WHAT'S WRONG WITH JUMPSTART(ING) OUR BUSINESS STARTUPS (JOBS) ACT?

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Lack of access to financial capital is a barrier for many entrepreneurs who seek to grow their business venture. In an effort to democratize the entrepreneurial ecosystem, Congress and the Obama Administration enacted the JOBS Act, which implements and regulates crowdfunding. The democratic nature of the online crowdfunding platforms is a seemingly attractive solution to structural and institutionalized barriers to fundraising within the entrepreneurship ecosystem. Although the JOBS Act is a laudable step, the legislation does not in practice help entrepreneurs and herein lies one of its greatest shortcomings. The JOBS Act is unduly burdensome and is yet another barrier for entrepreneurs. Merely permitting underrepresented entrepreneurs and unsophisticated investors to engage in an alternative investment scheme of crowdfunding to raise capital does not solve the problems of access to traditional sources of capital. This article makes concrete proposals for addressing these shortcomings.

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INTRODUCTION

The current federal securities laws were developed in the wake of the 1929 stock market crash, which resulted in the Great Depression.1 Historians have found that the cause of the

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Great Depression was widespread speculation and fraud. In the period leading up to the stock market crash, companies issued stock and then aggressively, and in some instances fraudulently, promoted the value of their companies in an effort to encourage investors to purchase their shares. The stock was therefore sold based on the promise of large returns with little disclosure of relevant information about the company. Yet, investors bought stock *en masse* in hopes of reaping huge profits, leading to a speculative frenzy. The U.S. stock market collapsed in October 1929 because those same investors attempted to sell their investments all at the same time.

Describing the aftermath of the 1929 crash, Irving Kahn, one of America’s longest living investors noted to a journalist that, “[t]here were also no legal protections. We had no securities laws. While everyone knows the system was flawed before the recent crash, at least there were some protections in place. In the Twenties we had nothing. And when the Depression hit, there were bread lines and families homeless in Central Park with nowhere to go.”

In response to the unprecedented effects of the market crash, President Franklin Roosevelt encouraged Congress to enact laws to prevent future speculative frenzies like the ones that occurred before the crash. Congress held several hearings that exposed the levels of abuse and prevalence of fraud that led to the stock market crash. As a result Congress enacted the Securities Act of 1933 (the “Securities Act”) and the

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2. See, e.g., id. at 678–79 (quoting American economist John Kenneth Galbraith, “American enterprise in the twenties had opened its hospitable arms to an exceptional number of promoters, grafters, swindlers, imposters and frauds. This, in the long history of such activities, was a kind of flood idea of corporate larceny.”).


7. See id. at 672 (“Prior to the enactment of the federal securities laws, the disclosure obligations of publicly traded firms defied any economic logic

Investor protection and issuer disclosure are major themes of the Federal Securities Laws. The Federal Securities Laws require companies to give investors information about the securities that are being offered and sold by a company. These disclosure requirements were put into effect to mitigate against fraud by issuers and sellers of securities. The goal of Congress was to protect investors by ensuring them access to truthful information.

After the passage of the Federal Securities Laws, the United States did not experience a significant economic crisis for several decades. In fact, the next six decades are referred to as the “golden era of financial stability.” During that era, Congress amended the Federal Securities Laws, but such amendments were mild and generally consistent with the underlying goals of investor protection and issuer disclosure. That period of economic stability was interrupted by the Great Recession.

Between 2008–2009, the period of the Great Recession, the United States saw the most dramatic employment contrac-
tion since the Great Depression. The rise in unemployment, paired with a credit crunch, caused millions of Americans to lose their homes, resulting in a major economic crisis. President Obama took several actions to fix the economic crisis, repair the financial system, and stabilize the housing market. Entrepreneurship and job creation were key parts of the government’s economic recovery strategy.

In January 2011, President Obama launched the Startup America Initiative and rolled out a series of entrepreneurship-focused initiatives. In a speech announcing the initiatives, President Obama stated, “[e]ntrepreneurs embody the promise of America: the idea that if you have a good idea and are willing to work hard and see it through, you can succeed in this country. And in fulfilling this promise, entrepreneurs also play a critical role in expanding our economy and creating jobs.”

Many of the policies implemented by the Obama Administration to facilitate the economic recovery from the Great Recession were aimed at creating jobs and encouraging entrepreneurship. A major component of the recovery legislation was the Jumpstart Our Business Startups Act of 2012 (“JOBS Act”
or “the Act”) that President Obama signed into law on April 5, 2012. In the unstable economy, entrepreneurs had little luck in seeking traditional sources of financing. The JOBS Act was meant to invigorate the economy by loosening the rules for investing and fundraising and to encourage funding of small businesses by reducing existing securities regulations. President Obama stated the goal of the Act and related legislation as, “put[ting] more people back to work and more money in the pockets of those who are working.”

The JOBS Act fundamentally changed the landscape of the Federal Securities Laws. Primarily aimed at entrepreneurs seeking capital, the JOBS Act theoretically increases the ability of small businesses and startups to access capital and generate jobs, through the use of crowdfunding. Crowdfunding is the act of raising capital from large amounts of people through the use of the internet. After the passage of the Act, entrepreneurs were legally allowed to sell their companies’ securities to online investors without registering an offering with the Securities and Exchange Commission (“SEC”). Since 2016, when the Act became fully effective, crowdfunding has become a part of the entrepreneurial landscape. Scholars theorize that the changes in the securities laws brought on by the JOBS Act democratize entrepreneurship, allowing for success-


22. Traditional sources of financing are typically unavailable to entrepreneurs, but during the Great Recession access to financial capital were further restricted.


ful participation in entrepreneurship by all.28 Crowdfunding may appear to be revolutionary; it has the potential to mitigate some of the disparities between businesses that have access to capital and those that do not.29 The reality, however, is that investment crowdfunding is not likely to democratize entrepreneurship. Given the extensive SEC regulatory requirements, it is unlikely that entrepreneurs will turn to investment crowdfunding to raise capital.

