



Via Hand Delivery

April 30, 2014

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets and Government Sponsored Enterprises
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Carolyn B. Maloney
Ranking Member
Subcommittee on Capital Markets and Government Sponsored Enterprises
Committee on Financial Services
B301C Rayburn House Office Building
Washington, DC 20515

*Re: May 1, 2014, Hearing entitled, "Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies, Part II"*¹

Dear Mr. Chairman and Ranking Member Maloney:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding \$3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of American workers.²

The purpose of this letter is to share with you the Council's initial concerns on two of the three draft bills that that will be examined at your May 1, 2014, hearing: the Equity Crowdfunding Improvement Act of 2014 (Crowdfunding Bill);³ and the draft bill to "direct the Securities and Exchange Commission to revise its proposed amendments to Regulation D, Form D, and Rule 156" (Reg D Bill).⁴

¹ Memorandum from FSC Majority to Members of the Committee on Financial Services 1 (Apr. 28, 2014), http://financialservices.house.gov/uploadedfiles/050114_cm_memo.pdf [hereinafter Memorandum].

² For more information about the Council of Institutional Investors (Council) and our members, please visit the Council's website at http://www.cii.org/about_us.

³ H.R. ____, the Equity Crowdfunding Improvement Act of 2014, <http://financialservices.house.gov/uploadedfiles/bills-113hr-pih-crwdfnd-m001156.pdf>.

⁴ H.R. ____, To direct the Securities and Exchange Commission to revise its proposed amendments to Regulation D, Form D, and Rule 156, <http://financialservices.house.gov/uploadedfiles/bills-113hr-pih-regd.pdf>.

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The Council cannot support the Crowdfunding Bill or the Reg D Bill at this time. We believe both bills are premature.

As you are well aware, the Jumpstart Our Business Startups Act (Act) was signed into law just over two years ago. We observe that the Crowdfunding Bill appears intended to amend the crowdfunding provisions of the Act that have yet to be implemented.⁵

Similarly, the Reg D Bill appears intended to direct the Securities and Exchange Commission (SEC) to revise a rule that has yet to be issued.⁶ Moreover, the proposed SEC rule that the Reg D Bill would revise is intended to “better enable the SEC to monitor the market . . . [for Rule 506 private offerings, and] provide[] additional safeguards as [the] . . . market changes and new practices develop.”⁷ The purpose of the proposed SEC rule is generally consistent with the Council’s view that “sufficiently strong safeguards [are necessary] to ensure that Rule 506 private offerings are sold only to sophisticated investors that can understand and bear the financial risks of those investments.”⁸

We believe a far more prudent approach for the Subcommittee is to support the implementation of the Act, including the adoption and implementation of related SEC rulemaking. Following sufficient implementation experience of the Act and related rules, the Subcommittee could then conduct or commission an independent evaluation of the implementation of the Act, including the Act’s impact on investors, capital formation, job creation, and small and emerging growth companies.⁹ Following the completion of that evaluation, the Subcommittee would then likely have some evidence that could potentially support the provisions of the Crowdfunding Bill, the Reg D Bill, or other potential amendments to the Act or related rules that the Subcommittee may deem appropriate.

⁵ Memorandum, *supra* note 1, at 1; see, e.g., *Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies: Hearing Before the H. Subcomm. on Capital Mkts. & Gov’t Sponsored Enters. of the Comm. on Fin. Servs.*, 113th Cong. 13 (Apr. 9, 2014) (statement of Professor John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia University Law School) (“[I]t may be premature to amend . . . [the crowdfunding provisions] in the absence of any experience), <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba16-wstate-jcoffee-20140409.pdf> [hereinafter Coffee].

⁶ Memorandum, *supra* note 1, at 2.

⁷ Press Release, Securities and Exchange Commission, SEC Approves JOBS Act Requirement to Lift General Solicitation Ban 1 (July 10, 2013), <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539707782#.U2D9PvldUYM>.

⁸ Letter from Jeff Mahoney, General Counsel, to Elizabeth M. Murphy, Secretary 4 (Sept. 27, 2012), <https://www.sec.gov/comments/s7-07-12/s70712-74.pdf>.

⁹ See, e.g., Coffee, *supra* note 5, at 1 (“More generally, we seem to be moving from JOBS Act I to JOBS Act II without any serious evaluation of the impact of the first round of changes.”).

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We appreciate the opportunity to comment on the Crowding Funding Bill and the Reg D Bill in advance of your hearing. Should you have any questions or require any additional information about the Council's views on this, or any other, matter please feel free to contact me at 202.261.7081 or jeff@cij.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney".

Jeff Mahoney
General Counsel