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16 August 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Jumpstart Our Business Startups Act

Dear Ms. Murphy:

CFA Institute[1] appreciates the opportunity to comment on certain provisions of the Jumpstart Our Business Startups Act (the "Act") that was recently enacted by Congress. We welcome the opportunity to provide input as the SEC considers the content of implementing regulations.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

CFA Institute has previously registered strong concerns that a number of the Act's provisions will increase the possibility for fraud through a number of provisions that reduce transparency, negate existing conflicts of interest safeguards, and significantly reduce important investor protections.

Full Public Consultation and Cost Benefit Review. To respond to the reduced investor protections, we think care should be taken to fully examine public opinion. That would include regular public consultation on proposed regulations needed to implement the Act, including a formal cost/ benefits analysis prior to the Commission introducing final rules. We question the haste to enact interim rules on such a controversial proposal.

"Surgeon General" Warning Label. In any event, we encourage the SEC to implement regulations that require emerging growth companies and crowdfunding companies to spotlight for investors, the risks they are undertaking with these securities. We recommend that a "Surgeon General"-like banner be added to the face of any prospectus or offering conducted under the ACT. This warning label should address key risks and provide prominent warnings of reduced transparency and investor protections.

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[1] CFA Institute is a global, not-for-profit professional association of more than 112,000 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom more than 102,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 137 member societies in 59 countries and territories.

Keep Regulation S-K Requirements Intact. We strongly support the Commission resisting calls to reduce, eliminate or otherwise water-down the disclosures required by Regulation S-K.

Discussion

CFA Institute supports reasonable efforts to increase opportunities for small companies to access the capital markets for equity and debt funding. However, this objective should not be accomplished by sacrificing the typical investor protections normally required for accessing public markets or otherwise skew the balance so far toward ease of financing as to render important investor interests irrelevant.

The financial market turmoil of recent years has virtually destroyed retail investor confidence. In order to overcome these negative perceptions, investors must be shown by companies and regulators alike that financial abuses will not be tolerated, that conflicts of interest will be managed and that important investor protections will be maintained. Meanwhile, where serious gaps in regulation are opened up by new legislation, bold warnings should accompany any such rollback. We are concerned that the Act fails in each of these areas and, therefore, could have the effect of worsening investor confidence.

Lack of Section 404 Safeguards. In a recent survey of the U.S-based CFA membership, more than 60% of respondents expressed their concern that the Act will create additional gaps in transparency and investor protections. Another 56 percent thought investors would find it more difficult to make informed investment decisions. Just 26 percent of respondents said they believed the Act would have no effect on the decision-making process.

Section 404 of the Sarbanes-Oxley Act requires strong and effective internal controls to ensure that investors receive accurate financial information from public companies. This may be even more important when new companies lack track records or adequate experience on which investors can rely. Section 103 of the JOBS Act undermines this objective by exempting so-defined emerging growth companies from this requirement for the first five years after an offering. We believe that implementation of Section 103 may encourage the very types of abuses that Section 404 was intended to address.

Analyst Conflicts of Interest. As an organization of research analysts and investment professionals, CFA Institute has significant reservations about the Act's provisions that eliminate or weaken barriers between the research and banking functions of companies. As we have cautioned previously, management of real and potential conflicts of interest with regard to investment research should remain a guiding principle of financial market regulation, regardless of whether the focus is on emerging or established issuers.

Obviously, investor protections are particularly important for less-established companies that have no performance records or audited financials. Here, average investors may be relegated to relying heavily on conflicted research. CFA Institute does not support provisions of the Act that

lift the heretofore established "quiet periods" for research relating to covered companies. Allowing the publication of research reports prior to, and during the execution of, IPOs by underwriters only provides potential investors with information that is more akin to marketing "spin" than diligent research. The dangers of such circumstances and the potential for highly misleading information are clear.

Recommended Solutions

In the context of these issues, and assuming that offerings will proceed under the Act, we offer the following list of suggested and needed disclosures and regulatory requirements.

Regulation S-K.

First, we encourage the SEC to prevent any significant roll back of Regulation S-K requirements beyond what is specifically required by the Act itself. We recognize that issuer-affiliated representatives are advocating for a number of additional revisions and exemptions from Reg. S-K provisions. To that end, we specifically urge the Commission to keep the provisions of Reg. S-K that require disclosures relating to the following:

- backlog of business;
- the extent to which issuers' businesses are affected by market risks;
- how investors might be diluted by future offerings or issuances of shares;
- how issuers will use the proceeds of share offerings and placements;
- the proper expensing of share-based compensation on issuers' income statements;
- material contracts; and
- selling shareowners.

Warning Label.

We encourage the SEC to mandate an investor protection warning label similar to those of other federal government agencies, to be used in connection with the offering and sale of any securities, such as those issued under the Act, which allow access to public markets without the full panoply of investor protections under the '33 Act and related regulations. The requirements for this should be to display such warning in a bold and prominent manner on the face of any communication, electronic or print, that has the purpose of offering or soliciting interest in such securities. An example of such a warning is as follows:

These securities are being offered under the JOBS Act which permits exemptions from standard public company disclosure and transparency requirements. These exemptions permit offerings with significantly reduced disclosure, limited and unaudited financial information and very limited auditor review of internal controls over

compliance and financial reporting. These securities are highly risky and should be purchased by investors who are skilled in analyzing such risks and are able to withstand a loss of their entire investment.

Other Enhanced Disclosures.

We further recommend that the SEC require more prominent and broad disclosures within the body of offering statements and interim financial statements for companies covered by the Act. Such warnings should alert investors to the potential risks relevant to an offering of this type, including prominent warnings about the higher possibility of loss of their entire investments due, in part, to the lack of an established trading market in the shares.

We encourage the Commission to consider inclusion of such other expanded rules or disclosures as it deems appropriate for companies covered by the Act. Our list includes the following:

- A standard prospectus for Act companies using comparable, uniform and easy-to-understand elements;
- Disclose use of proceeds;
- Disclose share issuance in connection with executive, director, and employee compensation;
- Annual audits included in annual reports to shareowners;
- At least semi-annual updates of performance and financial condition;
- Disclose all important company news through normal, public delivery channels;
- Identification of all persons or entities holding more than 20% of outstanding equity;
- Reveal all related-party transactions;
- Holding company principals liable for fraudulent representations;
- Consideration of separate exchanges for companies covered by the Act; and
- Requiring shares sold through crowdfunding to remain unregistered;

Conclusion

While we strongly support steps to improve employment opportunities, expand our economy and ensure adequate capital is available to small and growing companies, we disagree with how the Act has been structured and see it as a danger to market integrity if strong disclosure and accountability steps are not added through your rulemaking process. Recognizing that the SEC must now create regulations to implement the Act, we encourage a deliberative and unrushed process. Moreover, we support your bold efforts to adopt the kinds of provisions described above that are needed to safeguard markets and investors everywhere. Trust and confidence depend on it.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Linda L. Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

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