



The Commonsense Crowdfund Investing Compromise The Startup Exemption - February 13, 2012

Great progress has been made to legalize Crowdfunding in the US with 3 bills before Congress. We have seen Crowdfunding gain traction in the US with [2 donation-based projects raising over \\$1.5M each](#)¹ on Kickstarter. In addition, the UK is accelerating it's push to encourage Crowdfunded Investments by offering [a new tax credit](#)². Now is the time to push Crowdfund Investing legislation over the finish line here.

As we move the Crowdfund Investing legislation forward it is important to keep the following in mind. 1) It has to be written so a market can successfully be formed, within the confines of the regulations. (i.e., Trying to crowdfund \$250,000 in increments under \$1,000 is going to be nearly impossible if entrepreneurs are forced to raise 100% of their funding request in order to be funded). 2) It has to be easy to understand from an entrepreneur's, an investor's and intermediaries point of view. 3) It needs to be fair, without needless bureaucracy and costs where the advances in the Internet and technology can offer enhanced security and streamlined process and 4) It needs to be done in a way that our Nation's Job Creators can start capitalizing on its effectiveness NOW... without getting bogged down by lengthy SEC rule making.

In order to help advance this legislation, the [Startup Exemption](#), which represents over 5,000 active crowdfunding followers (including entrepreneurs, investors, intermediaries, security lawyers, authors, and security experts) sought a consensus on the 3 bills. The goal was to take the best of them and consolidate it into one that would provide access to capital without undue bureaucracy. It is important to keep in mind that the technology built into today's Internet can allow both the transfer of information between entrepreneurs and potential investors as well as intermediaries and regulatory agencies without lengthy and costly bureaucracy -- all in a transparent and accountable fashion.

We hope the compromise ideas we put forth in these pages are helpful as you push this legislation across the finish line.

Regards,
Woodie, Jason & Zak
The Startup Exemption Founders

¹ <http://www.digitaljournal.com/article/319501>

² <http://www.telegraph.co.uk/finance/businessclub/9064978/Tax-relief-boost-for-armchair-investors-in-small-firms.html>

The Compromise Chart - Taking the Best of All 3 Bills

CRITERIA	COMPROMISE	HR.2930	S.1791	S.1970	NASAA
Amount	\$1M (\$2M w/ Audited Financials)	\$1M (\$2M w/ Audited Financials)	\$1M	\$1M	\$500k
Investments	a) < \$50k <i>Household Income</i> ; up to \$1,000 b) Between \$50k & \$150k <i>Household Income</i> , up to 6% of AGI c) Over \$150k <i>Household Income</i> , up to \$10,000 in aggregate in any company	\$10,000 or 10% of AGI	\$1,000	a) < \$50k AGI, up to \$500, \$2k in aggregate b) Between \$50k & \$100k, up to 1% of AGI, 4% in aggregate c) Over \$100k, up to 2% of AGI, 8% in aggregate	\$1,000
Funds released @ x% of Target	100%	60%	60%	100%	60%
Holding Period	2 years	1 year	1 year	2 years	unknown
Intermediaries	Either SEC-Registered Intermediary that cannot perform any broker/dealer activities (eg: no soliciting investments nor promoting issuers for a finders fee, nor providing investment nor advisory services, etc.) or Intermediaries as currently formed and registered under the jurisdiction of the SEC.	SEC-Registered Intermediary	SEC-Registered Intermediary	Either SEC-Registered Intermediary that cannot perform any broker/dealer activities (eg: no soliciting investments nor promoting issuers for a finders fee, nor providing investment nor advisory services, etc.) or Intermediaries as currently formed and registered under the jurisdiction of the SEC.	Broker/dealer
Role of Intermediary					
- Background Checks	Yes	Yes	Yes	Yes	Yes
- Education	Yes	Yes	Yes	Yes	Yes
Transfer of Data	Yes a standards based data set that is transmitted to both the SEC & State Authorities on a periodic basis				
Disclosure	- a description of their business and executive summary,				

CRITERIA	COMPROMISE	HR.2930	S.1791	S.1970	NASAA
Preemption of State Law	- a description of their intended use of the proceeds of the offering (complete business plan & financials if seeking more than \$500,000),				
	- the target offering amount and updates regarding meeting the target offering amount,				
	- the price at which the securities will be offered for a given ownership stake, and				
	- a description of the basic rights of the securities				
	solely to State registration, documentation, and offering requirements no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person	solely to State registration, documentation, and offering requirements no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person	Conditional	Silent	

PART TWO: CROWDFUND INVESTING COMPROMISE
Section by Section Suggestions

Section 1: - Title

The Crowdfund Investing Act of 2012

Section 2: - Exemption of Securities Registration

- *Companies.* Startups or small businesses (that are not foreign, investment or public companies) with annual average revenues of less than \$5M for the past 3 years will be able to raise up to \$1 million (\$2 million with audited financials) from ordinary Americans through a registered online intermediary. For each funding round the company seeking investments must meet 100% of their stated target in order to get funded. Public solicitation is allowed only to direct people to the intermediary, not to individual securities.

