

## **Growing the Future of American Capital and Creating More Jobs**

### **Testimony of Rebecca Kacaba, CEO and Co-Founder of DealMaker**

#### **House Financial Services Committee Sub-Committee: Capital Markets**

**Date: February 26, 2025**

#### **Hearing on “The Future of American Capital: Strengthening Public and Private Markets by Increasing Investor Access and Facilitating Capital Formation”**

### **Introduction**

Chairman Wagner, Ranking Member Sherman, and Members of the Committee, thank you for the opportunity to testify before you today regarding the critical issue of the future of American capital markets, the growth of American businesses, and job creation.

My name is Rebecca Kacaba, CEO and co-founder of DealMaker, a privately held financial technology company. The DealMaker platform empowers companies to raise capital efficiently and compliantly, from startup to public company, with a focus on democratizing access to both capital and investment opportunities for everyday Americans. I commend the Committee for holding this important hearing.

DealMaker provides a full suite of tools required by founders to streamline the fundraising process, encompassing investor outreach, marketing, regulatory compliance, and transaction management. DealMaker leverages technology to reduce company costs, increase efficiency and speed, and enhance transparency in capital markets. To date, DealMaker has facilitated over \$2 billion in capital raises for over 900 American companies<sup>1</sup> across a wide range of industries, creating a significant number of new jobs (estimated between 20,000 and 40,000).<sup>2</sup> Simultaneously during this period, hundreds of thousands of individuals and families have become investors in private companies through our platform - democratizing the wealth created by the JOBS Act and the regulations related thereto.

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<sup>1</sup> See DealMaker 2024 Year In Review, available at [https://www.dealmaker.tech/content/dealmakers-2024-year-in-review?utm\\_campaign=%5BFY24-25%5D%20Company%20Social%20Page%20Content&utm\\_content=320722480&utm\\_medium=social&utm\\_source=linkedin&hss\\_channel=lcp-29021525](https://www.dealmaker.tech/content/dealmakers-2024-year-in-review?utm_campaign=%5BFY24-25%5D%20Company%20Social%20Page%20Content&utm_content=320722480&utm_medium=social&utm_source=linkedin&hss_channel=lcp-29021525). See also DealMaker website, <https://www.dealmaker.tech/>

<sup>2</sup> For example, studies show that capital investment of \$1,000,000 can produce a range of new job creation from 10 to 20, depending on the industry. See, Peri Report 2020, “Job Creation Estimates Through Proposed Economic Stimulus Measures”, at p.6, Table 1, available at [https://peri.umass.edu/images/Pollin--Sierra\\_Club\\_Job\\_Creation---9-9-20--FINAL.pdf](https://peri.umass.edu/images/Pollin--Sierra_Club_Job_Creation---9-9-20--FINAL.pdf); See also Peri Report 2023, “Employment Impacts Of New U.S. Clean Energy, Manufacturing, and Infrastructure Laws”, at p. 13-19, available at [https://peri.umass.edu/images/publication/BIL\\_IRA\\_CHIPS\\_9-18-23-1.pdf](https://peri.umass.edu/images/publication/BIL_IRA_CHIPS_9-18-23-1.pdf)

DealMaker is committed to innovating and developing solutions that empower businesses, expand access to capital for American businesses, and generating more jobs and supporting Congress in these important goals.

## **The Success of the JOBS Act**

Since Congress enacted the Jumpstart Our Business Startups (JOBS) Act in 2012, it has served as a tremendous example of bipartisan success for the American economy, balancing improvements to capital formation and job creation for small businesses with investor protection. With the anti-fraud provisions of the federal securities laws remaining in effect, an overwhelming majority of Congress welcomed the JOBS Act. These anti-fraud provisions continue to protect American investors today, who now have access to private markets with an ease unprecedented in the history of American private markets.

At DealMaker, we have observed how the JOBS Act opened previously unavailable avenues to raise capital, helping entrepreneurs succeed, often in rural communities and from minority groups. The Act introduced Regulation Crowdfunding, enabling small businesses - who were previously excluded from venture capital and private equity funding - to raise capital from their strongest supporters: their communities. At the same time, it implemented scaled caps on investment amounts to protect investors.

The resounding adoption of the JOBS Act by American businesses was partly attributable to the legislation's design: Congress's enactment was largely self-executing, allowing businesses to immediately capitalize on many of the newly available capital formation pathways. Continued additions and evolutions to the act, including those requiring agency action, have since been added.

