

**TESTIMONY OF
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AND COO - MANAGING MEMBER OF PRAIRIESMARTS LLC
BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES
COMMITTEE ON FINANCIAL SERVICES
HEARING ENTITLED "REDUCING BARRIERS TO CAPITAL FORMATION, PART II"
JULY 10, 2013**

INTRODUCTION

Chairman Garrett, Ranking Member Maloney and members of the Capital Markets and Government Sponsored Enterprises subcommittee, thank you for inviting me to testify today on this important hearing to Reduce Barriers to Capital Formation; my name is Chris Nagy.

I have spent the last 25 years working within Financial Services on Wall Street. Prior to my current roles at KOR Trading and PrairieSmarts, I was Managing Director at TD Ameritrade, where I oversaw all aspects of Order Routing. I worked extensively with market makers and specialists and served on the boards of many of our nation's Stock Exchanges, with the sole mission of helping retail investors secure the best possible prices across markets for publicly traded companies. As a result, I have a broad and deep understanding of stock market structure and capital flows.

Coincidental with the passage of the JOBS act, I left Wall Street and corporate America to found KOR Trading, a start-up advocacy and consulting firm that helps exchanges and trading firms with market structure issues. Secondly, I partnered with other like-minded entrepreneurs in another venture start-up, PrairieSmarts, which will bring institutional quality risk metrics to individual Investors, traders, and advisors in a way never possible before. I thank Congress for its vision to harness the ingenuity of American workers like me in bringing innovation and job creation to the forefront; the passage of the JOBS Act was invaluable. Our continued concern is that the Securities and Exchange Commission "SEC" has not had the time to write the regulations that support the implementation of two very important facets of the JOBS Act.

I'd like to focus on my area of experience as the Managing Partner of a start-up venture. Therefore, I will not speak to Title 1 as it is one of the few pieces of the JOBS act that is operational (and from what I understand, quite successful). PrairieSmarts, our start-up venture, currently has four Managing Members and 1 associate and we project that by 2017 we will have more than 250 employees in newly created jobs.

As you know, when the JOBS act was signed, specific mandates were assigned to the SEC to promulgate rulemaking not later than 90 days after the date of enactment of the Act in several areas. However, nearly one year after its passage, the SEC has not finalized these rules.

Creating and running a start-up is no easy task. The basic building blocks are:

1. The entrepreneur (risk taker)
2. An outstanding product, service or idea
3. Market demand
4. Partnerships with the right people
5. Money.

PrairieSmarts is at the most critical stage of our business model: raising money to build the business. It is during these initial stages of business in which we are setting up the company, developing and testing the product, completing patent applications, establishing the marketing plan, that require upfront investment - and this all needs to be done pre-revenue. For startups like ours the initial stages are our most critical, but also where the greatest opportunity lies. Breaking down barriers to access capital is critical as financing at this stage often makes or breaks the viability and sustainability of the enterprise.

JOBS Act Title II

For PrairieSmarts and many start-ups similarly situated, Title II of the JOBS Act would open the doors to additional access to capital by allowing general solicitation and advertising to “accredited investors”. Advertising in general is an important component of demand generation, which will help facilitate the raising of capital for start-ups, early stage companies, and emerging growth companies. We applaud this exemption to the SEC rules regarding general solicitation (public disclosure) and the required filings. Overall, we believe there is a much greater good by allowing more participation in capital raising for companies that are generating new jobs than the potential downside of an “accredited” investor losing money because of failed disclosure.

JOBS Act Title III

We feel Crowd Funding is an important source of capital for start-up companies. PrairieSmarts expects (and needs) to raise \$2 million to build the business over the *next* 18 months. It is early stage firms like ours which do not seek a great deal of capital, that often face the largest barriers. (Many of you may be familiar with the phrase “Valley of Death”). A significant portion of the initial investment is in jobs. In our case, we expect to hire software engineers, customer services representation, operations specialists and others. We commend the House for allowing Crowd Funding of up to \$1 million in twelve months. In our case it is not quite enough, but without question it is enough to get us up and running, and we expect to utilize this resource in the very near future.

