represents individuals with substantial personal claims.

RICHARD D. GREENFIELD, AV-rated by Martindale-Hubbell, has been admitted to practice before the Supreme Court of the United States, various Circuit Courts of Appeals, various federal District Courts, as well as the Courts of the Commonwealth of Pennsylvania, the State of New York and the State of Maryland. Mr. Greenfield is a 1965 graduate of the Cornell Law School, where he was awarded a J.D. In addition, he has earned degrees in Accounting (B.S. Queens College) and Business Administration (M.B.A. Columbia University Graduate School of Business).

Mr. Greenfield is thoroughly experienced in banking, securities and consumer litigation, having served as Lead or Co-Lead Counsel for plaintiffs in shareholder class and derivative actions alleging violations of the federal securities laws and/or breaches of corporate governance standards, in class actions brought on behalf of trust beneficiaries against major trustee-banks as well as in a wide variety of banking and consumer fraud cases. Mr. Greenfield founded and was Senior Partner in a 48 lawyer Pennsylvania-based law firm that specialized in such litigation; it was disbanded in 1993. He founded, with other lawyers, what became a 12 lawyer firm which disbanded upon the formation of his present firm in 1999.

Mr. Greenfield has achieved national and international recognition for his achievements and, in particular, for wide-ranging litigation involving the operations of banks, including features on the British Broadcasting Corporation's Money Programme; American Broadcasting Company's Business World; a feature on litigation against banks for Radio New Zealand; front-page articles in The Wall Street Journal; a substantial article in The New York

Times; a cover story in Banker's Monthly; and profile articles in Florida Trend, The American Lawyer, Philadelphia Business Journal, The Philadelphia Inquirer, Dagens Industri (Sweden's equivalent of The Wall Street Journal), American Banker, St. Petersburg Times, United States Banker, Ft. Lauderdale Sun-Sentinel and the Palm Beach Daily News. On September 3, 2009, he appeared on the Fox Business Network, speaking on the subject of the Bernard Madoff debacle and the failure of SEC and FINRA oversight. He is often sought by the business and legal media for comment on a wide variety of corporate, securities and shareholder rights topics and has been frequently quoted in every major business and law newspaper and periodical. In 1989, he was selected by The National Law Journal as one of 50 lawyers under the age of 50 who achieved national recognition for their professional accomplishments. In 1991, he was selected by The National Law Journal as one of the nation's 100 most influential lawyers.

Mr. Greenfield has been a periodic member of the faculty of the Practising Law Institute and has participated as a lecturer and panelist most recently in the programs New Trends in Securities Litigation as well as PLI's Securities Litigation Institute. He has also been a guest speaker at the Annual Meeting of the Conference of Actuaries in Public Practice held in Seattle, Washington, where he presented a paper entitled The Noose Tightens - Disclosure of Pension Liabilities Under The Federal Securities Laws, which was subsequently published. He has addressed Annual Conventions of the Association of Trial Lawyers of America and numerous programs of ALI-ABA and the Litigation Section of the American Bar Association, where he has spoken on various topics including class actions, securities fraud litigation, corporate governance, discovery in commercial litigation, attorneys fees and RICO litigation against accountants and lawyers, among others. He has been a guest speaker at programs of the state bars of Pennsylvania, Minnesota and Georgia and by other sponsors including, *inter alia*, The Commonwealth Club of California, Executive Seminars, Prentice-Hall, etc. He has been invited to speak on complex litigation and class actions at a retreat of one of the nation's largest defense-oriented law firms. More recently, Mr. Greenfield was a guest speaker at The Palm Beach Round Table, where the topic of his remarks was Corporate Kleptocracy – The Failure of Corporate Governance. He has also been a featured speaker in February and July 2005 and July 2006 at ALI-ABA programs in New Orleans, San Francisco and Chicago, where he spoke on the representation of beneficiaries in litigation against corporate fiduciaries.

Consistent with his speaking on topics relating to corporate governance, in September 2008, Mr. Greenfield was invited to and made a presentation to the Boards of Trustees/Directors of a group of mutual funds with $69 billion in assets entitled: "How to Avoid Being Sued by Your Shareholders," focusing on fee fairness, breaches of fiduciary duty and risk management.