This design has cultivated a growing ecosystem that has proven its efficacy over the past twelve years. Since 2016, Regulation A, Regulation Crowdfunding ("CF") and Reg D have grown the available capital in the American ecosystem substantially: Since 2021, Regulation A has raised 1.368 Billion. Last year alone, 94 offerings<sup>3</sup> raised a total of \$244M, a 7.5% increase in deal value from the year before, with an average company valuation of \$345M. The average successful campaign raised \$7.7M, with the five largest raises closing between \$20M and \$75M.<sup>4</sup>

Since 2016, Regulation CF has supported over 6,500 startups and raised nearly \$2.4 billion in capital through 8,400 investment rounds for early-stage companies.<sup>5</sup> More than half of that has been raised since 2021 (total of \$1.68B). In each year between 2021 and 2024, between 343 million and 496 million was raised through all Regulation CF offerings. Last year alone, 1,403 new Regulation CF offerings launched, with each investment average of 26% more (average check

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<sup>3</sup> 34 new Regulation A+ offerings launched and 61 offerings closed.

<sup>4</sup> See Kingscrowd Report "2024 Investment Crowdfunding: Trends, Stats and Platform Rankings" available at <https://kingscrowd.com/2024-investment-crowdfunding-trends-stats-and-platform-rankings/#section-state-private-markets>

<sup>5</sup> Statistics are available through July 2024.

size of \$1,500) than the year before, and an average deal value of \$368,000 raised in a successful campaign.

Moreover, Congress intended to diversify the capital markets to weather different economic conditions. During the worst year of the recent downmarket (2023), Regulation A and Regulation CF were better able to withstand the economic down cycle, compared to venture capital:

- In 2023, Regulation A, while impacted, fared better than venture capital which dipped 49%.<sup>6</sup>
- Regulation CF proved the most resilient, with deal value falling only 15% in 2023.
- In 2024, Regulation CF fared similarly well with investment levels reaching 69% of their 2021 peak, compared to venture capital deal activity at 50% of its 2021 peak.<sup>7</sup>
- This mirrors a parallel trend of Regulation CF outpacing venture capital growth: capital raised through crowdfunding has outpaced venture capital in year-over-year growth relative to 2018 volume: as of year-end 2024 estimates, Regulation CF is expected to finish at 4.4x its 2018 investment dollar volume, while venture capital is projected to reach only 1.3x its 2018 value.<sup>8</sup>

The capital raised by these small businesses directly creates a significant number of jobs. According to the SEC, since 2011, small businesses have created 80% of net new jobs (11.2M jobs) in the US economy.<sup>9</sup> Many of these jobs transition to large businesses, either through a small business naturally growing, or by a large business acquiring a small one. Studies show that these newly created jobs are key to an innovative and competitive economy.<sup>10</sup>

Over the 12 years since the JOBS Act's enactment, the US innovation sector has continued to evolve, providing entrepreneurs with unprecedented capital-raising opportunities. The following recommendations aim to empower American entrepreneurs to capitalize on these advancements, with the intent of expanding the JOBS Act's application. These proposals also seek to reduce unnecessary barriers to capital formation, while maintaining the consistent application of anti-fraud provisions. The implementation of these changes build upon the JOBS Act's improvements, creating a clear pathway to grow American businesses and create additional American jobs.

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<sup>6</sup> See Kingscrowd, *supra* note 4.

<sup>7</sup> Id.

<sup>8</sup> See Kingscrowd Report, “Reg CF Outpaces Venture Capital Growth Since 2018: 2024 Projections” available at <https://kingscrowd.com/how-has-online-startup-investing-growth-compared-to-venture-capital/>

<sup>9</sup> See SEC Office Of The Advocate For Small Business Capital Formation, Annual Report, Fiscal year 2024, available at <https://www.sec.gov/files/2024-oasb-annual-report-print.pdf>; See also Robert Press, “All Grown Up: How Small Business Jobs Transition through the Economy,” U.S. Small Business Administration Office of Advocacy, (June 11, 2024) at 1, available at <https://advocacy.sba.gov/wp-content/uploads/2024/11/Research-Spotlight-How-Small-Business-Jobs-Transition-508.pdf>

<sup>10</sup> See Robert Press, *supra*, note 9.

## The DealMaker Story

DealMaker's founders are former practicing attorneys with over a decade of private legal practice experience. As such, they witnessed firsthand the challenges faced by businesses, including loss of control by founders and a focus on liquidity over employee welfare.

These observations led to DealMaker, which itself was conceived through the collective investment of numerous individuals who believed in enhancing the efficiency of exempt markets. DealMaker's foundation rests upon the principles of the JOBS Act, empowering individuals to contribute small sums to build something great, as a community.

We have the distinct honor in working with founders building businesses they love. We see firsthand the difficulties of the entrepreneur's journey and how much they and their family sacrifice to grow a business and create jobs in America. We know the founder who slept on the storeroom floor for a year until they could get their business funded. We know the founders who staked their personal relationships and reputation, raising money from friends, family, and colleagues in order to get the idea they believe in off the ground. The very hope, vision, and purpose of our founders is why we do what we do. This is the essence of the American dream, and what drives job creation. Every day our team is privileged to serve these founders in the most fundamental way, and we take this responsibility seriously.