Although the JOBS Act was intended to provide greater access to capital for entrepreneurs and increase economic opportunity for ordinary investors, its greatest shortcoming is that it is unduly burdensome. The premise of this Article is that while laudable steps have been taken to democratize the entrepreneurial ecosystem by implementing crowdfunding, isolated regulation such as the JOBS Act will do little to support entrepreneurs in their startup ventures, resulting in grave effects on this country’s entrepreneurial ecosystem.30 Crowdfunding has several barriers to entry. These include transaction costs, disclosure requirements, portal registration, and capital limitations.31

This Article argues that the limits of and the restrictions in the rules prevent the JOBS Act from changing the existing dynamics within the entrepreneurial landscape. Scholars who have critiqued the crowdfunding legislation raise concerns related to investor risk,32 fraud,33 investor protection,34 and is-

28. See, e.g., Schwartz, supra note 26 at 619 (“[C]rowdfunding can democratize the market for financing speculative companies by inviting ordinary people to make investments that are currently offered solely to accredited (wealthy) investors.”).

29. Id.

30. Entrepreneurial ecosystem is a metaphor for promoting entrepreneurship as an economic development strategy.

31. See Hurt, supra note 25, at 217.


suer compliance and transaction costs.\textsuperscript{35} The legal scholarship has not addressed crowdfunding as it relates to the user experience in capital-raising for entrepreneurs. This study highlights that even with the loosened securities regulations, entrepreneurs, particularly those with startup ventures, will still struggle to access capital within the current financing framework, and the ordinary investor may be subjected to fraud and misinformation.

This article proceeds in four parts. Part I describes the securities laws and the financial landscape before the JOBS Act. Part II explains how crowdfunding operates within the statutory framework of the crowdfunding legislation. Part III assesses crowdfunding and illustrates the problems raised by the investment crowdfunding legislation. Part IV offers recommendations and suggestions towards changing parts of the JOBS Act.

I.

\textbf{THE FEDERAL SECURITIES LAWS}

Under the old regime, the Securities Act banned general solicitation,\textsuperscript{36} requiring that a company that offers or sells its securities must (1) register the securities with the Securities and Exchange Commission ("SEC"), or (2) find an exemption from the registration requirements, and (3) restrict investors to accredited investors.\textsuperscript{37}

The Exchange Act regulates financial markets, securities exchanges, and their participants.\textsuperscript{38} The Exchange Act created the SEC, the federal agency responsible for the enforcement of the Federal Securities Law and tasked with the authority to regulate the securities industry. The SEC has the power to promulgate rules pursuant to the Federal Securities Laws and to enforce federal law and its own rules. Under the Exchange Act, the SEC has the authority to register, regulate and disci-


\textsuperscript{36} General solicitation is advertising investment opportunities to the general public for private companies.


pline broker-dealers, regulate the securities exchanges, and review actions of the securities exchanges’ self-regulatory organizations.\textsuperscript{39} Before Congress enacted the Federal Securities Laws, most states also had their own securities laws, known as “blue sky laws.”\textsuperscript{40} Congress drafted the federal securities laws against the backdrop of pre-existing state regulation.\textsuperscript{41}

A. The Pre-2012 Federal Securities Law Regime

Under the Federal Securities Laws, companies seeking to raise capital through the sale of securities must either register the offering with the SEC or rely on an exemption from registration.\textsuperscript{42} Rule 506 of Regulation D is the most commonly used exemption from registration.\textsuperscript{43} A qualified offering under Regulation D allows for an issuer to raise an unlimited amount of capital from an unlimited number of “accredited investors” and up to 35 non-accredited investors.\textsuperscript{44}

\begin{thebibliography}{9}
\bibitem{41} In interpreting the federal securities laws, courts often reach back into relevant state law to interpret definitions or concepts that Congress used when drafting federal law. State law and federal law do not, however, correspond perfectly. Although there is some overlap, state law may provide for causes of action unavailable under federal law and vice-versa. State laws can be very different from state-to-state, and from federal law. Key differences are: (1) the kinds of products and transactions covered by the laws; (2) the registration requirements for brokers, dealers, and issuers; and (3) the breadth and causes of action available under anti-fraud provisions. For example, New York’s securities law, the Martin Act, permits only the Attorney General to bring a suit for violations. In New York, individual investors must bring private suits for common-law fraud law in order to recover. In many cases, federal law preempts state blue sky laws, requiring investors to sue in federal court and under federal law. LEGAL INFO. INST., supra note 3.
\bibitem{43} The Most Common Exemption — Regulation D Rule 506, CAP. FUND LAW, https://www.capitalfundlaw.com/blog/2015/04/05/the-most-common-exemptionregulation-d-rule-506 (last visited Oct. 7, 2019).
\bibitem{44} 17 C.F.R. § 230.506 (effective Sept. 23, 2003).
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B. The Accredited Investor Standard

The SEC created the notion of “accredited investors” to mitigate the tension between protecting individual investors in private securities offerings and promoting investment in private offerings to promote growth.45 An “accredited investor” is an individual or an entity that is presumed to not need the protection of federal or state securities laws based on their income or net worth.46 Qualifying as an accredited investor is significant because accredited investors may, under SEC rules, participate in investment opportunities that are generally not available to non-accredited investors or “ordinary investors.” These opportunities include investments in private companies and offerings by hedge funds, private equity funds, and venture capital funds. Arguably, the accredited investor rules are in place to prevent non-wealthy people from making risky investments that they cannot afford.47 As of 2010, only 7.4% of U.S. households were accredited based on net worth.48 This means that only a small percentage of the U.S. population can participate in private offerings, which require accredited investor status. This fact that wealthy investors have access to special kinds of investments that ordinary investors do not is, according to Professor Usha Rodrigues, “securities law’s dirty little secret.”49

In 2012, President Obama signed the Dodd–Frank Wall Street Reform and Consumer Protection Act (the “Dodd–Frank Act”) into law, which revised the accredited in-

46. Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Securities Act Release No. 33-6683, 37 SEC Docket 588 (Jan. 16, 1987) (the “Regulation D Revisions Proposing Release”) (The Accredited Investor standard is “intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or ability to fend for themselves render the protections of the Securities Act’s registration process unnecessary.”).
The Dodd–Frank Act directs the SEC to review the accredited investor definition as it relates to natural persons every four years to determine whether the definition should be modified or adjusted for the protection of investors, “in the public interest and in light of the economy.”

Before the Dodd–Frank Act, accredited investors were individuals with a net worth of above $1 million or an income above $200,000 per year. Under the current accredited investor definition, individuals are accredited investors if their income exceeds $200,000 in each of the two most recent years (or $300,000 in joint income with a person’s spouse) and that individual reasonably expects to reach the same income level in the current year. Individuals are also accredited investors if their net worth exceeds $1 million (individually or jointly with a spouse), excluding the value of their primary residence. Certain enumerated entities with over $5 million in assets qualify as accredited investors, while others, including regulated entities such as banks and registered investment companies, are not subject to the assets test. The accredited investor standard took on increased significance with the passage of the JOBS Act.