Mr. Greenfield was a lecturer on bank fraud litigation at the Eighth Annual Banking Law Institute sponsored by the Texas Tech School of Law in Houston, and on securities litigation at the Minnesota Institute of Legal Education's annual "Lying, Cheating and Stealing" Seminar in Minneapolis. He has organized and presented a program on Federal Class Actions for the Federal Bar Association. He has been the featured speaker at Institutional Investor Institute's "Spring Pension Fund Roundtable" in New York and at the Inner Circle of Advocates' Annual Meeting in San Diego. He has been a member of the Board of Advisors of the Banking Law

Review and has authored a chapter on class actions and other representative litigation in a desk book published by the New York State Bar Association entitled Federal Civil Practice, and its up-dates. He was a featured speaker at the Young Presidents Organization program on corporate litigation held in the United States Courthouse in Philadelphia presided over by the Honorable Stewart Daltzell and the Progressive Risk Management program on avoidance of shareholder litigation held in Sanibel Island, Florida. In 1996, Mr. Greenfield was a guest speaker at The International Biotechnology Conference in Philadelphia, where he spoke on the impact of the Private Securities Litigation Reform Act of 1995 and at the Pennsylvania Bar Institute's 2000 and 2001 programs where he addressed employees of the Law Department of the City of Philadelphia as well as members of the private bar on "Affirmative Municipal Litigation." He has also been a guest lecturer at the Wharton School of the University of Pennsylvania (leveraged buy-outs), Rutgers University School of Business (mergers and acquisitions) and the Temple University School of Law (shareholder derivative litigation). He has also been a guest lecturer at the University of Florida Graduate School of Business in March, 2007, speaking on the subjects of corporate governance and shareholder litigation. On February 22, 2010, Mr. Greenfield, was a guest lecturer at a Pennsylvania Bar Institute program, "Basics of Antitrust Law." In 2011, he spoke at the Coudert Institute in Florida on the topic "What Caused the Financial Crisis, Problems of Enforcement."

In July 2004, Mr. Greenfield was a guest lecturer for the Federal Financial Institutions Examination Council, the governmental training body for bank examiners of the FDIC, the Comptroller of the Currency and the Federal Reserve System, speaking on the subject of banks' conflicts of interest in the performance of their fiduciary responsibilities to beneficiaries. He has also been a Special Advisor to the Board of The Corporate Governance Institute of Florida Atlantic University. Mr. Greenfield was a guest speaker at the 24th International Symposium on Economic Crime held in September 2006 at Cambridge University in England speaking on the use of civil litigation in connection with the commission of economic crime.

Mr. Greenfield has been a member of the Editorial Advisory Board of Class Action Reports, for which he authored an article entitled "Rewarding The Class Representative: An Idea Whose Time Has Come," which appeared in the First Quarter, 1986 issue. He also authored "No More Chastity Belts: U.S. Needs Federal Corporate Code" for the Legal Times as well as many other articles for this publication and its affiliates in the American Lawyer Newspaper Group and has been a member of its National Board of Contributors. He has also written articles with respect to the fiduciary duties of financial institutions serving as trustees. He has been a member of the Federal Courts Committee of the Philadelphia Bar Association. He has also been active as Co-Chairman of the Class and Derivative Action and Securities Litigation sub-committees of the American Bar Association's Section on Litigation, and the Federal Bar Council of New York City.

Mr. Greenfield has also served as a Director of Equimark Corporation, a $2.5 billion, New York Stock Exchange listed bank holding company (prior to its acquisition) and two of its subsidiaries, Equibank (Delaware) N.A. and Liberty Savings Bank, based in Philadelphia.

Among his board memberships, Mr. Greenfield has been a Trustee or Director of the Philadelphia Museum of Art, the Hirshhorn Museum & Sculpture Garden, the Jewish Family and Children's Service of Greater Philadelphia, the Philadelphia Bar Foundation, the Public Interest Law Center of Philadelphia, American Friends of the Victoria & Albert Museum, Palm Beach Opera, the Philadelphia Festival of the Arts, HomeSafe of Palm Beach County, Inc., Florida Philharmonic, Ballet Florida, Town of Palm Beach United Way and Legal Aid Society of Palm Beach County. He has been a member of the National Committee for the Performing Arts of the Kennedy Center and the Collectors Committee of the National Gallery of Art in Washington, D.C.

MARGUERITE R. GOODMAN, AV-rated by Martindale-Hubbell, has been admitted to practice before the Supreme Court of the United States, the Courts of the District of Columbia, the Commonwealth of Pennsylvania (currently inactive), the Court of Appeals for the Third Circuit and the United States District Court for the Eastern District of Pennsylvania.

Ms. Goodman is a 1978 graduate of the Dickinson School of Law. She was on the First Place Team and won the American College of Trial Lawyers Award for Best Oral Argument at the 1977 National Appellate Moot Court Competition. She was selected for Law Review but declined for family reasons. She also holds a Masters degree in Communications from Cornell University (M.A., 1963) and a Bachelors degree from Brooklyn College (B.A., 1961).

Ms. Goodman has substantial experience in the prosecution and defense of complex commercial litigation, first with Pepper, Hamilton & Scheetz in Philadelphia, where she handled commercial, products liability, antitrust, regulatory and employment discrimination litigation. Thereafter, she was employed by the City of Philadelphia in various positions including serving as General Counsel to the Water Department and Deputy Solicitor for Enforcement, where she headed an 85-person division representing the City as plaintiff and increased its annual recovery from such litigation from $10 million to $28 million.