According to DealMaker's research, 75% of American startups are not funded by venture capital.<sup>11</sup> In fact:

- Fewer venture capital dollars are available for startups and those that are, are offered on unfavorable terms granting investors participating preferred stock and substantial ownership, shifting control over the growth of these businesses and the jobs they create away from the founders.
- In 2023, 93% of small businesses struggled to access sufficient American capital to cover operating expenses.<sup>12</sup>

As a result, equity crowdfunding is a more critical source of capital to leverage:

- The ability of every day Americans to invest in private businesses is becoming essential for those looking to access real long-term growth potential.
- Private market investments are no longer isolated to institutions and wealthy Americans. Retail investors are poised to unlock a whole new realm of opportunity: private investments grew from \$4 trillion to \$14 trillion over the last decade, and individual AUM in alternatives are projected to triple in the next 10 years.<sup>13</sup>

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<sup>11</sup> Of the 72,640 startups incorporated in the USA, only 23% (16,464) received venture capital backing in 2023. See Statista, Number of venture capital investment capital deals in the United States from 2006 to 2023, available at <https://www.statista.com/statistics/277505/venture-capital-number-of-deals-in-the-united-states-since-1995/#:~:text=Countries%20with%20the%20Most%20Startups.home%20to%20around%2072%2C560%20startups>

<sup>12</sup> See SEC Annual Report, *supra*, note 9 at page 5.

<sup>13</sup> See Kristin Olson, Global head of alternatives for wealth at Goldman Sachs, entitled "Goldman Sachs: Why individual investors need to look at private investments to further grow wealth" (November 8, 2024), available at

- Crowdfunding levels the playing field for businesses, allowing them to tap into a broad base of investors, including their own customers and communities.

Private companies are the heartbeat of the US economy. At DealMaker, we provide the essential infrastructure that empowers everyday investors to support these businesses—a modern realization of the JOBS Act’s pioneering vision. In the spirit of this vision, and from a compliance-first perspective, we submit following proposals designed to ignite economic growth and create new American jobs:

## **1. Remove the Offering Caps that Inhibit Growth and Interfere with Job Creation**

### ***(a) Remove the Offering Caps on Regulation A Offerings<sup>14</sup>***

At its time of enactment, the JOBS Act contained certain regulatory guardrails due to the unproven nature of online capital formation. However, in the modern internet era, it is no longer necessary to artificially constrain the capital formation demands of the market. In today’s world, the caps on Regulation A offerings are unduly burdensome, and artificially constrain the growth of online capital formation. These caps are particularly insufficient for large, rapidly scaling businesses, including established brands that would represent highly attractive investment opportunities for non-accredited investors. Consequently, the current structure perpetuates inequality by preventing premier investment opportunities from accessing retail investors through Regulation A, and forcing them to remain limited to accredited investors.

To grow the space, we need to change the perception that only small companies can use the exemption. The current caps restrict further growth of online capital formation because the space cannot attract larger, more established companies. This also impacts the overall perception of online capital: both with younger companies and service providers who innovate new services to support the space (such as law firms, VCs and broker dealers). Removing the Regulation A cap will enable its maturation.

Furthermore, the \$75 million cap renders Regulation A impractical for many larger private companies seeking to raise capital, particularly in emerging sectors such as biotech, where capital expenses can often dramatically exceed \$75M for companies executing cutting edge innovation or sports investing, where stadium development costs can reach billions. This limitation effectively excludes these opportunities from participation in the Regulation A framework.

The activity is occurring in any event: companies choose to use alternative structures like donations or tokens because they need to access capital that far exceeds the current \$75M cap. With the re-emergence of tokenized offerings, the cap on Regulation A will also cause many businesses to seek other, unregistered mechanisms to raise capital, including tokenized offerings which are not subject to the same regulatory purview and investor protection requirements.

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<https://www.cnbc.com/2024/11/08/goldman-sachs-why-individual-investors-need-to-look-at-private-investments-to-further-grow-wealth.html>

<sup>14</sup> See *Regulation A+ Improvement Act* (Stutzman), H.R. 2651, 118th Cong. (2023) available at <https://www.congress.gov/bill/118th-congress/house-bill/2651/text>

Ultimately, raising the Regulation A maximum creates a pathway to bring unregulated capital formation activities into a regulated space, within the structures Congress created to ensure proper business formation, transparent business planning, company disclosures, and job creation, as well as competition by American businesses on a global scale. This will allow these companies to meet their capital needs using Regulation A and build their investment communities. It also protects investors, giving investors more control and insight into the investments they purchase.