C. General Solicitation

In addition to the accredited investor standard, rules before 2012 prohibited the general solicitation of the public in securities offerings. Most of the exemptions from registration prohibit companies from engaging in general solicitation or general advertising—advertising in newspapers or on the internet to the public in connection with securities offerings. In other words, before the JOBS Act, private companies were only allowed to raise money from accredited investors and from those with whom they had a substantial pre-existing rela-

51. Id. § 413(b)(2)(A).
53. Id. § 230.501(a)(5).
54. Id. § 230.501(a)(1), (3), (7).
55. Id. § 230.501(a)(1), (2), (8).
56. Id. § 230.501. For calculation purposes, the value of primary residence is excluded.
tionship or to whom they were introduced via a registered broker-dealer. The rationale for the ban on general solicitation was to protect unsophisticated investors from fraud due to lack of information, education or disclosures.57

D. Changes to the Federal Securities Laws After the JOBS Act

The JOBS Act changed the Federal Securities Laws by lifting the ban on private companies from publicly advertising their fundraising efforts.58 The JOBS Act also exempts private companies from registering with the SEC if they offer securities amounting to $50 million or less every 12 months. By removing the general solicitation restriction, “Congress sought to make it easier for a company to find investors and raise capital.”59 The JOBS Act requires the SEC to revise the rules to permit general solicitation and general advertising in offerings where all purchasers are accredited investors and the issuer takes reasonable steps to verify their accredited investor status.60 Effectively, the Act changes the way companies can raise money and from whom they can raise it, without requiring a pre-existing relationship between the investor and the issuer.

In the aftermath of the financial crisis and in response to backlash against the Dodd–Frank Act, Congress moved quickly to pass legislation addressing business leaders’ concerns that the existing regulatory framework was overly burdensome and hindered entrepreneurship.61 The various legislative proposals to rescue the economy and support business growth came to-


59. SEC Fact Sheet (July 10, 2013), supra note 58.


gether under the JOBS Act. As a result, it was hastily drafted, not well thought through, and it has taken years for regulations to be established that flesh out the substance.

Through the efforts of Congress and the Obama Administration to democratize capital formation, the current legislation deviates significantly from the original goals of the Federal Securities Laws, which were investor protection and issuer disclosure. These changes in the Federal Securities Laws have laid the groundwork for investment crowdfunding and as a result of the JOBS Act, private companies are legally permitted to make solicitations to the general public.

II. REGULATION OF CROWDFUNDING

Typically, the success of a venture, whether it is a low-growth or high-growth venture, is directly tied to the founder’s ability to finance the venture. Research shows that capital is

62. See Harold S. Bloomental & Samuel Wolff, Going Public Handbook § 1:36 (2018), Westlaw SECGPH-HB ("H.R. 3606, the Jumpstart Our Business Startups Act, was introduced in the House of Representatives on December 8, 2011. The stated purpose of the bill was to "encourage small companies to go public in the U.S., to spur economic growth, and to create jobs." The House passed the JOBS Act on a bipartisan basis by a vote of 390 to 23 on March 8, 2012. The crowdfunding provisions of the House bill came under particular attack in the Senate, and ultimately the Senate adopted a different, enhanced version of the House’s crowdfunding provisions. The Senate passed its crowdfunding amendment 73-26 (CROWDFUND ACT S.2190) on March 22, 2012. Later that day, the Senate passed the full JOBS Act (as amended from the House bill), 73-26. On March 27, 2012, the House concurred in the Senate amendment to the JOBS Act, by a vote of 380 to 41, 19 not voting. H.R. 3606 was presented to the President on March 27, 2012. The legislation was signed by President Obama on April 5, 2012, to become Public Law No. 112-106. The SEC had publicly opposed the enactment of numerous provisions of the JOBS Act notwithstanding Presidential endorsement of the legislation. President Obama viewed the measure as a component of his jobs creation program.").


the number one predictor of a startup’s success.65 Undercapitalized businesses suffer from lower sales, profits, and lack of employment, and are more likely to fail than businesses receiving optimal levels of startup capital.66 Therefore, those who can access capital will have a greater chance of startup success, even if the idea is not the most innovative.67 Crowdfunding, an outgrowth of social media, was argued to be an important aspect of the entrepreneurial landscape that presents one possible way for entrepreneurs to access capital and raise funding.68 On its face, crowdfunding seems a fair and equitable way to level the playing field within the startup ecosystem. This section describes the mechanics of crowdfunding, a capital-raising scheme that would seem to be an antidote for outside fundraising challenges.

Crowdfunding is the practice of raising small amounts of money from a large number of individuals (the crowd) over the internet. The original purpose of crowdfunding was to make certain types of investments easier for both investors and founders alike. Whereas seeking angel investment and venture capital investment are private forms of capital-raising, crowdfunding is similar to an initial public offering (“IPO”)69 in that companies solicit investment from the general public. Successful projects typically receive about 25–40% of their funding from the founders’ first, second, and third degrees of connections.70 Crowdfunding platforms are used to raise

65. Mark Fahey, Alive at Five: The Key Year for Companies’ Survival, CNBC MKTS. (June 12, 2015), https://www.cnbc.com/2015/06/12/alive-at-five-the-key-year-for-companies-survival.html.

66. See Alicia Robb, Access to Capital Among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms, U.S. SMALL BUS. ADMIN. OFF. ADVOC. 6 (Apr. 2013).


69. An IPO is a solicitation to the general public to purchase equity in a venture in exchange for money.


A. Types of Crowdfunding

There are generally two categories of crowdfunding: project-based crowdfunding and investment-based crowdfunding.

