

December 9, 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; Comments on SEC Proposed Rule re Section 3(b); Release Nos. 34-71120; 39-2493; File No. S7-11-13

Dear Chair White:

As Washington regulators and lobbyists engage in a pitched battle, along with their proxies in Congress, and the SEC seemingly dawdles and endlessly debates issues such as preemption and the like relating to long-pending JOBS Act legislation and rulemaking, this unfortunately masks the harm inflicted on our economy and the impact on the daily lives of Americans. It also distracts from the very necessary and important focus of our government officials - as to what good can come out of revamping archaic securities laws which unnecessarily impede the flow of capital to small businesses and the communities they nourish.

Pertinent to the Commission and its pending JOBS Act rulemaking, the most recent example of this endless debate is reflected in a letter addressed to the Chair of the SEC, Mary Jo White, by the Senior Ranking Democrat on the House Financial Services Committee (HFSC), Congresswoman Maxine Waters, dated December 4, 2014, joined in by Congressman Stephen M. Lynch from the Commonwealth of Massachusetts.¹ The letter is in support of another comment letter penned by Groundfloor Inc. dated November 18, 2014,² praising the NASAA Coordinated Review Program and the virtues of a dual registration system for smaller issuers who seek to raise capital under Regulation A or the new, proposed Regulation A+.”

The last two sentences of the Congressman Waters letter are noteworthy:

¹

http://democrats.financialservices.house.gov/FinancialSvcDemMedia/file/001%20Maxine%20Waters%20letters/2014_12_04%20Waters%20Lynch%20letterto%20SEC.pdf

² <http://www.sec.gov/comments/s7-11-13/s71113-139.pdf>

“Groundfloor notes that ‘Combined state and federal registration along with the new Coordinated Review program presents a threshold that legitimate businesses can meet, while creating a disincentive for speculative and unscrupulous issuers.’ We strongly urge you to closely examine NASAA’s Coordinated Review program, and not undermine crucial investor protections by preempting the states’ regulators.”

As I expect that the Commission has already had ample commentary on the Title IV proposed rules, including three letters from the undersigned, I will not dwell on the issue of the scope of federal preemption of state blue sky laws or the relative merits of a new coordinated review program spearheaded by NASAA over the past two years. Rather I choose to address some of the very real consequences of the failure of both the Commission and Congress to act in a responsible and timely manner – both with respect to Title III crowdfunding and Title IV. Both the Groundfloor letter and the Congressman Waters letter miss the real headline: two to be exact.

The first headline graced the Wall Street Journal back in August 2014:

“Groundfloor Raises \$1M, Moves to Georgia to Crowdfund Real Estate”³

Yes, according to the Wall Street Journal Article, Groundfloor, a startup, moved from a major banking and population center, North Carolina, home to JOBS Act visionary Congressman Patrick McHenry, to Georgia, so it could take advantage of Georgia’s local crowdfunding statute.

“Groundfloor Inc., one of several startups that crowdfunds investments in real estate, raised \$1 million in seed funding and moved its headquarters to Atlanta in search of less-restrictive crowdfunding rules.

Groundfloor is moving its headquarters from North Carolina to Georgia because Georgia allows state residents to invest in crowdfunded projects even when they’re not considered accredited investors by the Securities and Exchange Commission.”

Of course, this would not have been necessary had either the Commission promulgated final rules under Title III of the JOBS Act, or had the Democratic members of the House Financial Services Committee paid closer attention to Congressman Patrick McHenry’s Title III crowdfunding “fixit” bill introduced before the HFSC Capital Markets subcommittee in May 2014 – in an attempt to undo damage inflicted by Senate Democrats back in March 2012, when they added amendments to Congressman McHenry’s original Title III bill at the behest of special interest groups such as NASAA. Yes, the same bill that was unable to garner bi-partisan support seven months ago.

Because of this inaction in Washington, D.C. investment crowdfunding in this country is dead in the waters - unable to even take its first breath, unless one is lucky enough to live in a state which allows

³ <http://blogs.wsj.com/venturecapital/2014/08/19/groundfloor-raises-1m-moves-to-georgia-to-crowdfund-real-estate/>

intrastate crowdfunding. And some day, when it does take its first breath, there are serious concerns as to whether Title III crowdfunding, borne out of flawed legislation, can flourish, let alone survive.

But there is a much bigger headline – especially for the eyes and ears of those who are today publicly expressing outrage and indignation over the plight of communities populated by disadvantaged Americans of color.

Let’s take a close look at what Groundfloor is doing today, in the City of Atlanta, once home to the Reverend Martin Luther, King, Jr., one of the greatest civil rights leaders this country has seen. According to the Home Page of Groundfloor’s Blog:⁴

“The Atlanta Police Foundation (APF) is a nonprofit organization that has partnered with GROUND FLOOR to provide affordable housing to an Atlanta Police Officer.

Through this program, the APF acquires and rehabilitates homes in target neighborhoods throughout the city. Once renovated, these homes are sold to officers, eligible for down payment and equity incentives, to purchase a home in exchange for their engagement in the community.

It’s a win for everyone. Affordable housing for local police who provide a local presence in our Atlanta neighborhoods.

We’re always thankful for safer communities.”

And where does the money come from to loan to police officers for housing in the City of Atlanta, so that they can live in, and engage with, the communities that they serve?: from intrastate crowdfunding and a Regulation A offering. Imagine what could be accomplished with a *workable* federal crowdfunding statute and regulations, and a Regulation A+ (or Regulation A) which does not require the smallest of companies to subject themselves to registration *twice* – first at the SEC and then at the states in which the investors and small business are located.

Though for whatever reason, Groundfloor applauds a dual registration system for small business, other pioneers in their industry have a less sanguine view of dealing with cumbersome, duplicative and unnecessary governmental red tape. And the co-founder of Fundrise, Ben Miller, has already testified before the House Financial Services Committee in May 2014, in support of a bill introduced by Congressman McHenry to eliminate blue sky review in its entirety for small issuers for all Regulation A/A+ offerings.⁵

Though the Silicon Valleys of this country are awash with cash, as Congressman McHenry has pointed out, there are vast capital deserts across the U.S. – which can be rejuvenated by those who have both the power and responsibility to do so. Both Title III crowdfunding and Title IV crowdfunding bring with them the potential and promise to both create jobs and rejuvenate capital deserts in the poorest of urban neighborhoods as well as outlying rural areas. This dream cannot be realized without both smart legislation and smart regulators.

⁴ <https://www.groundfloor.us/APF>

⁵ <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-bmiller-20140501.pdf>

The solutions to the problems in American communities of color, which today grace the cover of every publication and cable news show, are not “hands up” - or a hand out.

Perhaps Rodney King got it right 20 years ago when he asked the question: “Why can’t we all get along?” Hopefully our elected officials in Washington and the SEC Commissioners can answer this question in 2015 with a unified voice and a unified plan. Hopefully this can start with the members of the House Financial Services Committee putting partisan politics aside and focusing on real solutions to real inefficiencies in our capital markets. Hopefully the Commission will factor into their priorities the very real, adverse impact that their calendar and decisions have on ordinary Americans and small business – nearly three years after the enactment of the JOBS Act of 2012.

And a personal message to my fellow Californian, Congresswoman Waters. It’s time to take a page from the playbook of another Georgia resident, former Congressman Newt Gingrich, and his 20 year old “Contract with America.” It’s high time that the House Financial Services Committee come together in 2015 in a bi-partisan manner and draft a Contract with America’s Small and Emerging Businesses.

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

cc: Congresswoman Maxine Waters