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Introduction

Chairman McHenry and Members of the Subcommittee:

Thank you for inviting me to appear today to talk about the implementation of the JOBS Act. Much of my work focuses on the interaction of securities regulation and small business capital formation, and it is an honor to be asked to address you on that subject today.

I want to focus my comments on the crowdfunding provisions of the JOBS Act and the SEC's implementation of those provisions. I believe that crowdfunding could spark a revolution in small business financing and help close what some people have called the small business capital gap.[2] But that can happen only if the regulatory burden is limited. For the very small offerings that crowdfunding facilitates, cost is a crucial consideration; it will not take much regulatory cost to eliminate crowdfunding as an option.

The JOBS Act's creation of a crowdfunding exemption is an important first step, but that exemption is not complete until the SEC enacts implementing regulations, and the SEC has been given substantial authority to modify or add to the Act's requirements.[3] As a result, the SEC will have an important influence on the usefulness of the new exemption. The devil, as they say, will be in the details.

General Principles of Regulation

I would first like to offer three general principles that the SEC should follow in drafting crowdfunding regulations. After that, I will turn to specific recommendations.

1. The SEC Regulations Should be as Light-Handed and Unobtrusive as Possible

The SEC crowdfunding regulations need to be as light-handed and unobtrusive as possible. The new crowdfunding exemption already imposes a fairly substantial disclosure cost on small businesses. Additional regulation would significantly

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[2] *See* C. Steven Bradford, *Crowdfunding and the Federal Securities Laws*, 2012 COLUM. BUS. L. REV. 100-104 (2012), and sources cited therein.

[3] The Act includes a general authorization of "such rules as the Commission determines may be necessary or appropriate for the protection of investors." Jumpstart Our Business Startups (JOBS) Act, Pub. L. 112-106, § 302(c), 126 Stat. 306 (2012).

reduce the utility of the exemption and would be inconsistent with the intent of the JOBS Act—to reduce the regulatory burden on small business capital formation.

The SEC and others are concerned about the possible use of crowdfunding by disreputable elements to engage in securities fraud, and I wholeheartedly endorse the efforts to fight fraud. But the Act already imposes significant regulatory restrictions on issuers and the brokers and funding portals who will act as intermediaries in crowdfunded offerings. Additional regulatory requirements will unnecessarily increase the cost of the exemption. If fraudsters were the only ones affected by additional regulatory requirements, I would endorse them wholeheartedly. But the cost of these requirements is borne primarily by the host of honest entrepreneurs seeking to raise money for their small businesses, not by the fraudulent few.

Imposing additional layers of mandatory disclosure and other regulatory requirements on legitimate small businesses is not the best way to fight fraud. The best way to fight fraud without burdening legitimate small businesses is to go after the fraud directly—to use the antifraud tools already available in the federal securities laws. State securities regulators have an important role to play in that fight against fraud. Many state securities commissioners were disappointed by the Act's preemption of state securities registration requirements, but they can take the funds they were prepared to spend to register crowdfunded offerings and use it to police fraud.

For what it's worth, a significant amount of money is being invested in non-securities crowdfunding right now. From the fraudster's standpoint, the financial incentives and the gains from fraud are exactly the same, whether or not securities are involved. But fraud has not been a major issue. That indicates to me that the structure of crowdfunding—public web sites, neutral intermediaries filtering the requests for funds, relatively small investments—is effective in preventing fraud.

2. To the Extent that Additional Regulation is Needed, it Should Be Imposed on Crowdfunding Intermediaries, Not Issuers

To the extent that additional regulation is required, it should be centered on crowdfunding intermediaries—brokers and funding portals—rather than on the entrepreneurs raising funds. Crowdfunding intermediaries can be used as gatekeepers to keep out the bad actors and to structure the offerings in such a way that investor risks are reduced.

The small companies and entrepreneurs most likely to engage in crowdfunding are poorly capitalized and legally unsophisticated. They do not have and cannot afford

sophisticated securities counsel to guide them through complex regulation. Too much complexity at the entrepreneurial level will destroy the exemption's utility and produce a host of unintentional violations.

Crowdfunding intermediaries, on the other hand, will be repeat players. They can spread any regulatory costs over a large number of offerings. They will be more heavily capitalized than almost all of the entrepreneurs using the crowdfunding sites, and they can afford securities counsel. As repeat players, crowdfunding sites will also be much more accessible to securities regulators for enforcement purposes.