***(b) Increase the Offering Limit for Regulation Crowdfunding From \$5M to \$10M in a 12 Month Period<sup>15</sup>***

The 2020 increase in the Regulation CF cap from \$1.25 million to \$5 million demonstrably stimulated market activity: when the CF cap rose to \$5M, market activity jumped by approximately 250% between 2020 and 2021 with only \$209.4 M invested through Regulation CF in 2020 as compared to \$496.1M invested through Regulation CF 2021.<sup>16</sup>

The Regulation CF ecosystem has matured, with a growing prevalence of broker-dealer participation (as opposed to only funding portals). Companies are regularly reaching the \$5M cap on Regulation CF offerings indicating both the efficacy of the offering mechanism and strong investor interest.

When companies hit this maximum, they face two suboptimal choices: either (a) discontinue retail investment and return to traditional funding sources (which undermines the objective of democratizing capital formation); or (b) prematurely transition to a Regulation A offering, incurring substantial fixed expenses that outweigh the benefits of incrementally raised capital. This generates a high volume of refunds, which are costly to companies, unnecessarily confusing to retail investors, and complicated for market intermediaries to manage.

The disclosure provided to Regulation CF investors when audited financial statements are included is comprehensive. As Regulation CF has matured, we have observed that the same companies often use multiple exemptions in online capital raising. A higher Regulation CF cap would enable companies to raise a greater amount of capital annually, reducing the burden on companies to transition to a full Regulation A offering too early.

Industry data indicates that 80% of Regulation A offerings raise \$10M or less.<sup>17</sup> With a higher Regulation CF cap, this volume of activity could be accommodated through the Regulation CF framework, which is well-structured, thereby reducing the regulatory burden on businesses.

Ultimately, increasing the Regulation CF cap will foster the growth of the online capital formation space, enabling the funding of a greater number of businesses and creating more jobs.

## **2. Harmonize the Regulation CF and Regulation A Regimes**

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<sup>15</sup> See *Improving Crowdfunding Opportunities Act* (McHenry), H.R. 2607, 118th Cong. (2023) available at <https://www.congress.gov/bill/118th-congress/house-bill/2607/text>

<sup>16</sup> See, Kingscrowd, *supra* note 4.

<sup>17</sup> *Id.*

Today, Regulation CF and Regulation A exemptions are being used for a similar purpose. Investors are investing in each type of offering interchangeably, considering the underlying investment more than the specific mechanism in which they are participating. Accordingly, the rules between these types of offerings should be harmonized. The best elements of each regime can be combined and shared.

This would be easier for businesses, investors and market participants to understand, and lead to better compliance.

Here are a few examples of ways the rules can be harmonized:

***(a) Harmonize Rule 12(g) for Companies who Raise from Retail Investors, Growing the Space and Creating More Jobs<sup>18</sup>***

Section 12(g) of the 1934 Securities Exchange Act establishes the thresholds at which a company must register a class of securities with the SEC and become a reporting issuer, including the number of unaccredited investors (500) that triggers registration.

Different exceptions from this count were created for Regulation A and Regulation CF shareholders. Notably, the Regulation CF exception states that once an issuer holds more than \$25M in assets, its Regulation CF shareholders are no longer exempted and may count towards registration requirements. This threshold is too low and places a burden on issuing companies.

Consider a practical example:

- A seed-stage company wishes to raise capital through Regulation CF preferring their community to directly own shares and be reflected on the capitalization table.
- The company raises \$600,000 from 600 individual investors.
- Two years later, the company raises \$26 million in a Series B funding round.

At this point, the company now exceeds \$25 million in assets and has more than 500 unaccredited investors, triggering a requirement to become a reporting company within two years - well before it is reasonably necessary. This is not to the benefit of the company nor its investors.

To avoid premature registration, companies often resort to using cumbersome and expensive structures, such as Special Purpose Vehicles (SPVs) or custodians, to circumvent 12(g). This workaround creates complexities and unintended consequences. When companies do pursue an IPO, investors may face challenges in transferring their shares from custody, as few custodians are willing to provide this service due to the high risk of needing to provide immediate liquidity upon a public offering. This creates a barrier to streamlining the IPO process. Furthermore, SPVs are less appealing to investors as they create an additional layer of separation from ownership and are not visible on the company's capitalization table. Investors find themselves owning an interest in an intermediary entity, which can be confusing.

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<sup>18</sup> 15 U.S.C. § 78l(g).



Shareholders in Regulation A and Regulation CF offerings should be treated **uniformly** with respect to the 12(g) exception, and the criteria should align with the current Regulation A standard which is reasonable and fair.

The proposed *Bill to Exclude Qualified Institutional Buyers (QIBs) and Institutional Accredited Investors (IAIs) from the record holder count for Mandatory Registration*<sup>19</sup> could be expanded to address these necessary updates to 12(g) with respect to online capital.