- *Intermediaries.* The bill requires all crowdfunding to take place through online intermediaries (Web sites) registered with the SEC. They will be exempt from broker/dealer registration as long as they refrain from acting as a broker/dealer (eg: no soliciting investments nor promoting issuers for a finders fee, nor providing investment nor advisory services, etc). They will have to perform background/fraud checks on issuers and provide warnings to investors on of the speculative nature of investing in startups, emerging businesses, and small issuers, including risks in the secondary market related to illiquidity & warn investors that their shares are restricted to eliminate “pump and dump” schemes. Intermediaries will have to report to the SEC on the Crowdfund Investing activity taking place via their service.
- *Investors.* In order to ensure that inexperienced or lower-income investors are not exposed to risks they cannot bear, as well as minimizing the risks of fraudulent schemes, this legislation sets limits on individual investments in crowdfunded companies.
 - Any household can invest up to \$1,000 in aggregate across all crowdfunded companies.
 - Investment amounts scale up by income:
 - Those households with income between \$50,000 and \$150,000 can invest up to 6% of their annual income in aggregate in any company.
 - Those households making \$150,000 or more can invest up to \$10,000 in aggregate in any company.
- *Disclosure.* Disclosure is the foundation of a reliable marketplace. This bill requires companies seeking crowdfunding to provide basic data disclosures. These data elements are drawn from the executive summary of the current SCOR form and include:
 - a description of their business and executive summary,
 - a description of their intended use of the proceeds of the offering (complete business plan & financials if seeking more than \$500,000),
 - the target offering amount and updates regarding meeting the target offering amount,
 - the price at which the securities will be offered for a given ownership stake, and
 - a description of the basic rights of the securities. Accountability. The Crowdfund Investing Act ensures that the entrepreneur providing the information is properly accountable for material misstatements or omissions.
- *Flexibility.* The bill provides SEC broad reporting and rulemaking authority. The SEC will be able to set additional rules as this market develops and must report regularly to Congress on the effect of crowdfunding on investor protection (see section 8).

Section 3 – Exclusion of Crowdfunding Investors from Shareholder Cap

Companies will be able to use crowdfunding to raise capital without unintentionally triggering public reporting requirements.

Section 4 – Preemption of State Law.

Preemption relates solely to State registration, documentation, and offering requirements for crowdfunded securities and shall have no impact or limitation on other State authority to take enforcement action with regard to an issuer, intermediary, or any other person or entity using the exemption from registration.

Section 8 – Fraud Response Review

The bill directs the SEC to conduct a review of the effects of the new crowdfunding exemption on investor protection: These reviews will be reported to Congress: once every six months for the first year following the date of this bill's enactment, annually for the following three years.

PART THREE: SUGGESTED DISCLOSURE FORM From NASAA-Approved SCOR Executive Summary

- 1) Name of Company: _____
- 2) Street address of principal office: _____
- 3) Company Telephone Number: _____
- 4) Person(s) to contact at Company with respect to offering: _____
- 5) Telephone Number (if different from above): _____
- 6) Type of securities offered:
 - a. Price per security: \$ _____
 - b. Sales commission, if any: _____ %
 - c. Minimum number of securities offered: _____

Investment in a small business is often risky. You should not invest any funds in this offering unless you can afford to lose your entire investment. See Item 1 for a discussion of the risk factors that management believes present the most substantial risks to you.

- 7) Describe the business of the Company
- 8) Describe how the Company plans to carry out its activities.
- 9) This Company:
 - Has never conducted operations.
 - Is in the development stage.
 - Is currently conducting operations.
 - Has shown a profit in the last fiscal year.
 - Other (Specify): _____
(Check at least one, as appropriate)
- 10) Jurisdiction and planned date of formation:
- 11) How the Company Will Use Your Money
- 12) Describe how the Company intends to use the proceeds of this offering.
- 13) The Principal Officers of the Company & Title
- 14) The Offering

15) Name of Intermediary:
Address:
Telephone Number:

You should consider the terms and risks of this offering before you invest. No government regulator is recommending these securities. No government regulator has verified that this document is accurate or determined that it is adequate. It is a crime for anyone to tell you differently.

PART FOUR: What Will Be the Power of Crowdfund Investing

Launching Soon - LegalizeCrowdfunding.org

A targeted nationwide social media campaign to rally our nation's job creators to one focal point. On this site they will register their interest in using crowdfunding, their state of residency, the sector of their idea (eg: IT, manufacturing, healthcare, etc), how much money they need and how many jobs they will create in their first year. You will be able to track data live.