1. Project-Based Crowdfunding

With project-based crowdfunding, investors receive the outcome of a project in exchange for their investment.\footnote{Schwartz, supra note 26, at 615.} Before the JOBS Act, project-based crowdfunding was the predominant model for solicitation via the internet because entrepreneurs were prevented from soliciting the public to invest in the securities of their company. As a result, crowdfunding was primarily used for donations and fundraising for feel-good projects or to support the arts.\footnote{See Andrew Schwartz, Crowdfunding Securities, 88 Notre Dame L. Rev. 1457, 1459 (2013).} With this type of crowdfunding, nonprofit organizations and individuals used the internet to garner financial support for specific projects.\footnote{See id. An example of a notable donation-based crowdfunding campaign is the Mott Hall Scholarship Fund, which was started by the founder of Humans of New York. The crowdfunding campaign raised over $1 million dollars in a little over a week’s time. See Winnie Hu & Jonah Bromwich, A Boy Praises the Principal of His Brooklyn School, and a Fund-Raising Campaign Takes Off, N.Y. Times (Jan. 29, 2015), http://www.nytimes.com/2015/02/01/nyregion/a-boy-praises-the-principal-of-his-brooklyn-school-and-a-fund-raising-campaign-takes-off.html.} It is a fundraising vehicle that builds momentum and rallies people around an idea, rather than spurring on investment opportunities. Creators keep the funds raised without obligation to funders, as opposed to investment-based crowdfunding, where
funders receive a security in return. Kickstarter, GoFundMe and Indiegogo are examples of popular crowdfunding websites primarily used for project-based crowdfunding. Kickstarter is a common launching pad for art projects, particularly film and music projects. Indiegogo is a common platform for crowdfunding based on donations. There are no criteria for the kind of project that can become an Indiegogo campaign. This type of crowdfunding has helped to fund video games, film projects, music and the arts, in addition to supporting individuals and nonprofit organizations in need.

2. Investment Crowdfunding

As described above, investment crowdfunding was effectively prohibited under the securities laws pre-JOBS Act. The SEC and many in the finance industry worried that ordinary people could lose their life savings in a crowdfunding scheme because of fraud or naivety. Yet, the passage of the JOBS Act


76. As of the writing of this article, Kickstarter has facilitated over $4.5 billion in crowdfunding contributions since its inception. See Kickstarter Stats, Kickstarter, http://www.kickstarter.com/help/stats (last visited Oct. 11, 2019).


78. As of the writing of this article, Indiegogo has expanded into investment crowdfunding. See How It Works, Indiegogo, https://www.indiegogo.com/how-it-works (last visited Oct. 11, 2019).


80. There are some limitations on the types of ventures that can be funded. For example, marijuana related products cannot be sold.


82. See, e.g., In the Matter of Michael Migliozzi II and Brian William Flato, Securities Act Release No. 9216 (June 8, 2011).

allowed for investment crowdfunding. Investment crowdfunding involves companies making an offering for sale of securities to the general public using the internet. With investment crowdfunding, instead of receiving a product or supporting the outcome of a project, investors receive a security in exchange for money. Investment offerings may include offerings of stock, interest-bearing loans, revenue sharing, convertible debt, and future equity.

The most common types of investment crowdfunding are debt and equity. Debt crowdfunding is when a group of people or businesses lend money to an individual or company with the understanding that the loan will be repaid with interest. Equity crowdfunding is where the exchange between the company and investor is represented by company equity, or ownership, as opposed to goods or services. The idea is very similar to how common stock is bought and sold on the stock market.

B. How Crowdfunding Works

Crowdfunding works by using an online platform to raise funds from the public (the “crowd”). With investment crowdfunding, securities are generally sold through a broker or SEC-approved funding portal. These brokers are facilitators who have an obligation to provide information, reduce the risk of fraud, and are responsible for investors’ and issuers’ compliance with the law. The broker/portal model


87. See id.

88. Wroldsen, supra note 85, at 546.

educates both companies and investors and standardizes the process of online solicitation.  
Crowdfunding is thought to be a key to economic growth. As a result, three of the JOBS Act titles—Title II, Title III, and Title IV—created three different sets of regimes in which private companies can raise investment capital online. Title II permits companies to publicly advertise that they are raising capital (although they can only sell to accredited investors). Title III creates the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act (the “CROWDFUND Act”), which exempts businesses from the SEC registration requirements in connection with online capital raising from anyone, including unaccredited investors. However, there is a limit on the amount of capital that can be raised under Title III. Title IV, referred to as “registered crowdfunding,” allows startups to raise up to $50 million per year from both unaccredited and accredited investors via an update to existing Regulation A, now referred to as Regulation A+. It should also be noted that Title VII of the JOBS Act obligates the SEC to reach out to small businesses, as well as businesses owned by women, veterans, and minorities, regarding the changes made by the JOBS Act.

C. Title II: “Access to Capital for Job Creators”

As described in Part II above, prior to Title II going into effect in September 2013, federal regulation prohibited the general solicitation or advertisement of securities in a private placement exemption, requiring issuers to have some preexisting relationship with potential purchasers before conducting a private placement. The preexisting relationship requirement

92. An “accredited investor” is an individual $1 million net worth (excluding the value of primary home), or over $200,000/year (or $300,000 together with a spouse). 17 C.F.R. § 230.501(a)(1).
created a significant limitation on an issuer’s ability to find and raise capital, since issuers were required to know all potential investors. Title II changed that limitation, creating a new registration exemption often referred to as “Accredited Crowdfunding,” which creates a streamlined registration process for startups and private companies to raise any amount of money online, as long as the ultimate purchasers are accredited investors and the issuer goes through extra steps to verify their investors’ accredited status. Title II allows founders to publicly advertise investment opportunities online via crowdfunding platforms, foregoing the requirement of a preexisting relationship.

The effect of Title II is that some small businesses and startups can market their business to strangers, unencumbered by the former restriction of a preexisting relationship, and raise an unlimited amount of money from accredited investors via online crowdfunding portals. Elimination of the preexisting relationship requirement means that entrepreneurs may now connect to a wider source of capital they might otherwise be unable to access, and accredited investors have access to investments that they might not otherwise find. Arguably, this change helps entrepreneurs reach investors previously unknown to them who may already meet the accreditation standards and helps investors seeking to make investments in emerging companies.

D. Title III: “CROWDFUNDING”

On October 30, 2015, the SEC adopted the final rules for the implementation of investment-based crowdfunding and in May 2016, the SEC final rules for Title III went into effect. The new rules created an additional private placement exemption from registration of a securities offering. Unlike Title II, Ti-

95. It remains unclear what steps the SEC will require from issuers to verify that purchasers under Rule 506 are actually accredited investors.
98. Id.
tle III permits investment crowdfunding to be made available online to unaccredited investors via crowdfunding portals registered with the SEC. Effectively, Title III permits companies to sell securities to both accredited and non-accredited investors without registering or complying with the full disclosure requirements of a public offering. The rules provide that any investor, regardless of whether they are accredited, may invest in a startup business by investing in equity, debt, or other financial instrument. Businesses are limited to raising up to $1 million annually from unaccredited investors. Unaccredited or ordinary investors may invest a maximum of $2,000 or 5% of their income if their net worth and annual income are both less than $100,000. Investors with over $100,000 in net worth or income may invest up to 10% of either.