3. The SEC Regulations Should Be Simple and In "Plain English"

The SEC regulations should be simple to follow and written in "plain English." In other words, the SEC should itself follow the requirements that its regulations impose on businesses.

The SEC requires issuers to present disclosure to investors "in a clear, concise and understandable manner," using "plain English principles."[4] These rules recognize that clarity facilitates understanding by investors, many of whom lack the skill and resources to interpret dense "legalese."

Clear, plain-English crowdfunding regulations will similarly facilitate understanding and compliance by small-business issuers, many of whom will not be legally or financially sophisticated. Small businesses faced with dense, complicated regulations have three options. First, they can forego the exemption, and the promise of crowdfunding will not be realized. Second, they can hire sophisticated securities counsel to guide them through the regulations, and most of the offering proceeds will be eaten up by the cost of complying with the regulation. Or third, they can try to navigate the rules on their own, in which case violations are likely. None of these outcomes is desirable.

To make it easier on entrepreneurs using the exemption, the SEC should:

- Write the regulations in everyday language that does not require a lawyer to interpret.
- To the extent possible, pose the disclosure requirements in simple, question-and-answer, fill-in-the-blank format.
- Make the regulations completely self-standing, without cross-references to the federal securities statutes or other regulations. Issuers using the exemption should be able to find everything they need in a single document.

[4] *See* Securities Act Rule 404(b),(d), 17 C.F.R. § 230.404(b),(d) (2012).

- Separate the requirements directed at issuers from the requirements directed at crowdfunding intermediaries, even if that requires duplication. Issuers and intermediaries should not have to wade through material that does not apply to them in order to find the appropriate rules.

Specific Recommendations

With those general principles in mind, I would now like to make some specific recommendations.

1. The SEC Should Adopt a "Substantial Compliance" Rule

To qualify for the crowdfunding exemption, both issuers and crowdfunding intermediaries must comply with a number of detailed requirements. Compliance with *all* of those requirements is a condition of the exemption.[5] If the crowdfunding intermediary fails to comply with any of the requirements of section 4A(a) or if the issuer fails to comply with any of the requirements of section 4A(b), the exemption is unavailable. It does not matter how minor the violation is or whether the issuer or the intermediary reasonably believed it was in compliance.

If, for example, the crowdfunding intermediary allows a single investor to participate without answering just one of the required questions about risk,[6] the issuer would lose the exemption for the entire offering. If the issuer inadvertently sells an investor securities that exceed the cap for that investor by $1, the exemption would be lost for all of the sales, not just those to that purchaser.

Given the complexity of the exemption's requirements, inadvertent violations are likely, and the consequence of even a minor violation is drastic. Absent an exemption, section 5(a)(1) of the Securities Act makes it unlawful to sell a security unless a registration statement is in effect.[7] If the section 4(6) crowdfunding

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[5] Section 4(6) exempts "transactions involving the offer or sale of securities by an issuer . . . *provided that*" the listed requirements are met. Securities Act of 1933 § 4(6), JOBS Act, Pub. L. 112-106, § 302(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d(6)) (emphasis added). The required conditions include the intermediary's compliance with section 4A(a) and the issuer's compliance with section 4A(b). *See* Securities Act of 1933 § 4(6)(C),(D), JOBS Act, Pub. L. 112-106, § 302(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d(6)(C),(D)).

[6] Securities Act of 1933 § 4A(a)(4)(B), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(4)(B)).

[7] Securities Act of 1933 § 5(a)(1), 15 U.S.C. § 77e(a)(1) (2010). Section 4(6) is an exemption from section 5 of the Act. *See* Securities Act of 1933 § 4, 15 U.S.C. § 77d (2010) ("The provisions of section 5 of this Act shall not apply to -- . . .").

exemption is lost because of some minor noncompliance, all of the sales in the offering would violate section 5(a)(1). Under section 12(a)(1) of the Securities Act, all purchasers would be able to rescind their purchases and get their money back.[8]

Other Securities Act exemptions include "substantial compliance" rules that protect issuers even if the issuer failed to comply with the exemption in certain insignificant ways.[9] The Regulation D exemption also includes several provisions that protect the issuer if it reasonably believed the requirements of the rule were met, even if they actually were not.[10] Section 4(6) needs a similar set of substantial compliance and reasonable belief rules.

