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February 14, 2024

The Honorable Mike Johnson (R-LA)
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Steve Scalise (R-LA)
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Tom Emmer (R-MN)
Majority Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Elise Stefanik (R-NY)
Republican Conference Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Gary Palmer (R-AL)
Republican Policy Committee Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Katherine Clark (D-MA)
Democratic Whip
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Pete Aguilar (D-CA)
Democratic Caucus Chairman
U.S. House of Representatives
Washington, D.C. 20515

The Honorable James Clyburn (D-MD)
Assistant Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Crowdfund Capital Advisors Urges Congress to Support H.R. 2799, the Expanding Access to Capital Act, As Amended

Dear Speaker Johnson and Republican and Democratic leaders:

The JOBS Act of 2012 was one of the most bi-partisan pieces of legislation to come out of Congress that has considerably pumped billions of dollars into the US economy, spurred a massive amount of innovation, and created and supported hundreds of thousands of jobs. Congress should be commended for working across the aisle to put America first and pass responsible legislation promoting private capital markets, all while providing robust investor

protection. As proof, one can look to the [2023 Investment Crowdfunding Annual Report](#)¹ and [CClear](#)², which tracks all Regulation Crowdfunding offers and provides data to substantiate all those claims. It is heartening to see that all the naysayers' claims about this legislation when it passed have failed to come true. Quite the opposite, all the benefits of why it should become law have become a reality.

We³ urge you and your colleagues to pass H.R. 2799, the Expanding Access to Capital Act, as amended ("H.R. 2799"). As explained below, we strongly support H.R. 2799 because it delivers economic output, innovation, and jobs without inhibiting regulators from promoting responsible capital formation and protecting investors in their states. Title VII (the Improving Crowdfunding Opportunities Act) is designed to fortify the crowdfunding ecosystem, enhancing the framework for capital formation while upholding stringent investor protections, thereby supporting the public securities markets and ensuring that investors have diverse avenues to secure their financial future.

Before Regulation Crowdfunding became law, opponents claimed that it would "make it easier for companies to cheat investors,"⁴ or that it "sacrifices essential investor protections without offering any prospects for meaningful, sustainable job growth."⁵ Nearly eight years later, we can unequivocally state that those fears were unfounded. As proof, here are some of the highlights from the 150-page 2023 Investment Crowdfunding Annual Report.

Since the launch of Regulation Crowdfunding on May 16, 2016:

- More than 6,800 issuers across 1,800 cities in the US have filed over 8,000 offerings⁶.
There has been one case of fraud.
 - It is critical to note that the North American Securities Administrators Association ("NASAA") would have you believe that crowdfunding may lead to fraudulent

¹ Information about the report can be found here: <https://cclear.samcart.com/products/investment-crowdfunding-2023-annual-report>

² <https://crowdfundcapitaladvisors.com/cclear-inc-launches-capitalpulse-ratings-for-enhanced-analysis-of-regulation-crowdfunding-investments/>

³ CrowdFund Capital Advisors (CCA) played a pivotal role in creating Investment Crowdfunding in the U.S. by drafting and lobbying for the JOBS Act, which included Regulation Crowdfunding under Title III, fundamentally changing early-stage finance. Their founders, Sherwood Neiss, Jason Best, and Zak Cassady-Dorion, conceptualized the Crowdfunding Exemption Framework, leading to widespread bipartisan support, presidential endorsement, and enactment into law, marking one of the most significant changes in securities laws in over 80 years. CCA has globally influenced crowdfunding ecosystems, working in over 43 countries to reduce early-stage finance challenges. It has been recognized as a leading authority in the field, with its founders ranked among the top ten most influential people in crowdfunding by Forbes. Their CClear Investment Crowdfunding Database and various reports provide invaluable insights into the crowdfunding market, analyzing trends, investor participation, and economic impacts. These serve as essential tools for stakeholders across the crowdfunding ecosystem.

⁴ "JOBS Act Could Open a Door to Investment Fraud, SEC Chief Says," *The Washington Post*, March 14, 2012, https://www.washingtonpost.com/business/economy/jobs-act-could-open-a-door-to-investment-fraud-sec-chief-says/2012/03/14/gIQA1vx1BS_story.html.

⁵ [ibid](#)

⁶ Slides highlighting Investment Crowdfunding trends can be found here: <https://cclear.ai/hr2799>

activity by citing a 2014 Enforcement Report. Remember that this was before 2016 when Regulation Crowdfunding went into effect BEFORE rules were in place to protect investors. So perhaps the law Congress created did exactly what NASAA wanted: to protect investors.