***(b) Remove the Requirement for FINRA Participating Members to Comply with Corporate Financing Rule 5110 in Regulation A Offerings***

Broker-dealer compensation in Regulation A offerings is currently governed by FINRA Rule 5110.<sup>20</sup> The compensation guidelines, based on analyses from 1990, are no longer applicable to contemporary online offerings utilizing private placement technology systems. Originally designed for traditional roadshows, Rule 5110 does not adequately account for modern technology fees, payment processing fees, marketing fees, or the blended fee models prevalent in today's market. These blended models enhance industry scalability and efficiency by consolidating necessary services for online Regulation A offerings and reducing costs compared to traditional, siloed services. They also have a high cost in technology development, which ultimately increases compliance and decreases costs to companies.

Compliance with Rule 5110 imposes an undue administrative burden on broker-dealers supporting Regulation A offerings, which are generally smaller in scale than traditional public offerings. Furthermore, Rule 5110 enforces compensation limits, which can create a disadvantage for registered firms subject to rigorous compliance standards. While these firms face fee restrictions, unregistered marketing agencies and promoters are not similarly constrained. This disparity incentivizes experienced brokers to leave the space, potentially leading to an influx of less experienced, unregistered entities. Investor protection is best served by specialized, regulated firms.

Brokers participating in Regulation A offerings should either obtain approval for a specialized Regulation A business line within their membership (similar to intermediaries in Regulation CF) or participate in a streamlined FINRA process as an alternative to Rule 5110. Broker-dealer conduct is overseen and reviewed by regulators through many existing processes including regular cycle exams; these existing mechanisms and frameworks should be sufficient for reviewing the compensation earned by brokers in Regulation A offerings.

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<sup>19</sup> H.R. 2605 118th Cong. (2023), available at <https://www.congress.gov/bill/118th-congress/house-bill/2605/text>

<sup>20</sup> The Notice To Members NASD 92-53 ( available at <https://www.finra.org/rules-guidance/notices/92-53>), published by FINRA's predecessor, is still being used by FINRA today to determine limits on broker dealer offering fees for all public offerings, regardless of the size. NASD 92-53 determines whether fees are fair and reasonable as required by Rule 5110(1)(a) (available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5110>). NASD 92-53 fee limits are based on a survey of 874 offerings filed in 1991, and the expenses incurred by companies in 1991. It caps fees for these blended services (many of which did not exist in 1991), if offered in a combined package with broker dealer services. This approach ignores 30 years of innovative changes to capital formation strategies.



The existing framework of the *Unlocking Capital for Small Businesses Act*<sup>21</sup> can be leveraged to modernize Rule 5110, providing an exemption for broker dealers from compliance with the Corporate Financing Rule 5110 in Regulation A offerings.

These recommendations are especially pertinent given the pending Financial Innovation and Technology for the 21st Century Act (FIT21) bill. The current fee review process under Rule 5110 would pose significant challenges for an anticipated increase in crypto market participants, potentially delaying crypto offerings—an outcome FIT21 seeks to avoid. Aligning the fee review process with the proposed exemptive relief for Regulation A broker-dealers would foster a more consistent and efficient regulatory environment.

### **3. Expand the Availability of Regulation CF and Regulation A to More Participants**

The expansion of the online capital market is contingent upon regulatory amendments that broaden participation. Barriers to entry inadvertently drive market activity into unregulated spheres, including areas such as cryptocurrency, non-fungible tokens (NFTs), and online gambling. Increasing the accessibility of regulated markets, with appropriate investment limitations, will redirect these funds toward American businesses, thereby fostering job creation. Furthermore, enabling broader market participation will enhance the overall quality of offerings, potentially leading to improved investment returns and a greater allocation of capital to legitimate, job-creating opportunities.

#### ***(a) Remove the “Common Control” Element of Regulation CF Companies Eligibility, Allowing Entities Under Common Control to Raise the Maximum Amount Under Regulation CF with the Addition of Disclosure about Shared Officers/Directors/Owners so that VC Backed Companies can use the Exemptions***

Regulation Crowdfunding imposes a unique limitation on entities under common control, specifically restricting the amount of capital they are permitted to raise. This restriction differentiates Regulation CF from traditional capital-raising mechanisms and Regulation A, which do not have such limitations. As a consequence, numerous companies backed by strategic or venture capital investors, who often hold substantial ownership stakes or board positions, encounter limitations in utilizing crowdfunding. This, in turn, reduces the maturity of investment opportunities accessible to retail investors through online investment platforms.

Permitting entities under common control to be treated independently when calculating maximum offering amounts, provided that appropriate statutory disclosures are made, would significantly enhance the opportunity for traditional venture-backed companies to provide ownership opportunities to their users, which could also increase the survival rate of venture-backed companies that may not be able to pursue venture funding in different economic climate or who

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<sup>21</sup> See H.R. 2590, 118th Cong. (2023) available at <https://www.congress.gov/bill/118th-congress/house-bill/2590/text>

don't meet rigorous venture follow-on capitalization requirements e.g. 50%+ growth rate, but are strong businesses.