Nothing in the Act itself specifically authorizes the SEC to enact a substantial compliance rule, but the SEC has blanket authority to "issue such rules as the Commission determines may be necessary or appropriate for the protection of investors to carry out sections 4(6) and . . . 4A."[11] The SEC has even broader authority in both the Securities Act and the Securities Exchange Act to "conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions" from any provision of the statutes, if the Commission determines that "such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[12] The SEC could use this authority to specify that an issuer that reasonably believed it met the requirements of section 4(6) or that substantially complied with section 4(6) would still be entitled to the exemption, in spite of the noncompliance.

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[8] Securities Act of 1933 § 12(a)(1), 15 U.S.C. § 77l(a)(1) (2010). *See* Carl W. Schneider & Charles C. Zall, *Section 12(1) and the Imperfect Exempt Transaction: The Proposed I & I Defense*, 28 BUS. LAW. 1011 (1973) (proposing a defense where an issuer's failure to comply with a registration exemption was innocent and immaterial).

[9] *See* Securities Act Rule 260, 17 C.F.R. § 230.260 (2012) (Regulation A); Securities Act Rule 508, 17 C.F.R. § 230.508 (2012) (Regulation D). *See also* Carl W. Schneider, *A Substantial Compliance ("I&I") Defense and Other Changes are Added to SEC Regulation D*, 44 BUS. LAW. 1207 (1989) (discussing the addition of Rule 508 to Regulation D).

[10] *See* Securities Act Rules 501(a), 17 C.F.R. § 230.501(a) (2012) (reasonable belief that investors are accredited investors); 501(h) (reasonable belief that purchaser representatives meet the requirements to serve as purchaser representatives); 505(b)(2)(ii), 17 C.F.R. § 230.505(b)(2)(ii) (2012) (reasonable belief that there are no more than 35 purchasers); 506(b)(2)(i), 17 C.F.R. § 230.506(b)(2)(i) (2012) (reasonable belief that there are no more than 35 purchasers); 506(b)(2)(ii), 17 C.F.R. § 230.506(b)(2)(ii) (2012) (reasonable belief that non-accredited purchasers meet a sophistication requirement).

[11] JOBS Act, Pub. L. 112-106, § 302(c), 126 Stat. 306 (2012).

[12] Securities Act of 1933 § 28, 15 U.S.C. § 77z-3 (2010); Securities Exchange Act of 1934 § 36(a)(1), 15 U.S.C. § 78mm(a)(1) (2010).

2. The SEC Should Require that Crowdfunding Sites be Open to the General Public and Offer an Open Communication Forum for Each Offering

The SEC regulations should require crowdfunding intermediaries to keep their web sites open to the general public. In addition, crowdfunding web sites should be required to include an electronic bulletin board that allows investors, potential investors, and other members of the public to communicate about each offering.

The original House crowdfunding bill included such a requirement,[13] but that requirement was not included in the crowdfunding exemption that was eventually enacted. However, the Act authorizes the SEC to impose additional requirements on crowdfunding intermediaries "for the protection of investors and in the public interest,"[14] and I believe these requirements are consistent with that standard.

Open communication channels can help protect investors from both fraud and poor investment decisions by allowing members of the public to share knowledge about particular entrepreneurs, businesses, or investment risks.[15] Openness of this sort would allow crowdfunding sites to take advantage of "the wisdom of crowds,"[16] the idea that "even if most of the people within a group are not especially well-informed or rational . . . [the group] can still reach a collectively wise decision."[17]

An open bulletin board would help prevent fraud. If an entrepreneur has a shady business background, people with knowledge of the entrepreneur's past can communicate that knowledge to potential investors. If the entrepreneur falsely claims to own a facility in Grand Island, Nebraska, people in Grand Island can expose the fraud.