E. Title IV: “Small Company Capital Formation”

Title IV revived the already existing, but little used, Regulation A, which offers another exemption from registration by adding a new provision many have referred to as “Regulation A+” or “Registered Crowdfunding.” Regulation A+ targets startups by allowing them to raise up to $50 million per year from accredited and unaccredited investors (unaccredited investors are limited to investing 10% of their self-reported income or net worth). It gives entrepreneurs the ability to raise larger amounts of capital than under Title III from a larger pool of investors than the typical traditional accredited investor.

Title IV also allows Regulation A+ companies to avoid individual state securities laws and to gauge investor interest in an offering before formally filing with the SEC. Regulation A+ effectively allows companies to advertise online, avoid individual state’s financial regulations, and confidentially “test the waters” to gauge potential investor interest before registering with the SEC. This option is mostly for late-stage startups because it requires significant time and money (six to eight

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102. SEC Adopts Rules for Crowdfunding, supra note 97.
months, $50,000 to $150,000) in the initial SEC registration and ongoing financial reporting. By contrast, a full IPO costs $2.6 million. While Title IV allows unaccredited investors to participate, there have only been a few investment crowdfunding platforms catering to unaccredited investors.

F. Intermediaries

Crowdfunding intermediaries or brokers are responsible for helping issuers comply with the JOBS Act. Brokers are obligated under the JOBS Act to make sure that each investor receives (1) issuer disclosures, and (2) reviewed investor information materials to ensure transparency and protect against fraud. The intermediary must also affirm that the investor can bear the risk and confirm their understanding of the risks of investment via questionnaire. The intermediary is required to (1) conduct a background check on each officer, director, and 20% or more shareholder of the issuer, (2) protect investor privacy, (3) ensure that no offering proceeds are provided to the issuer unless the target offering amount has been met, (4) allow investors to cancel their commitments, (5) ensure that no investor exceeds the allowable investment limited from all crowdfunding investments within a 12-month period, and (6) take measures to reduce the risk of fraud.  

G. Disclosure Requirements Under the JOBS Act

There are three tiers of financial disclosure, which depend on the targeted size of the offering. All issuers must provide a description of their financial condition, certain financial information, and after a crowdfunding round, file with the SEC, and make available to investors financial statements and a report on the results of operations. Tier 1 requires that for offerings of $100,000 or less, an issuer must disclose its most recent income tax return or a copy of its financial statements, certified by the principal executive officer to be true and com-

plete in all material respects. Tier 2 is for issuers that want to raise more than $100,000, but not more than $500,000. It requires financial statements reviewed by an independent public accountant. Tier 3 is when an issuer wants to raise $500,000 or more. In this tier, issuers need to provide audited financial statements. Tier 2 and tier 3 disclosure requirements may prove to be the breaking point for a number of issuers who will have to decide whether the cost and effort of audited financials justifies the additional offering amount. In theory, the JOBS Act worked to balance making capital more accessible with potential fraud, but the reality is that in practice, startups may raise $500,000 or less to avoid the audited financial statement requirement.

This section discussed the variations of crowdfunding, how crowdfunding works, and the new crowdfunding rules and legislation, and the next section makes some observations about the crowdfunding rules and identifies some problems and barriers to entry for entrepreneurs.

III. THE PROBLEM WITH CROWDFUNDING

Because crowdfunding has the potential to increase the capital-raising opportunities available to entrepreneurs and investment opportunities available to non-wealthy investors, the JOBS Act has been touted by scholars as having the potential to bring about a powerful shift in the existing traditional fundraising mechanisms. On its face, crowdfunding seems to be exactly what entrepreneurs and investors need. Certainly, it seems plausible that, given the issues with respect to traditional capital raising, crowdfunding would be a welcome and meaningful way for entrepreneurs to have equal access to capital. Supporters of the new securities regulations argue that these opportunities can change outcomes for certain groups of participants in the financial markets, since entrepreneurs who have been historically shut out of the market for traditional sources of funding now have the opportunity to appeal to their networks and to strangers over the Internet to support


their business. In addition, it is argued that crowdfunding enables non-wealthy investors to participate in the financial markets in a new way. Therefore, the purported value of crowdfunding is that it allows more individuals to engage as producers and consumers in the economy, without relying upon that portion of the country that is wealthy or has access to wealth.

The project-based model of crowdfunding has been operating for nearly a decade and has developed into a robust market, but the investment-based model of crowdfunding made possible by the JOBS Act has not had that much time to develop, and its impact is unknown. Yet scholars have written about the potential for disastrous consequences for both investors and issuers. The use of the Internet for anonymous investment transactions raises concerns about the risk to those who invest with issuers when they do not have a pre-existing relationship. In addition, critics cite transaction costs, fear of fraud, shareholder dilution, and information asymmetry as consequences of the new changes to the Federal Securities Laws.


110. There is little to no existing empirical data on crowdfunding at the time this Article was written.


There were many naysayers when the JOBS Act was first proposed. The lengthy delay between the time that the JOBS Act was signed in 2012 and the rulemaking that went into effect in 2016 can be attributed to the SEC’s fear, reflected by many scholars, that both the public and entrepreneurs were not ready to democratize investment. Proponents of crowdfunding argue that it has the potential to play a positive role in improving the trajectory of a startup business and argue that crowdfunding can also play a role in providing investment vehicles for non-wealthy investors, who have been traditionally shut out of Wall Street. Some have claimed that investment crowdfunding is the best source of startup funding for women and people of color. But if investment crowdfunding is so great, more entrepreneurs would seemingly have tried it. Of the 6 million businesses in the U.S., only 1400 entrepreneurs have turned to investment crowdfunding. Crowdfunding has not been widely used by anyone, not just entrepreneurs.

There is not enough empirical evidence about whether the JOBS Act has created more economic opportunity for startup businesses. Bloomberg reports that, in the first year equity crowdfunding was allowed by the SEC, 142 companies raised a total of $37.6 million. In contrast, venture investors invested

114. See Rodney Sampson, *Crowdfunding’s Power to Close the Racial Wealth Gap*, HUFFINGTON POST (May 16, 2016), http://www.huffingtonpost.com/rodney-sampson/crowdfunding-power-to-cl_b_9994080.html (“I personally believe that equity crowdfunding is the most significant piece of financial based legislation for African Americans since the Emancipation Proclama-
tions 1863 emancipation of the Southern Slaves.”).


is-equity-crowdfunding; Rebecca Lake, *Crowdfunding for Non-Accredited In-
vestors*, INVESTOPEDIA, https://www.investopedia.com/articles/entrepreneur-
ship-small-business/050216/guide-crowdfunded-investments-nonaccredited-
investors.asp (last updated Sept. 19, 2019).