***(b) Pass the Unlocking Capital for Small Businesses Act and Expand the Finders Rules to Regulation A and Regulation CF***

We express our support for the *Unlocking Capital for Small Businesses Act*<sup>22</sup>, which provides an exemption from broker registration requirements for finders. This exemption should extend to not just accredited, but also non-accredited investors and provide a framework for people associated with capital raises who are unregistered to be compensated. Independent capital markets advisors serve a critical function in assisting companies to understand and comply with these regulations. The process of navigating service providers, understanding and adhering to digital marketing rules, creating necessary disclosures, and locating legal counsel specialized in exempt markets are all areas where capital markets advisors can provide valuable assistance, thereby contributing to the overall growth of the space. There are many intermediaries in the space now that are performing acts relating to digital offerings so a clear framework for those operating in the space would be helpful.

**4. Modernize Marketing and Advertising Rules to Grow the Space and Create More Jobs**<sup>23</sup>

The current regulatory framework surrounding companies communications in media such as TV, podcasts, and radio is ambiguous, hindering business growth and innovation.<sup>24</sup> To enhance the likelihood of success for companies, it is crucial to enable widespread promotion and discussion of their offerings, including verbal promotion as addressed by the *Helping Angels Lead Our Startups (HALOS) Act*. Increased awareness of compelling offerings will stimulate the market and encourage mainstream companies to utilize Regulations A and CF, thereby fostering job creation.

We envision a world where QR codes are on TVs and in sports stadiums, linking fans to broker-dealer-monitored landing pages with full disclosures, allowing people to invest small amounts in the brands they consume and love everyday around them, where investment opportunities are part of everyday life. Simplified and clear guidelines can help make this a reality.

Broader wording can be properly regulated by allowing discussion around future actions when an act subject to diligence has occurred. For example, allow a company to market that there will be a share price increase when a board of directors has passed a resolution to increase share price at a set future date. Prohibiting truthful communications about the terms of an offering or a

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<sup>22</sup> Id.

<sup>23</sup> The *Helping Angels Lead our Startups (HALOS) Act* could be expanded to include these concepts. See H.R. 1553 118th Cong (2023) available at <https://www.congress.gov/bill/118th-congress/house-bill/1553/titles>

<sup>24</sup> See Avlok Kohli, Written Testimony, U.S. House of Representatives Committee on Financial Services (December 4, 2024), available at <https://docs.house.gov/meetings/BA/BA00/20241204/117742/HHRG-118-BA00-Wstate-KohliA-20241204.pdf>

company's intent does not protect investors. Rather, simplifying the Regulation CF marketing rules to allow truthful communications about an offering, enhances investor protection and improves confidence in the markets by allowing companies to transparently inform their potential investors about the offering.

***(a) Regulation CF***<sup>25</sup>

Companies using Regulation CF express widespread frustration regarding the costs of navigating these complex rules and the resulting delays in offering launches.<sup>26</sup> This undermines the intention of the JOBS Act, which was to create a less expensive regime for small businesses to raise capital, while maintaining balanced protection for unaccredited investors.

The changes that Regulation CF advertising rules have around the point in time of the offering process are extremely confusing and very challenging to comply with. Ideally the rules are as similar as possible for both Regulation CF and Regulation A; and do not change at any time during the course of an offering.

Additionally, currently, Regulation CF restricts the mixing of “terms” and “non-terms” communication to the Intermediary's offering page. Regulation A does not have these limitations because shares are sold through an SEC-qualified offering circular. In practice, companies use general solicitation advertisements to identify prospective investors. When a broker-dealer acts as an intermediary, there should be a mechanism to allow mixed Terms/Non-terms communication outside the offering platform, subject to broker-dealer oversight and inclusion of statutory disclaimers. We support simplifying these rules to allow certain communications outside the landing page to include mixed term and non-term communications if reviewed by a registered intermediary.

***(b) Regulation A***

Regulation A offerings generally require a single fixed price<sup>27</sup>, with fairly cumbersome methods to change this price during the course of an offering. As a result, companies are limited in how they can discuss potential price changes, creating vagueness and uncertainty for investors. Companies are further restricted in their ability to leverage investment incentives, or (in certain cases) to use Regulation A to mimic traditional *At The Market* offerings. Improving and streamlining the mechanism by which companies raising via Regulation A can update their share price and accordingly inform investors of those updates would unlock efficiency and access.

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<sup>25</sup> See 17 CFR §227.201.

<sup>26</sup> See 17 CFR §227.204. The rule divides communications based on when the communication is made: either before or after a Form C is filed with the SEC: Before a Form C is filed with the SEC, the issuing company can publicize its intention to conduct a Regulation CF offering under the Testing the Waters provisions of the rules. After a Form C is filed and is publicly available, the rules create two categories of communications - non-terms and terms, which are limited to a short list of key facts about the offering. In most cases companies use non-terms of communications, which means they are prohibited from mentioning facts about the key aspects of their offering.