But, as you know, these resources only become available if and when the SEC finalizes the initial regulations.

SMALL BUSINESS ADMINISTRATION INITIATIVES

We also expect to find further funding through Small Business Investment Companies (SBIC). In our minds this was a brilliant idea implemented by Congress. Start-up businesses are hamstrung by the current profitability requirement when seeking SBA financing assistance. Thanks to Congressional initiative, start-up, and small to medium size firms can access capital through Small Business Investment Companies. We are very excited to be a part of a SBIC investment program in the fall of 2013 and believe it will be successful to expand the reach of assistance to start-ups like ours. Congress may want to consider permitting these firms to become more involved in providing capital to financial services firms than is currently the case.

OUTREACH

Title VII of the JOBS act also requires that the SEC will "Conduct outreach programs and make information available to startups." I can tell you from my seat that I have yet to receive my information or outreach from the SEC on opportunities available under the JOBS act and ask Congress to help the SEC along on Provisions of Title VII of the Act.

LEGAL IMPEDIMENTS

With innovation many times comes the ability to patent a product or an idea. At PrairieSmarts we did just that. The Patent process is designed to protect that idea and give the initiator a competitive advantage in the marketplace. Patent costs are not cheap and bear a considerable cost burden to the start-up. Further, "Patent Trolls" lurk in the weeds waiting to jump on an opportunity to sue or potentially sue the startup who initiated the patent. Our current legal system requires that each side bear the attorney costs to fight what in many instances are frivolous actions brought by large corporations to stifle and drain the revenues of the start-up in hopes that they eliminate a competitive threat. While this Committee does not have the ability to change laws regarding legal actions against start-ups, I ask Congress to examine this issue and seek ways to help start-ups from unnecessary and many times frivolous litigation, by requiring the initiator of such actions to bear all the legal costs.

Requirements like these would significantly aid start-ups from unnecessary costs many times initiated by large companies to stifle competition.

STOCK MARKET STRUCTURE

We have ambitions to someday seek an IPO and publicly list within the US markets. In doing so we believe there would be merits to wider spread increments to facilitate larger pools of liquidity in the markets. We support Section 106(b) of the JOBS Act, the initiative to seek widening spreads for small public companies. However, we feel that simply widening spreads may not achieve the full desired effect of increasing transparent liquidity provisioning. While the SEC has delivered their report to Congress as required under the JOBS act, a pilot recommendation is overdue. We believe

in conjunction with a pilot that the SEC should seek to incentivize liquidity as was recommended by the joint CFTC-SEC Advisory Committee following the market events of May 6th, 2010¹. One such method would be the removal of Section 31 fees for small capitalized securities along with greater incentives to persons who regularly implement market maker strategies. We also believe that the balance has tipped in favor of dark pool operators and encourage the SEC to finalize its non-public trading rule proposal from 2009². We also note that internalized payment for order-flow programs have increased dramatically over the past few years and would encourage the SEC to consider a “Trade-at” pilot in small capitalized securities as it will ensure that volume happens on our transparent exchanges. Other countries such as Canada and Australia have implemented rules regarding trade-at with good results. Finally, we believe that the SEC should seek to fortify rules 605 and 606 regarding execution quality, which today are severely outdated. Greater transparency with the quality of order execution stimulates competition, keeps practices like payment for order-flow in check, and ensures that any pilot to widen spreads has empirical data behind it.

I am hopeful Congress can help push the SEC on its mission to finalize their tasks under the JOBS act to help entrepreneurs like myself become successful and deliver innovation and jobs to our Capital Market System.

I invite Congress to follow PrairieSmarts as a real life example of a start-up. We expect to raise money through either Crowd Funding and/or the SBIC programs. We believe both programs expand access to invaluable capital. The JOBS act can help us (but to date has not helped us) as we progress to our goal and your goal to bring innovation and jobs to our great country.

Thank you for your time and I’m happy to answer any questions you have.

¹ See: http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf

² See: <http://www.sec.gov/rules/proposed/2009/34-60997.pdf>