.com/news/articles/2017-05-19/u-s-startups-fail-to-attract-expected-crowd-of-
small-investors.
$69 billion according to the National Venture Capital Association.

Although the JOBS Act was intended to provide greater access to capital for entrepreneurs, the legislation and current capital raising schemes available to entrepreneurs may not be enough to meaningfully democratize the entrepreneurial ecosystem.

A. The Allowable Fundraising Amounts Are Too Small

Title III on its face appears to enable the opening of access to capital for entrepreneurs, but there are some significant hurdles and limitations, not the least of which is that companies can only raise $1 million in equity crowdfunding within a 12-month period. This amount is minor compared to the amount of work, legal, and otherwise a company needs to do in order to comply with all the regulations. Currently, a startup’s first outside capital is averaging between $1.7 and 1.9 million. If a startup wants to meet the average, they will need to conduct a financing round in addition to a crowdfunding round.

The amount unaccredited investors can invest in a business is capped in a given year at $2,000, or 5% of their annual income or net worth (whichever is greater) if the investor makes less than $100,000 annually. Unlike Title II investments, these new classes of investors can “self-certify.” The crowdfunding websites are not required to ask for individual tax returns or bank statements to prove how much the investors are worth; these investors are simply required to check a box indicating that they acknowledge that the JOBS Act limits Title III investors from spending more than 5% of their income on crowdfunding offerings (although accredited investors can invest up to 10%).

Any investor can invest in Title III exempted crowdfunding campaigns. Issuers are limited to no more than a million dollars annually via crowdfunding sources. Public companies, registered and exempt investment companies, and non-U.S. companies are prohibited from using the crowdfunding exemption.

B. The Requirements Are Too Costly

While Title III of the JOBS Act was written with specificity for smaller startups raising money, the rules may be too limited and demand too much to be actually useful for a startup business. Title III limits a business to raising up to $1 million per year. While raising $1 million would be a great opportunity for a startup, the money raised does not come without a cost. The expected costs of crowdfunding are problematic.\(^{121}\) Professor Patricia H. Lee found that the compliance costs and liabilities for issuers may reduce the impact of crowdfunding.\(^{122}\) She writes that transaction costs come from “heavy regulatory burden[s] imposed, including issuer disclosure requirements, entrepreneur’s reporting requirements and the requirement that sales take place through a new SEC-registered framework called a funding portal.”\(^{123}\) Further, she asserts that crowdfunding financing may be one of the most expensive ways to obtain capital because of the cost of the regulatory burdens.\(^{124}\) Despite the JOBS Act waiving the registration requirements,\(^{125}\) crowdfunding under Title III is still costly for issuers, due to an obligation to abide by regulations that generally requires professional assistance that averages between $50,000 to $100,000.\(^{126}\) Raising money with Regulation A+ still involves quite a bit of work and expense for the issuer, approximately $50,000–$100,000, along with ongoing bi-annual financial reporting. Further, equity crowdfunding may be cost prohibitive to all but the wealthiest startups. Issuers must be able to produce and offering disclosure documents, enlist a fund-

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122. Lee, supra note 35, at 36.  
123. Id. at 38.  
124. Id. at 39.  
125. All crowdfunding offerings are exempt from registering the offering with the SEC. This is good for startups because registration is costly. On average the cost of initial securities registration is $2.5 million with additional $1.5 million in costs related to compliance with ongoing requirements. See Thomas, supra note 121, at 62.  
ing portal, conduct background checks, and file an annual report. According to the SEC’s Regulation Crowdfunding Study survey estimates, the total cost of creating a campaign page, issuer disclosures, film, and video, and hiring a marketing firm, a lawyer, and an accountant amounts to approximately 5.3% of the amount raised.\textsuperscript{127} NextGen found that companies spend $20,000 to $50,000 on legal accounting and marketing—a heavy burden for startups generally, particularly if the startup is only looking to raise a couple hundred thousand dollars.\textsuperscript{128}

C. \textit{The Requirements Are Too Risky}

The obligations on the startup fundraiser may be too risky. The burden is on the company to prove the eligibility of their investors. The company must have written confirmation by a certified public accountant, an attorney, an investment advisor, a broker-dealer, or income-related IRS forms.\textsuperscript{129} It may therefore simply be easier for companies to seek investment from only accredited investors, rather than the ordinary investor, because there is too much additional risk that these small, emerging companies take on by participating in crowdfunding and offering to ordinary investors. For example, failure of a startup to prove status of its investor means that the startup could be banned from offering securities for one year, which could be fatal for a startup enterprise. Under the JOBS Act, companies face new liability. Investors can bring suit against a company they have invested in for material misstatements and omissions.

D. \textit{The Requirements Are Too Burdensome}

One of the purposes of the JOBS Act is to increase access to capital by reducing the disclosure requirements of the securities laws, but the JOBS Act is unduly burdensome and is


\textsuperscript{129} Final Rule: Crowdfunding, supra note 64; SEC Fact Sheet (July 10, 2013), supra note 58.
likely to be another barrier for entrepreneurs. The JOBS Act contains restrictive disclosures described in Part II above, that describes the specific disclosures that need to be made by issuers to the SEC, investors, intermediaries, and the public. These disclosures include the name of the company, its legal status, the physical address and website URL, along with information about officers, directors, and equity holders that own 20% or more of the company. Issuers must also provide a description of the business, a business plan, planned use of the proceeds, terms of indebtedness, employment information, other offerings conducted, financial statements, and capital structure and risks.

The restrictions on its users create practical problems for founders and investors. For instance, companies can only conduct crowdfunding transactions through funding portals, and companies that use crowdfunding are required to file annual reports with the SEC. Preparing such disclosure statements that protect the business may be too costly and burdensome, either in time and/or technical expertise, or transaction costs for some startups, because of the scarcity of resources. The rules require that all companies that use crowdfunding file financial statements for the last two fiscal years (or less). Companies must submit audited financial statements for offerings of more than $500,000. Because of the audit costs, it is likely that companies might only raise $490,000 to avoid the cost of audited financial statements.

