

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: April 28, 2014

Subject: May 1, 2014, Subcommittee on Capital Markets and Government Sponsored Enterprises Hearing Entitled “Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies, Part II”

The Subcommittee on Capital Markets and Government Sponsored Enterprises will hold a hearing entitled “Legislative Proposals to Enhance Capital Formation for Small and Emerging Growth Companies, Part II” at 9:30 a.m. on Thursday, May 1, 2014, in room 2128 of the Rayburn House Office Building. This will be a one-panel hearing and will include the following witnesses:

- Benjamin Miller, Co-Founder, Fundrise
- Annemarie Tierney, Executive Vice President and General Counsel, SecondMarket
- William Beatty, Director of Securities, Washington Dept. of Financial Institutions
- Jeff Lynn, Chief Executive Officer, Seedrs Limited

The hearing will examine discussion drafts of legislation outlined below.

H.R. _____, the Equity Crowdfunding Improvement Act of 2014.

Title III of the Jumpstart Our Business Startups Act (“JOBS Act”) (P.L. 112-106) establishes the foundation for a regulatory structure for startups and small businesses to raise capital by offering their securities over the Internet using a technique known as crowdfunding. The crowdfunding provisions of the JOBS Act are intended to provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The provisions also permit Internet-based platforms to facilitate the offer and sale of securities without having to register with the Commission as brokers. The JOBS Act required the Securities and Exchange Commission (SEC) to issue rules implementing the Act within 270 days of enactment, which would have been January 5, 2013, but the SEC missed this deadline. On October 23, 2013, the SEC issued proposed rules for public comment and the comment period closed on February 4, 2013. The SEC has received more than 325 comment letters but has yet to finalize this rule, which is now more than 450 days overdue. In response to comment letters received by the SEC and concerns with the underlying statute that may make crowdfunding difficult to implement, Rep.

Patrick McHenry has proffered a discussion draft of legislation that would strike Title III of the JOBS Act, which was added by the Senate, and replace it with legislation that closely mirrors the House-passed crowdfunding title and makes additional improvements.

H.R. _____, the Startup Capital Modernization Act of 2014.

Rep. Patrick McHenry has proffered a discussion draft of legislation, the Startup Capital Modernization Act, to reform and improve Regulation A securities offerings. Section 2 of the discussion draft increases the maximum amount of a single public offering under Regulation A from \$5 million to \$10 million. Section 3 clarifies the preservation of state enforcement authority with respect to an issuer, intermediary, or any other person or entity using the exemption from registration under Regulation A. Section 4 directs the SEC to exempt securities acquired under Tier 1 and Tier 2 Regulation A offerings from Sec. 12(g) of the Securities Exchange Act of 1934 if the issuer provided potential investors with audited financial statements. Section 5 amends the Securities Act of 1933 to add the resale of any securities acquired in an exempted transaction to the list of “exempted transactions” as long as certain conditions are met.

H.R. _____, To direct the Securities and Exchange Commission to revise its proposed amendments to Regulation D, Form D, and Rule 156.

In July 2013, the SEC adopted a rule lifting the ban on general solicitation and advertising for certain private securities offerings under Rule 506 of Regulation D (Reg D), as mandated under Title II of the bipartisan JOBS Act. In addition to lifting the ban on general solicitation and advertising, the SEC issued a separate rule proposal not called for by Congress that would impose a number of new regulatory requirements on small companies seeking to utilize amended Rule 506 to raise capital, including proposals to submit additional Form D filings to the SEC in advance and at the conclusion of an offering, and to file written general solicitation materials with the SEC. Under the SEC’s rule proposal, an issuer could also be disqualified by the SEC from using Rule 506 for one year based on a failure to comply with the Form D filing requirements. The comment period closed on September 23, 2013. The SEC has received more than 200 comment letters but has not yet taken further action on the rule proposal. Rep. Scott Garrett has proffered a discussion draft of legislation that would amend the Federal securities laws, consistent with the goals of Title II of the JOBS Act, to ensure that small businesses do not face complicated and unnecessary regulatory burdens when attempting to raise capital through private securities offerings under Rule 506, while at the same time preserving important investor protections.