Following her employment by the City, Ms. Goodman became a shareholder of Kohn, Savett, Klein & Graf, P.C. in Philadelphia, where she continued her commercial litigation practice, handling class action, contract, antitrust, and construction matters. In 1991, she began a solo commercial litigation practice specializing in shareholder, derivative and consumer class action litigation.

Ms. Goodman was the principal author of "Defense of Public Liability Litigation Arising out of Nuclear Accidents," Nuclear Litigation 187 (PLI 1979), the author of Note, Adoption of Walker, 81 Dickinson Law Review 857 (1977) and the Editor and principal drafter, Newsletter, American Federation of Investors & Consumers.

Ms. Goodman has been a member of the Board of Directors of Planned Parenthood, the Florida Philharmonic, the Armory Art Center, Miami City Ballet, Town of Palm Beach United Way and Junior Achievement International.

Ms. Goodman and Mr. Greenfield are husband and wife.

ANN M. CALDWELL, formerly a partner in a predecessor of the Firm, is currently of counsel to it, has been admitted to practice before the Courts of the Commonwealth of Pennsylvania, the Third Circuit Court of Appeals and the United States District Courts for the Eastern and Middle Districts of Pennsylvania.

Ms. Caldwell is a graduate of Dickinson College (B.A. *cum laude* 1978) and of the Dickinson School of Law (J.D. *cum laude* 1984), where she was a member of the Dickinson Law Review and the Dickinson School of Law Woolsack Honor Society (top 10% of the Class).

Ms. Caldwell has substantial experience in the prosecution and defense of complex commercial litigation including shareholder derivative and consumer fraud litigation, banking and products liability cases, first with Dilworth, Paxson, Kalish & Kaufman in Philadelphia then with other firms in Philadelphia until becoming a partner in a predecessor of the Firm in 1995.

Ms. Caldwell was the principal author or co-author of a number of publications including: Note, Maressa v. New Jersey Monthly, 88 Dickinson Law Review 187 (1983) and Products Liability and Medical Devices: Diagnosis and Cure, Dickinson Law Review (1983), Defending Banks in Prime Rate Overcharge Cases Filed under RICO (Pennsylvania Bar Institute (with Edward F. Mannino and Anne Marie Kelley); Training for the New Lawyer-Preparing for, Taking and Defending Depositions, ABA Section of Litigation (1987); Ounce of prevention-Ways to Diminish Exposure to Product Liability Claims, Focus Magazine (1991); When Disaster Strikes, The Pennsylvania Lawyer (1992). She has also lectured before the ABA Section of Litigation on the topic Training for the New Lawyer (1987).

ILENE F. BROOKLER, of counsel to the firm, is a member of the New York and California bars. Ms. Brookler is a *cum laude* graduate of Brandeis University where she received a B.A. in 1989 and the Columbia University School of Law, where she received a J.D. in 1993. At Columbia, she was a Student Editor and Judge of the Moot Court Board and a staff member of the Human Rights Law Journal. Thereafter, she was an associate with, *inter alia*, two major firms, Proskauer Rose Goetz & Mendelsohn LLP and Mayer, Brown & Platt, both in New York City. During the past three years, she has developed substantial experience in the conduct of shareholder litigation.

MICHAEL I. SHAFTEL, formerly an associate in a predecessor of the Firm, is currently of counsel to it, has been admitted to practice before the Courts of the Commonwealth of Pennsylvania and the United States District Court for the Eastern District of Pennsylvania. Mr. Shaftel is a graduate of the San Francisco Art Institute (B.F.A. with honors 1980) and the Vermont Law School (J.D. 1993), where he was Note Editor of the Vermont Law Review. His responsibilities for the Firm have included extensive brief and motion drafting; conducting written discovery and depositions; drafting in-depth research memoranda and legal opinions, case evaluations and mediation statements; and managing large-scale document review

and analysis projects. Mr. Shaftel was the author of CERCLA Injunctive Orders in Chapter 11 Bankruptcy: Fresh Start or Free Ride for the Reorganized Debtor?, 17 VT. L. REV. 281 (1992).

JEFFREY B. FIRST, of counsel to the firm, is a member of the Pennsylvania bar. Mr. First is a graduate of the University of Delaware, where he received a B.S. in Business Administration in 1985, and the University of Pennsylvania Law School, where he received a J.D. in 1988. Thereafter, he was an associate with, *inter alia*, two major firms, Kirkpatrick and Lockhart in Washington D.C. and Buchanan Ingersoll in Philadelphia. Mr. First has substantial experience in the prosecution and defense of complex commercial litigation.

October 1, 2012