Further, tracking crowdfunding investors may be too burdensome, so crowdfunding investors might be the least preferable investor in a startup venture. A startup venture looking to raise $1 million might prefer to receive the money from a single individual (or a single fund) as opposed to hundreds or even thousands of ordinary investors. The logistics of keeping track of all of those investors may prove problematic and may overly complicate a company’s cap table.

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131. Id.
134. A capitalization table that specifically outlines the equity and debt ownership of a company in its entirety.
E. The High-Growth v. Low-Growth Distinction

Further, it seems as though the JOBS Act was put in place to promote certain kinds of businesses, for example, high-tech or high-growth ventures. The JOBS Act was enacted to level the playing field, and the legislation was used as a tool to promote entrepreneurship in an effort to stimulate the economy, but the legislation targets the high-growth venture to the exclusion of low-growth smaller businesses.135 The statute’s focus on high-tech companies seems to have a narrow view of entrepreneurship. Therefore, while crowdfunding might work for scalable high-tech ventures, it is unlikely to favor most modest low-growth potential enterprises—the kinds that are run by most entrepreneurs. The crowdfunding opportunity is most favorable for scalable enterprises with an exit strategy and may not be a great fit for neighborhood businesses or low-growth businesses.

Scholars argue that the most promising companies—the high-growth ventures delivering the remarkable returns that keep the entire venture capital industry afloat—may also be the one least likely to raise money via crowdfunding.136 Because crowdfunding rules cap fundraising at $1 million every 12 months using equity-based crowdfunding, there is not that much money to be made from crowdfunding. Therefore, the high-growth ventures—the unicorns and blockbusters—may not bother raising such a small amount (only up to $1 million) from a crowd.137 Many high-growth or tech companies may opt out and may raise capital through traditional private channels.

F. The Dumb Money Effect of Crowdfunding

The use of crowdfunded financing does not provide the added benefit of access to an experienced investor willing to serve as advisor to the venture. With angel investors and venture capital, the entrepreneur has the ability to develop a rela-

136. See Cowley, supra note 83.
137. Id.
tionship and consult with experienced investors, capitalizing on the investors’ expertise and their network. Both types of investment are invaluable to a founder, because the money comes with the investors’ expertise and network. Furthermore, practitioners would argue that having too many investors proves problematic for companies, particularly when shareholder approval is required for action.

G. The Ordinary Investor

In addition to targeting small businesses and startups, the JOBS Act also sought to target investors of modest means to invest in startup companies. In his speech when he signed the bill, President Obama said, “For the first time, ordinary Americans will be able to go online and invest in entrepreneurs they believe in.” Certainly, crowdfunding appeals not only to entrepreneurs, but to investors as well. The JOBS Act shifted the investing landscape from only institutional and expert investors to unsophisticated retail investors. Under the crowdfunding rules, ordinary investors have access to companies that they would not ordinarily have access to, since before the JOBS Act such investment was only available to wealthy investors who were friends and family of the founders. Investing in such ventures is another way for ordinary investors to potentially build wealth. Under the previous regime, the SEC rules

138. Investors can be categorized as either smart money investors or dumb money investors. Smart money is investment plus expert assistance, social capital and/or mentoring. Dumb money is money that is just money without expert assistance, social capital or mentorship. Caroline Banton, Smart Money, INVESTOPEDIA, https://www.investopedia.com/terms/s/smart-money.asp (last updated May 20, 2019).


140. Press Release, The White House, Office of the Press Sec’y, Remarks by the President at Global Entrepreneurship Summit and Conversation with Mark Zuckerberg and Entrepreneurs (June 25, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/06/25/remarks-president-global-entrepreneurship-summit-and-conversation-mark (“I believe we are better off in a world in which we are trading and networking and communicating and sharing ideas. But that also means that cultures are colliding and sometimes [it] is disruptive, and people get worried. You’re the bridge, you’re the glue . . . .”).

141. Landler, supra note 21.
“created an investment climate that the rich get richer, while the poor get left behind.”142 Yet, while the rhetoric of crowdfunding provides an opportunity for investors as well as founders, it is unlikely that investing in crowdfunding opportunities will build enough wealth and capital to provide a meaningful economic opportunity because it is unlikely that the return on a crowdfunding investment will come close to that of an investment in the private market, a market that is still only available to accredited investors. Additionally, the rules around unaccredited investors may be such a burden for startups that they may choose to solely appeal to accredited investors, since the rules allow companies to raise money from accredited investors without spending much cash or having to publicize disclosures regarding company finances.

1. Fraud

Despite crowdfunded securities being subject to anti-fraud provisions of the securities laws143 and gatekeepers such as auditors, lawyers, and underwriters, fraud remains a major concern because crowdfunding securities are subject to limited disclosure requirements (as described in Part II). Some scholars are therefore concerned that a probable consequence will be increased fraud and inaccurate information, harkening back to the events that sparked the crash of the stock market in 1929.144 Ordinary crowdfunders lack the ability to vet their investments or engage with a specific strategy in the same way that traditional investors do. As soon as a request is posted on a crowdfunding platform, it goes live and an investor can in-

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143. The new section of the Securities Act § 4A(c) provides the liability standards for issuers in connection with crowdfunding offerings. In the Proposed Rule for Crowdfunding, the SEC notes: “The anti-fraud and civil liability provisions of the Securities Act, such as Sections 12(a)(2) and 17, apply to exempted transactions, including those transactions that will be conducted in reliance on crowdfunding.” Crowdfunding, Release Nos. 33-9470, 34-70741 (comments to be received on or before Feb. 3, 2014) (to be codified at 17 C.F.R. pts. 200, 227, 232, 239, 240 and 249), https://www.sec.gov/rules/proposed/2013/33-9470.pdf.
144. Schwartz, supra note 73; see, e.g., Heminway & Hoffman, supra note 111.
vest. This is the time period that worries scholars and where the greatest potential for fraud exists. 145

In addition, because of the regulatory burden of crowdfunding using unaccredited investors, the ordinary investor may be effectively excluded from investment crowdfunding anyway. Another issue raised by critics of the JOBS Act is the fallout from the opening up to the masses of investment opportunities once only available to the rich. 146 Opening investment opportunities up to the ordinary investor gives such investor an opportunity to build wealth previously available only to the wealthy or those connected to savvy entrepreneurs or founders of unicorn companies. For example, friends and family of founders of certain companies, such as Twitter, Facebook, Dropbox, Uber, and other unicorns, 147 were able to invest and see their investment grow to be worth million or billions. In contrast, the public had to wait until the IPO (sometimes public investors are subject to losses) to invest in the companies, which allegedly “democratizes investment.” 148