- In 2023 alone, 41.7% of those issuers had at least one woman or minority founder. Compare that to VCs funding less than 2%.
 - Keep in mind there was nothing in the law to direct capital to fund women or minorities; this was a wonderful byproduct of the vastly bipartisan law that is disproportionately helping entrepreneurs in districts like Rep. Maxine Waters (D-CA), where 48% of funded issuers were women or minorities.
- Companies are spurring innovation in over 500 industries, raising over \$2.2 billion from nearly 2 million Americans.
 - Thanks to Congress and Regulation Crowdfunding, the seeds of America's future unicorns will most likely be fertilized here. Take, for example, [Boxabl](#)⁷, a company that specializes in manufacturing foldable, prefabricated homes designed for easy shipping and quick assembly to address affordable housing solutions. They began their online fundraising journey via Regulation Crowdfunding in 2020 and raised \$3.2 million from almost 1,000 investors at a \$42 million valuation. They are valued at well over \$3.3 billion in their latest round. Arguably, it was a massive success for their investors. Or consider the economic impact of Microsoft, Google, Apple, and Tesla, which were all once startups.
- Regulation Crowdfunding companies have created and supported over 310,000 jobs and are responsible for pumping more than \$6.8 billion into the economy.
 - To put it differently, enhancements you can make to Regulation Crowdfunding will likely lead to more jobs and economic output than is currently happening.
- The Bureau of Labor and Statistics states that approximately 50% of all new businesses fail within five years. However, only 17.8% of funded companies have gone out of business within Investment Crowdfunding.
 - Simply put, a strong correlation exists between successfully funded Regulation Crowdfunding companies and longevity.
- The average growth in revenue between the year an issuer was successful and the following year is an impressive 284.5%.
 - Thanks to annual reporting requirements within the law, we can track growth.

CCA Strongly Supports the Improving Crowdfunding Opportunities Act.

Crowdfunding is a financing method in which money is raised by soliciting small individual investments or contributions from many people. A company must comply with state and federal

⁷ <https://www.boxabl.com/>

securities laws to offer and sell securities through crowdfunding. Because the SEC took four years to implement the rules related to Regulation Crowdfunding (despite rumors from within the Commission that the rules were complete seven months after President Obama signed the law into effect), State legislatures and regulators were the first to enact tailored crowdfunding laws. And while NASAA might say they “did so with the twin goals of benefiting local businesses and the Main Street investors who would be asked to invest in them⁸,” they most likely did this because a) they knew the federal version of the law was coming and they wanted to be seen as being “first” and b) they didn’t want to be seen as if they didn’t care about promoting entrepreneurship, innovation, and jobs. Remember, if Congress hadn’t acted, the States wouldn’t have (proof being they did nothing of substance before the 2012 JOBS Act became law).

In addition, it is arguable that given the vast bipartisan support of Regulation Crowdfunding⁹, no ‘investor protection legislators’ would have voted in favor of a law that directs the SEC to promulgate rules to implement a path for issuers to circumvent applicable securities laws. Conversely, Regulation Crowdfunding sets forth the most prescriptive exempt offering outside of Regulation A+ (which is qualified by the SEC). It is most likely for this reason that a) there has been hardly any fraud or enforcement actions in the marketplace, b) fraudsters are deterred from the deep disclosure requirements within Regulation Crowdfunding, and c) per NASAA’s letter there are much easier ways for fraudsters to take advantage of investors¹⁰.

Regulation Crowdfunding is successful because it has built-in investor protection mechanisms, disclosure requirements that do not exist elsewhere in the securities laws, and ongoing reporting requirements that benefit investors. Some of these requirements (that don’t exist elsewhere) include all transactions under Regulation CF to occur online through an SEC-registered intermediary, which can be either a broker-dealer or a funding portal; caps on the amount companies can raise to a maximum aggregate amount of \$5 million in 12 months; limits the amount individual non-accredited investors can invest across all crowdfunding offerings in 12 months; and requires disclosure of information in filings with the SEC and to investors and the intermediary facilitating the offering.

Regulation CF stipulates specific exclusions for certain entities from participating in transactions as a measure for protecting investors. Excluded entities comprise those obligated to submit reports under Exchange Act Section 13(a) or 15(d) and investment and blank check companies. Additionally, issuers branded as ‘bad actors’ or those who have not complied with the annual reporting requirements of Regulation CF for the past two years are also barred from using this regulation.

