February 3, 2014

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Via email and e-file: rule-comments@sec.gov

RE: File No. S7-09-13, Release Nos. 33-9470; 34-70741
Comments on Proposed Rules Title III Crowdfunding Regulations, JOBS Act

Dear Ms. Murphy:

On behalf of the Small Business & Entrepreneurship Council (SBE Council) and our nationwide membership of entrepreneurs and small business owners, thank you for the opportunity to submit comments on proposed Title III rules of the Jumpstart our Business Startups Act (JOBS Act).

SBE Council and its membership were ardent supports of the JOBS Act and the stand-alone legislation that first passed the House to make securities-based crowdfunding legal. Our members and staff spent a significant amount of time educating individual members of the House and Senate about crowdfunding, and its potential for providing entrepreneurs the opportunity to efficiently attract investment capital and unlock dormant capital. The genesis and drive behind the JOBS Act was to enact a practical solution addressing the scarcity of capital, which unfortunately persists today.

As the Commission wells knows through its regular interactions with entrepreneurs and the annual forum on Small Business Capital Formation, access to startup and growth capital remains an enduring challenge for the small business community. These challenges and barriers are exacerbated by outdated and excessive regulation. Through the JOBS Act, and specifically Title III, the SEC has an opportunity to change the regulatory and market dynamics for America's entrepreneurs. But Title III regulations, as proposed, need improvement and tailoring to make a real difference for small businesses.

As we are seeing across the country, elected officials at the state level are aggressively reforming tax and regulatory policies to improve the environment for startups and small businesses, which includes initiatives to attract capital and investment. Six states have implemented or are on the verge of passing intrastate investment crowdfunding legislation. Other states will follow in 2014. They recognize that the currently proposed federal framework will be (if enacted) too costly and complex for most small businesses. The proposed regulations on funding portals may be too impractical to enable a vibrant market. If the SEC (and, by extension, Congress) does not work to fix the complexity and burden associated with proposed Title III regulations, the market for investment crowdfunding will become highly fragmented. That means only entrepreneurs and investors who reside in the most hospitable investment crowdfunding states will benefit, and our nation's entrepreneurs will be shortchanged from experiencing the promise and full potential of a national crowdfunding marketplace.

SBE Council is hopeful that the final rules will be designed around the practical thought reflected in other areas of the proposed rulemaking, including: investor self-certification, flexibility in the offering amount, outreach/advertising, and parallel crowdfunding and Reg D offerings. Primarily, with respect to issuers, SBE Council is concerned that excessive requirements and costs will act as a barrier to accessing capital through the new funding portals. We also believe these costs and burdensome requirements, if allowed to stand, will drive the growth in intrastate crowdfunding. Quite simply, the requirements established by the states are far more user-friendly and flexible.

Costs and Burdens for Issuers: Investment crowdfunding is certainly not for all entrepreneurs. No one expected that there would be zero upfront costs associated with a crowdfunding effort. Small businesses do expect reasonable costs, and welcome the responsibility of being a good steward of investor resources. But even the SEC's own estimates show that investment crowdfunding will not be an affordable undertaking for most small businesses.

For example, the SEC estimates it will cost $6,000 to prepare and file Form C prior to a crowdfund. Extensive disclosure requirements will prove costly, as will accounting and auditing costs depending upon how much the issuer intends to raise. The SEC can learn a great deal from the states in terms of how they structured compliance and reporting requirements in establishing their regulatory frameworks for crowdfunding. To the extent possible, we would recommend that the SEC attempt to scale compliance requirements, eliminate redundant steps from Form C (and Form C-AR – anticipated SEC cost: $4,000) and reporting requirements throughout the duration of the crowdfunding campaign that would intuitively flow from the business plan, issuer "pitch" and communications with potential and actual investors.

With respect to audits, CPA reviews and accounting issues, these too will increase costs or fully prevent entrepreneurs from considering Title III crowdfunding. Other

commenters have suggested eliminating the audit requirement for raises of $500,000 and over. SBE Council concurs with that recommendation. Audits are costly. But so are CPA reviews, and the proposed requirement that financial statements be prepared in US GAAP just does not make sense for most small businesses.

US GAAP is overly complicated and burdensome for small businesses. This has long been recognized in the accounting community and is why the American Institute of Certified Public Accountants (AICPA) released new guidelines in June 2013 for small and mid-size businesses. AICPA's guidelines are tailored to reflect how small businesses operate – they are simplified, streamlined and more relevant for smaller enterprises. SBE Council strongly recommends that the SEC accept and allow for "other comprehensive basis of accounting." By asking the question about alternatives – and whether they should be allowed - we assume the SEC recognizes the complexity and burdens faced by small businesses when it comes to US GAAP. Flexibility to allow for alternatives make sense for small businesses, and will provide potential investors with the relevant information they need to assess the investment worthiness of an issuer.

A Vibrant Funding Portal Market: Several areas in proposed Title III rules need to be fixed to ensure small businesses have a choice in the funding portal marketplace. There will be very few funding portals to choose from if the SEC does not clarify liability concerns. The rules must also allow portals the discretion to vet companies that are seeking to crowdfund (as "investment advice" is prohibited in the proposed regulations.) At the same time, funding portals could be held legally responsible (as they would be considered issuers for the purpose of liability) in connection with lawsuits by investors. With the burden of proof on issuers to prove that statements were not "materially misleading" this could lead to unbridled lawsuits. In addition to greater clarity from the SEC on "burden of proof," the portals must be given the discretion to scrutinize potential issuers. This provides for a greater investor protection. The portals are required to take an active role in screening for fraud to protect investors. Why not allow them to make sure the issuers on the platform are crowdfund-ready?

As estimated by the SEC, it will cost funding portals more than $400,000 in regulatory compliance costs alone to open their doors – or their portals. Obviously, there will be extensive staff, technology and operational costs on top of this. The combined regulatory and liability risks are far too great under current proposed regulations to expect a vibrant funding portal marketplace. That means less choice for issuers, as well as higher costs. Fixing the proposed regulations to provide clarity when it comes to liability and discretion on the funding portal's part will allow for innovation, competition and accountability in the portal space. Greater choices of funding portals will benefit investors and the entrepreneurs who will be using these platforms.

SBE Council recognizes that the proposed Title III regulations stem from a complicated piece of legislation. However, the SEC was given the latitude to allow for a scalable framework that takes into account the needs of resource-constrained entrepreneurs. Entrepreneurs, and the innovators in this new space, require practical rules to allow for this new market to flourish. The intent of Congress in passing the JOBS Act was to create a new marketplace that enables entrepreneurs to better access investment capital. To lower barriers and "democratize" access. The SEC can still fine-tune proposed Title III rules – to simplify and make them less costly for entrepreneurs and small businesses - while protecting investors.

Thank you for your time and consideration.

Sincerely,

Karen Kerrigan
President & CEO

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