2. The Ordinary Investor is Unlikely to Build Wealth

Ostensibly, now the ordinary investor can speculate on companies at the ground floor. The potential in theory is a good thing, but the reality is that it is unlikely to result in an ordinary investor building wealth in practice. Investing is a luxury that requires disposable income. It is inconceivable that the ordinary investor is in a position to become a venture capitalist. The ordinary investor does not have disposable income or the wealth to participate in crowdfunding offerings. Investing, as a mechanism to build wealth, is likely to never be an option for the ordinary investor. As Professor Usha Rodrigues puts it, “even with CROWDFUND, the real homeruns are still reserved for the big wallets.” 149 Meaning that there is more

146. Cowley, supra note 83.
148. See, e.g., Heminway & Hoffman, supra note 111.
money in the private markets that are not currently available to the ordinary investor.

3. Financial Literacy is Needed

These inexperienced investors will not know how to decide which companies are worthy of their investment. Inexperienced investors may not be savvy enough to understand the risks associated with new ventures. Online investors face greater uncertainty than investors in traditional businesses. On the other hand, experienced investors spend copious amounts of time and resources evaluating the companies in which they invest. Conducting due diligence on potential investments is a key part of their investment strategy to determine whether they will receive a return on their investment. Crowdfunding investors will not have the opportunity to conduct due diligence beyond the information that is shared on the crowdfunding platform.

4. The Exit Strategy for Investors is Complicated

It is likely that most entrepreneurial ventures will fail. Fifty percent of all businesses will go out of business; only ten percent have a likelihood of success. Those ventures that are headed toward a success story with monster returns will take years to build. The average time for a company to go from a startup to an IPO is ten years. Companies currently go pub-

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lic at a much lower rate than ever before.\textsuperscript{154} This length of time before a public offering will be a barrier for many ordinary crowdfunding investors.

Although sold to the general public, shares issued through a crowdfunding offering are privately held and may not be transferred easily. Unlike shares of a public company that are bought and sold on a public exchange, there is no exchange where crowdfunding investors can sell their securities, although there are crowdfunding portals that re-sell crowdfunded securities. Without a robust secondary market, or a clear exit for investors, it is unlikely that as many investors will want to participate in equity crowdfunding; therefore, founders will not be able to fully take advantage of crowdfunding. Crowdfunding is still in its infancy, but creating an exit strategy for investors is important. Not every company will reach the level of an IPO or an acquisition that generates investment returns. Hence, providing investors liquidity is an important issue that needs to be resolved for crowdfunding to takeoff.

IV. RECOMMENDATIONS TO REVISE THE JOBS ACT

The JOBS Act in its current form is not likely to meaningfully assist entrepreneurs in building their businesses. The legislation needs to be revised to be more user-friendly for entrepreneurs. Congress should introduce legislation that addresses the restrictions and limitations of the JOBS Act, which is identified in Part III above.

The legislation should make crowdfunding mechanisms more appealing to low-growth companies as well as high-growth ventures. For example, the legislation should financially support funding portals for entrepreneurs. Further, Congress should create a registration exemption for small business offerings.

Congress should include funding that supports more crowdfunding platforms and support for entrepreneurs. Congress should expand Title VII of the JOBS Act to educate entrepreneurs about the JOBS Act and dedicate resources to

overcome the barrier of the costs related to equity crowdfunding. Crowdfunding’s effects on entrepreneurship needs to be studied and better understood in order to create meaningful legislation that will support investors and entrepreneurs.

The SEC should limit the liability of a crowdfunding intermediary or portal’s liability while extending at least a 5-year grace period for portals to make a good-faith effort to comply with all crowdfunding rules as proposed by the Fix Crowdfunding Act (H.R. 4855).

The SEC should increase the annual fundraising limit from $1 million to $5 million, which enables entrepreneurs who require larger amounts of capital in the seed round to use equity crowdfunding as a potential source of funding. Allowing companies the opportunity to raise more money during a crowdfunding round will help startups protect their valuation and also save money on the necessary legal and accounting fees required to utilize equity crowdfunding.155

These recommendations for change, specifically as they relate to the Title III rules, will encourage more entrepreneurs to launch crowdfunding campaigns without the fear of transaction costs, burdensome due diligence, and bureaucracy. Lastly, the SEC should allow for the use of special purpose investment vehicles, which would help entrepreneurs keep their cap tables organized because the investors of low-dollar amounts are grouped together into one large fund that appears on the cap table as one large entity.

**Conclusion**

Entrepreneurship was touted as the means to overcome the economic crisis and the solution to level the playing field in the entrepreneurship ecosystem. Crowdfunding is an apt metaphor for entrepreneurship as an economic development strategy. Crowdfunding was introduced to resolve some of the inequities existing within the entrepreneurial landscape. The

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passage of the JOBS Act promoted the idea that the way forward out of the recession is for entrepreneurs to either start a high-growth business or to invest in a high-growth business. The changes to the securities laws arguably have the potential to disrupt traditional financing constructs and traditional methods of capital raising by promoting economic participation by everyone, not just the wealthy accredited investor.

The change to the securities laws, allowing for investment in startup enterprises and investment by unaccredited investors, is a monumental advancement for entrepreneurship in the U.S. The purpose and goals of crowdfunding have been lauded for their aspirations, but as a fundraising mechanism, it only works in a limited sphere. Crowdfunding as it currently stands is unlikely to overcome the existing challenges to capital raising that entrepreneurs face within the entrepreneurial ecosystem. The legislation could do more to account for how entrepreneurs have access to capital and markets. It remains to be seen whether entrepreneurs will benefit from the change. Crowdfunding is not a panacea to the many fundraising challenges facing small businesses. After the historic change to the securities laws, it seems as though crowdfunding is not merely a passing trend. Historically, however, the U.S. has a history of creating wealth-building policies that benefit the wealthy. As an unintended consequence of investor protection, tax policies and financial policies have also evolved to favor the wealthy. 156 With respect to crowdfunding, every effort should be made to avoid that phenomenon.

156. Rodrigues, supra note 49, at 3417 (Describing the disparity in investment access, Professor Rodrigues writes that “in the name of investor protection, investments have been harmed by being sidelined.”).