⁸ NASAA letter to Congress. January 26, 2024. “NASAA Urges Congress to Oppose H.R. 2799, the Expanding Access to Capital Act, As Amended. P.7.

⁹ HR2930, the Entrepreneur Access To Capital Act. Approved by the House 407-17: <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=277245>

¹⁰ Ibid. P.6. Footnote.

Crowdfunding was meant to provide a means for individual investors to invest in startups or small, local businesses with the goal of those businesses returning a profit to their investors. As these businesses grow and scale, they may need additional capital. This may require the approval of investors. Given that crowdfunding can attract hundreds of investors, having a way to streamline both communication and voting was necessary. Hence, pooled investments were approved through a particular purpose vehicle (“SPV”) or fund organized to invest in or lend money to a single company. In short, without an SPV, many investors on an issuer’s capitalization table can be unwieldy and potentially impede future financing.¹¹

Recent developments in 2021 have seen the SEC open the door for specific Special Purpose Vehicles (SPVs) to partake in Regulation CF offerings. This progression came after the SEC’s revision of Rule 3a-9 under the Investment Company Act of 1940, creating a new provision that allows narrowly defined crowdfunding SPVs. These changes come with stringent conditions ensuring these SPVs function exclusively as investment conduits for crowdfunding issuers. Utilizing a crowdfunding SPV means that both the SPV and the associated crowdfunding issuer are considered joint issuers for the purposes of the Securities Act, necessitating full adherence to Regulation CF’s mandates along with other relevant securities regulations.

Regulation CF stands out in the realm of exempt securities offerings by establishing investment ceilings for non-accredited individual investors, a distinction not found for accredited investors, with the exception of Regulation A+. For non-accredited investors, these caps are calibrated to their financial thresholds: (i) the greater of \$2,500 or up to 5 percent of their annual income or net worth if either is below \$124,000 or (ii) up to 10 percent of their annual income or net worth, with a cap at \$124,000, for those whose income and net worth both meet or exceed \$124,000.

The Benefits of the Improving Crowdfunding Opportunities Act

The Improving Crowdfunding Opportunities Act would deliver economic output, innovation, and jobs without inhibiting regulators from promoting responsible capital formation and protecting investors in their states. This legislation will improve investor protection and promote tried and trusted forms of capital formation without depriving the public securities markets and the investors that rely on them of opportunities to build secure financial futures. This legislation would build upon the framework already working for Regulation CF and provide the following improvements:

1. The proposal seeks to streamline the regulatory landscape for secondary market transactions by amending Section 18(b)(4)(A) of the Securities Act. The amendment would classify any report filed under Section 4A(b), or regulations derived from it, as one that triggers the covered security status, thereby invoking federal preemption over state registration. Currently, under Section 4A, issuers and intermediaries engaged in transactions under Section 4(a)(6) are mandated to disclose specific information to both

¹¹ See SEC, [Report to the Commission Regulation Crowdfunding](#) (June 18, 2019) at 57-59.

investors and the SEC. Moreover, Section 18(b)(4)(C) already exempts offerings under Section 4(a)(6) from state registration mandates. This amendment aims to harmonize the exemption across all states by modeling it after the 'Manual Exemption,' which allows for exemption from state registration if ongoing disclosures are provided in a National Securities Manual. This unified approach would replace the inconsistent state exemptions and offer a clear, cost-effective route for issuers to keep investors informed through regular disclosures, fulfilling regulatory requirements for transparency and investor protection.