<sup>27</sup> See 17 CFR §230.251(d)(3)(ii).

There has been significant advancement in online capital formation since the original marketing rules were passed, and updates would provide greater clarity needed to leverage traditional media like TV and radio and grow the space to create more jobs.

## **5. Increase Investor Participation to Grow Early Stage Investment Activity and Create Jobs via Tax Incentives**

Another policy Congress may consider is a tax incentive for investors in Regulation crowdfunding and Regulation A offerings. This type of incentive has proven to stimulate economic growth and create jobs in other jurisdictions such as the U.K.

This incentivizing policy should be established in the U.S. to stimulate similar growth in the American ecosystem, remove barriers to investment and make it easier for everyday Americans to support entrepreneurs and contribute to job creation.

The UK's Seed Enterprise Investment Scheme (SEIS) and Enterprise Investment Scheme (EIS) offer tax breaks to investors who support early-stage and other businesses. See Schedule A for a more detailed summary.

### ***Under SEIS***

- Investors receive a 50% tax break on up to £200,000 invested in a qualifying business each tax year.
- 50% of capital gains are exempt from CGT if they're re-invested in a SEIS/EIS-eligible business.
- Companies are eligible for SEIS if they are incorporated in the UK, have been trading for less than three years, are not trading on a public stock exchange, have fewer than 25 full-time employees, and have less than £350,000 in gross assets.
- Most recently released data for the 2022-2023 tax year shows 1,815 companies raised £157 million (approx. USD \$200M) from SEIS investments.
- Since SEIS was introduced in 2012, equity-based crowdfunding in the UK grew from under £30 million in 2013 to almost £550 million in 2020, representing an 18 fold increase.<sup>28</sup>

### ***Under EIS***

- Investors receive a 30% tax break on up to £1 million invested in a qualifying business each tax year.
- Investors can claim EIS from four months after the business starts trading until five years after January 31 in the tax year after the investment.

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<sup>28</sup> See Economics Observatory, "What is crowdfunding and how is it helping small businesses in the UK?", available at <https://www.economicsobservatory.com/what-is-crowdfunding-and-how-is-it-helping-small-businesses-in-the-uk>

- Companies are eligible for EIS if they are incorporated in the UK, have fewer than 250 full-time employees, and have gross assets of less than £15 million.
- Most recently released data for the 2022-2023 tax year shows 4,205 companies raised £1.957 billion (approx. USD \$2.5B) from EIS investments

The exemptions under *Qualified Small Business Stock (QSBS) Exemption - Section 1202*<sup>29</sup> and *Investment Loss Deduction - Section 1244*<sup>30</sup> could be easily extended to the online investing space for early stage offerings under Regulation CF and Regulation A.

Incentivizing direct investment via Regulation CF benefits smaller retail investors and small business owners and entrepreneurs who frequently use Regulation CF to generate interest in their business and build brand communities. The proposed tax incentive is an implicit government endorsement which legitimizes crowdfunding i.e. the government wants me to do this. The incentive will encourage growth in the regulated investment crowdfunding community which will result in significant job formation.<sup>31</sup>

## 6. Harmonize the Space with Future Legislation

Finally, it is necessary to give advanced consideration to the integration of Artificial Intelligence (AI) into retail investment products. This strategic approach will ensure the sector remains at the forefront of technological development, meeting the evolving expectations of consumers who demand seamless online experiences, akin to those in unregulated sectors, as well as reducing cost of capital for companies. AI possesses the capacity to significantly benefit investors by enhancing communications pertaining to offering terms and regulatory compliance. AI can also bolster fraud detection, ensure adherence to marketing regulations, and facilitate the globalization of international rules for companies, thereby enabling international investors to support American businesses. If rules are created around these areas, growth will ensue.

In the immediate term, it is advisable to harmonize Regulations CF and A. Looking ahead, it is paramount to ensure complete harmonization of digital asset regulations with the existing regime so that investors are directed to deploy funds in ways that result in maximum job creation, and rules are clear and consistent for all market participants.

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<sup>29</sup> 26 U.S.C. § 1202.

<sup>30</sup> 26 U.S.C. § 1244.

<sup>31</sup> The Crowdfunding Professionals Association (CfPA) estimates even a small incentive (capped at \$1,000 for a \$2,000 investment) would sustain over 1 million new jobs, 120 billion in economic growth and support nearly 30,000 American businesses each year. See Press Release, Crowdfunding Professional Association (January 28, 2025) available at <https://www.prweb.com/releases/coalition-for-crowdfunding-american-jobs-and-prosperity-launches-in-support-of-the-trump-jobs-act-302360632.html>

## **Closing**

In conclusion, the foundational legislation driving this discussion is the JOBS Act. The ultimate objective of our collective efforts is the creation of American jobs. It is profoundly rewarding to witness our customers expressing pride in the employment opportunities they have generated and the facilities they have constructed with the capital we have helped them raise.

