

Fund Democracy

March 14, 2012

BY EMAIL

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 2051

Dear Majority Leader Reid and Minority Leader McConnell,

I am writing on behalf of Fund Democracy¹ to express my support for the Capital Raising Online While Deterring Fraud and Unethical Disclosure Act of 2012 (“CROWDFUND Act”). As the Act’s title suggests, an exemption from registration requirements for very small securities offerings creates significant potential for fraud and unethical conduct. The CROWDFUND Act addresses this concern by providing significant regulatory relief to very small issuers without unreasonably compromising the investor protection provisions on which the federal securities laws are grounded and the long-term success of the U.S. securities markets has been based.

In particular, I note the substantial improvements over the crowdfunding exemption contained in Title III of the Jumpstart Our Business Startups Act (“JOBS Act”) recently approved by the House. The JOBS Act’s crowdfunding exemption, aptly referred to by Columbia Law School Professor John Coffee as the “The Boiler Room Legalization Act,”² removes fundamental investor protection measures that are essential to the successful operation of the U.S. securities markets.

Most notably, the JOBS Act would grant broker-dealers who act as intermediaries in crowdfunding offerings a *complete exemption* from registration as brokers. Such an exemption is grossly overbroad and removes an entire regulatory structure for precisely the kind of small offerings where experience has demonstrated a high risk of fraud. In contrast, the CROWDFUND Act provides a

¹ Fund Democracy is a nonprofit investor advocacy group. I am the president and founder of Fund Democracy, a securities law professor at the University of Mississippi School of Law, a Vice President with the financial planning firm Plancorp LLC, a former Assistant Chief Counsel at the Securities and Exchange Commission, and a former securities law practitioner with the law firm WilmerHale. On September 15, 2011, I testified on an early draft of the House crowdfunding exemption before the House Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs.

² Testimony of John Coffee before the before the Senate Committee on Banking, Housing, and Urban Affairs (Dec. 1, 2011).

reasonable alternative to broker registration by permitting crowdfunding intermediaries to be lightly regulated as “funding portals.” These portals would continue to be subject to essential investor protection rules while relieving them of regulation that is unnecessary in the crowdfunding context.

Furthermore, the CROWDFUND Act requires that issuers provide appropriately limited financial disclosures depending on the size of the offering, whereas the JOBS Act provides a one-size-fits-all blanket exemption from providing *any financial information* for offerings of up to \$1 million. The CROWDFUND Act also provides regulators with 21-day advance notice of crowdfunding offerings. In contrast, the JOBS Act allows for notice with the making of the first offer, at which point regulatory action will often be too late.

Notwithstanding the CROWDFUND Act’s significant improvements over the JOBS Act’s crowdfunding exemption, I remain concerned regarding the potential for fraud in crowdfunding markets. I strongly encourage the reconsideration of the \$2,000 investment limit as applied to low-income individuals and recommend that investments not exceed the greater of \$500 or 5% of income. I also encourage a thoroughgoing re-evaluation of the operation of the crowdfunding exemption in practice following the delivery of each of the SEC reports required in Section 6 of the Act.

In conclusion, I applaud the CROWDFUND Act’s reasonable balancing of the costs of raising capital for the smallest issuers, and the benefits of adequately protecting both investors and the integrity of the U.S. securities markets.

Sincerely,

A handwritten signature in black ink, appearing to read "Mercer Bullard". The signature is fluid and cursive, with a large initial "M" and "B".

Mercer Bullard
President and Founder