2. Revise Section 4A(c) of the Securities Act to establish that funding portals bear responsibility for fraudulent or misleading statements by issuers only if they had an active role in the fraud or failed to meet their due diligence duties. Funding portals, unlike Broker-Dealers, do not possess the authority to conduct extensive diligence on issuers. They operate primarily as listing agents, executing basic bad actor checks to maintain market integrity. However, they lack the mandate to perform deep verifications or deny issuers access based on detailed due diligence. Consequently, holding them accountable for nuanced inaccuracies in issuer statements, such as technical claims beyond their expertise, would be unreasonable. The law must reflect this distinction, absolving portals from liability for details they aren't licensed or permitted to verify and aligning legal accountability with the scope of their certified capabilities.
3. Amend Securities Act Section 4A(a) and the definition of "financial institution" in Section 5312 of Title 31, United States Code. However, this should not remove anti-money laundering, "Know Your Customer," and associated Bank Secrecy Act requirements. These are fundamental parts that enable the market, and we agree that they shouldn't be removed, but we also don't believe the Title intends to remove them.
4. A revision of Exchange Act Section 3(a) is advocated to lift the constraints on curation, thus empowering funding portals to dispense generic investment advice through various communication modes. This amendment is expected to act as a protective measure for investors, equipping them with broader insights for better investment choices. Furthermore, any substandard advice dispensed by funding portals could be documented and used to hold them accountable, ensuring a check on their advisement quality.
5. It's proposed to revise paragraph (t)(1) of section 227.201 in Title 17 of the Code of Federal Regulations. It sets the financial statement requirements for offerings that, combined with all other offerings in the past year, total aggregate target offering amounts of \$124,000. The adjustment would elevate the permissible target offering threshold to a maximum of \$250,000 and require explicit documentation concerning the inaccessibility of financial statements reviewed or audited by an independent public accountant. Even

so, the current cap of \$124,000 is deemed sensible, ensuring due diligence is performed on financials for significant capital raises. Hence, Congress should maintain the status quo in this regulation.

6. Update Section 4A(f) of the Securities Act to enable specific investment companies to utilize the SEC's exemption for crowdfunding. This is supported as it would broaden opportunities for micro funds aiming to raise up to \$5M under Regulation CF, democratizing access for retail investors into venture capital in a risk-managed manner and potentially increasing the number of women and minority-led micro funds, which in turn could lead to more diverse business investments across the country.
7. Revise Section 4(a)(6) of the Securities Act to formally raise the offering ceiling from \$5,000,000 to \$10,000,000. It is suggested that this limit be further augmented to \$20,000,000, given the proven effectiveness of the system in ensuring investor protection and minimizing fraud. Raising the cap would permit larger, more mature issuers to capitalize on Regulation CF for funding, offering retail investors low-risk opportunities to diversify into more seasoned businesses, potentially nearing mergers or exits.
8. Overturn the recent modifications by the SEC to the investment thresholds for non-accredited individual investors under Section 4(a)(6) of the Securities Act, establishing a more precise guideline that investment should not surpass 10 percent of an investor's annual income or net worth without imposing an upper limit on the total amount that accredited investors can invest. This approach aligns with the original framework presented to Congress and maintains risk mitigation for investors more understandably.

Conclusion

As the legislative journey of H.R. 2799, the Expanding Access to Capital Act progresses, it's imperative to reflect on the transformative impact that the JOBS Act of 2012 has had on the economic fabric of our nation. The 2023 Investment Crowdfunding Annual Report, bolstered by the meticulous data from CCLEAR, is a testament to the unprecedented growth and prosperity this legislation has fostered. It has not only infused billions of dollars into the U.S. economy but has also been a catalyst for innovation and job creation, supporting hundreds of thousands of livelihoods across the country.

The passage of H.R. 2799 represents a pivotal step toward solidifying this growth trajectory and fortifying the crowdfunding ecosystem that has proven to be a bedrock for capital formation. This act is poised to enhance the framework for capital formation while upholding robust investor protections, thereby nurturing the public securities markets and safeguarding investors' financial futures.

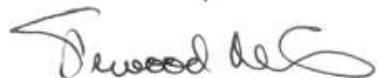
As legislators, the choice before you is not merely a regulatory one; it is a choice that will shape the economic destiny of countless Americans. The act's emphasis on economic output, innovation, and job creation aligns seamlessly with the ethos of promoting responsible capital formation without compromising on investor protection.

The statistics speak volumes: the over 310,000 jobs created, the \$6.8 billion economic infusion, the significant growth in issuer revenue, the democratization of capital among women and minorities, and the commendable survival rate of funded companies. These are more than just numbers; they are stories of American entrepreneurship, resilience, and ingenuity.

Passing H.R. 2799 is not just a legislative decision; it's a commitment to America's spirit of enterprise. It is a declaration that we stand firmly behind the industrious innovators, the relentless job creators, and the dedicated workers who together form the backbone of our economy. Let us seize this opportunity to foster an environment where businesses thrive, jobs are plentiful, and economic prosperity is within reach of all our citizens.

Thank you for your time and consideration. Should you have any questions or wish to seek CCA's technical feedback on legislative proposals, please do not hesitate to contact me at sherwood@theccagroup.com.

Sincerely,



Sherwood Neiss
Principal
Crowdfund Capital Advisors, LLC