We express our gratitude for the opportunity to present DealMaker's experience in capital raising and to highlight the experiences of our customers, American entrepreneurs and builders. Technological innovation driving American capital formation is central to our mission and operations. It is why we do what we do and we operate at the pace that we do; to keep up with the innovators of America, and their expectations.

The foregoing proposed regulatory amendments will expand the regulated sphere, thereby directing American investment capital towards the establishment and growth of American businesses and the creation of employment opportunities, as opposed to high-risk speculative trading that may result in financial losses without concomitant job growth.

We commend the important work of Congress and the diligent attention the Committee dedicates to this area. We are eager to continue collaborating with and supporting your groundbreaking endeavors. We welcome the opportunity to address your questions during the hearing and offer our continued assistance to the Committee in its vital capital formation efforts.

## **Appendix:**

Schedule A: UK tax incentives

## Appendix A

### UK Early Stage Tax Incentive Strategies

The UK's Seed Enterprise Investment Scheme (SEIS) and Enterprise Investment Scheme (EIS) offer tax breaks to investors who support early-stage and other businesses.<sup>32</sup>

Funds raised can only be used on expenses to help the company grow or R&D. Companies using SEIS or EIS must get pre-approved by the government. Finally, companies must carry out a “qualifying trade.” Nearly all trades qualify, with the exception that certain denominated trades cannot account for more than 20% of the business raising capital.<sup>33</sup>

#### SEIS

**What Do Investors Get?** Investors receive a 50% tax break on up to £200,000 invested in a qualifying business each tax year. Investors can claim SEIS from four months after the business starts trading until five years after January 31 in the tax year after the investment. 50% of capital gains are exempt from capital gains tax (CGT) if they are re-invested in a SEIS/EIS-eligible business

**Which Companies Can Use It?** SEIS is intended for very early-stage businesses that are raising capital for the first time. Companies are eligible for SEIS if the company:

- Is Incorporated in the UK.
- Has been trading for less than three years.
- Is not trading on a public stock exchange.
- has fewer than 25 full-time employees.
- has less than £350,000 in gross assets.
- hasn't already taken any EIS investments.
- Has never received investment from a venture capital trust.
- is not in control of another company that isn't a qualifying subsidiary.
- Is not and has never been under the control of another company.

**Maximum Amount Raised:** companies can receive a maximum of £250,000 in funding through SEIS.

#### EIS

**What Do Investors Get?** Investors receive a 30% tax break on up to £1 million invested in a qualifying company each tax year. Investors can also invest up to £2 million in a "knowledge

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<sup>32</sup> See Vest “What Is SEIS” available at <https://www.vestd.com/seis-and-eis-explained#:~:text=As%20of%20April%202023%2C%20investors,a%20much%20more%20attractive%20prospect>

<sup>33</sup> Denominated trades: Coal or steel production, Farming or market gardening, Leasing activities, Legal or financial services, Property development, Running a hotel, Running a nursing home, Generation of energy, such as electricity and heat, Production of gas or other fuel, Exporting electricity, Banking, insurance, debt or financing services



intensive business" (KIC). 50% of capital gains are exempt from CGT if they're re-invested in a SEIS/EIS-eligible business.

**Which Companies Can Use It?** EIS is available to a wider range of small and medium-sized enterprises (SMEs). Eligible companies:

- permanently established in the UK.
- trading for less than seven years (although in some situations you can still apply).
- fewer than 250 full-time employees.
- less than £15 million in gross assets.
- not trading on a public stock exchange.
- Do not control another company (other than qualifying subsidiaries).
- not under the control of another company, nor does another company own more than 50% of its shares.
- don't plan on closing after completing a project (or series of projects).

**Maximum Amount Raised:** £12 million\*capped at £5 million per year, up to £20 million for a knowledge-intensive company (KIC). This £12 million total includes money raised through SEIS, other venture capital schemes, social investment tax relief, and certain types of state aid.

**Eligible SEIS Investors:**

- hold the shares for at least 3 years.
- have a UK tax liability.
- not an employee or associate of one (though they can be a director).
- have no related investments.
- have no linked loans.
- Investment is not for the purposes of tax avoidance.
- don't own 30% or more of the shares or voting control in the company from the time of incorporation until at least three years after the share issue.

**Eligible EIS Investors:**

- hold the shares for at least 3 years.
- have a UK tax liability.
- not an employee or associate of one (though they can be a director).
- have no related investments.
- have no linked loans.
- Investment is not for the purposes of tax avoidance.

The following persons cannot invest in a startup through SEIS or EIS:

- Company's Employees
- Founder's Spouse or civil partner
- Founder's Parents
- Founder's Grandparents
- Founder's Children
- Founder's grandchildren
- Anyone with 30% or more shares in the issuer's company or voting control.