

September 7, 2012

By email (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: Rulemakings under Title III of the Jumpstart Our  
Business Startups Act (JOBS Act) - Crowdfunding  
Activities.**

Dear Ms. Murphy:

Set forth below are our comments related to Title III of the JOBS Act. The JOBS Act focused on increasing American job creation and economic growth, relying in part on provisions relating to securities offered or sold through "crowdfunding." As a primary focus of The LeGaye Law Firm PC is the representation of professionals in the securities industry with respect to regulatory compliance and securities law matters, we respectfully offer the comments set forth below in response to the Securities and Exchange Commission's (Commission) invitation for the public to submit comments before enabling rules for the JOBS Act are proposed. The opinions expressed herein are our own and do not necessarily reflect the opinions of any of our clients.

**1. Independent Verification of Accredited Investor Standards**

As the purpose of the JOBS Act is to encourage and support capital formation, and any requirement that imposes additional burdens on issuers or on purchasers would contravene the fundamental impetus for the JOBS Act. In setting forth the reasonable steps to be taken to verify that purchasers of the securities offered by means of general solicitation or general advertisement in Rule 506 offerings are accredited investors, the proposed rules should reflect current custom and practice. To the extent additional verification is required, we believe that the Commission should be sensitive to the legitimate privacy concerns of purchasers and to the fact that what might constitute reasonable steps may depend upon particular facts and circumstances and the applicable accredited investor category. We believe that the Commission's rules should reflect current custom and practice which take these considerations into account.

**2. Due Diligence**

We would note that while the Commission needs to carefully balance investor protection against the legislative intent of the JOBS Act to encourage and support capital

formation, the Commission rules should not impose due diligence obligations that are so structured and strict that they may be unnecessarily burdensome on small private issuers and start-up companies, and or place disproportionate due diligence costs on intermediaries engaged in crowdfunding. To this end, issuers engaged in crowdfunding offerings will operate under a distinct safe harbor provided by the new Section 4A of the Securities Act and will be required to make written disclosures and regulatory filings to this effect. Due diligence and suitability obligations for intermediaries engaged in crowdfunding activities and offerings should be structured narrowly to address the specific requirements Section 4A of the Securities Act. Intermediaries should be permitted to reasonably rely upon written representations of the issuer, its duly authorized officers and directors, and to be allowed to exercise professional judgment as to additional due diligence requirements that would address general anti-fraud provisions.

### **3. Crowdfunding Disclosure Guidelines**

The disclosures a small business must make as set forth in the crowdfunding provisions of the JOBS Act generally refer to certain minimum disclosures, such as a description of the company's business and business plan, certified, reviewed or audited financial statements (depending upon the amount of funds to be raised), use of proceeds, the past or prospective compensation received by persons to promote the offering through the intermediary's channels, the method for determining the offering price of the securities, ownership and capital structure, and risks to investors relating thereto. While helpful, these topics only indicate appropriate matters for disclosure. Because the intent of the JOBS Act is to allow small companies access to capital markets, the Commission should prepare guidelines for the respective disclosures so that issuers would not be required to expend a disproportionate amount of the funds raised on preparing a fair and balanced presentation of such disclosures.

### **4. Issuer Limitation On Portals**

Due to the issues related to the total amount of funds that an issuer may raise in any particular year, we would recommend that issuers only be able to utilize one portal at a time, or in the alternative if allowed to be on multiple portals, those portal provide investors with consolidated investment data to potential investors so that the "market" would be able to track where any issuer was with respect to capital raised to date.

### **5. Segregations of Investor Funds**

The Commission needs to issue clear guidelines on what the Commission believes to be acceptable methods of ensuring that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount. To this end, there are a number of practical issues related to this matter that the commission should address, including the type of account that would comply (i.e., would an escrow account be required, or would a segregated account with the portal, or attorney trust account suffice), and what type depository would be acceptable (i.e., bank, saving and loan, trust company, or credit union). Finally, whatever guidelines are issued, they should apply to both broker-dealers and to non-broker-dealers so that all intermediaries and portals have a level regulatory playing field.

## 6. Investor Education

Due to the potential for abuse and fraud, we would note that investor education is a fundamental issue related to crowdfunding. To assure compliance with the rules promulgated, we would note that the Commission should set forth clear guidelines regarding the obligations of both portals and intermediaries as to investor education, and provide clear and viable alternatives that can be relied upon.

## Conclusion

We appreciate the opportunity to submit these comments and your thoughtful consideration of same. Should you have any questions, please contact the undersigned at 281-367-2454.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel E. LeGaye", with a large, stylized flourish extending to the right.

Daniel E. LeGaye  
The LeGaye Law Firm, P.C.