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[13] *See* Entrepreneur Access to Capital Act, H.R. 2930, § 2(b), 112th Cong. (as passed by House, Nov. 3, 2011) (proposed sections 4A(a)(12) and 4A(b)(11) of the Securities Act).
[14] Securities Act of 1933 § 4A(a)(12), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(12)).
[15] *See* Bradford, *Crowdfunding and the Federal Securities Laws*, *supra* note 2, at 134-136.
[16] *See generally* JAMES SUROWIECKI, THE WISDOM OF CROWDS: WHY THE MANY ARE SMARTER THAN THE FEW AND HOW COLLECTIVE WISDOM SHAPES BUSINESS, ECONOMIES, SOCIETIES, AND NATIONS (2004).
[17] *Id.*, at xiii-xiv. *See also* Armin Schwienbacher & Benjamin Larralde, *Crowdfunding of Small Entrepreneurial Ventures,* at 12*, in* HANDBOOK OF ENTREPRENEURIAL FINANCE (Douglas Cumming ed., forthcoming 2012), *available at*: http://ssrn.com/abstract=1699183at 12 (although individual crowdfunding investors might not have any special knowledge about the industry in which they are investing, they can be more effective as a crowd than alone).

An open communication channel would also allow investors and potential investors to share knowledge about the issuer's industry, the type of service or product the issuer is proposing to provide, problems with the issuer's business plan or projections, and regulatory issues the issuer might not have considered. These types of communications would not only make investors more informed before they invest, but could help the issuer refine its plans. An open communication channel would also allow investors to monitor the enterprise better *after* the investment is made, sharing information and providing feedback on an ongoing basis.

There is a risk that these open forums could be the target of spammers or advertisements, or that people would post fraudulent comments. Because of those risks, crowdfunding intermediaries should be free to remove inappropriate comments from the bulletin board. In addition, unless the intermediary knows that a particular comment is fraudulent or otherwise improper, it should not be liable for the content of the information posted.

3. The SEC Should Add an Integration Safe Harbor

Congress has made it clear that the crowdfunding exemption is not intended to be exclusive, that issuers who use the crowdfunding exemption may use other exemptions as well. New section 4A(g) of the Securities Act provides: "Nothing in this section or section 4(6) shall be construed as preventing an issuer from raising capital through methods not described under section 4(6)."[18] But a crowdfunding issuer who also sells securities outside the crowdfunding exemption faces a difficult securities law problem.

Section 4(6), like other Securities Act exemptions, exempts "transactions," so the issuer's entire offering must fall within the exemption.[19] As with other Securities Act exemptions, the issuer may not use two or more exemptions to cover parts of what is essentially a single transaction.[20] If the issuer sells securities outside of section 4(6), those other sales might be considered part of the same "transaction" and destroy the section 4(6) exemption, the exemption used for the other sales, or both.

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[18] Securities Act of 1933 § 4A(g), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(g)). This provision was also in the original House bill. *See* Entrepreneur Access to Capital Act , H.R. 2930, § 2(b), 112th Cong. (as passed by House, Nov. 3, 2011) (proposed section 4A(f)(2) of the Securities Act).

[19] Securities Act of 1933 § 4(6), JOBS Act, Pub. L. 112-106, § 302(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d(6)).

[20] C. Steven Bradford*, Expanding the Non-Transactional Revolution: A New Approach to Securities Registration Exemptions*, 49 EMORY L. J. 437, 460 (2000).

The SEC has developed a doctrine known as the integration doctrine to determine what constitutes a single offering for purposes of the Securities Act exemptions.[21] That doctrine applies a five-factor test which asks whether (1) the different offerings are part of a single plan of financing; (2) the offerings involve the same class of security; (3) the offerings are made at or about the same time; (4) the same type of consideration is paid for the securities sold; and (5) the offerings are for the same general purpose.[22]

Unfortunately, the integration doctrine is an uncertain, confusing mess.[23] SEC staff interpretations of the test in no-action letters have been confusing and inconsistent.[24] "Everyone seems to agree that these criteria are nearly impossible to apply, principally because neither the Commission nor the courts have ever adequately articulated how . . . [the five factors] . . . are to be weighed or how many factors must be present in order for integration to occur."[25] Because of the uncertainty of the integration test, even legal experts often find it impossible to say for certain whether two offerings will be integrated and treated as one.

Small business issuers seeking to raise money through crowdfunding lack the legal expertise needed to navigate the integration doctrine, and they cannot afford to hire sophisticated securities counsel to advise them. They are, therefore, not in a position to determine the effect of prior fundraising efforts on the availability of crowdfunding—whether, for example, the private solicitation of money from Aunt Agnes will be considered part of their crowdfunded offering for purposes of section 4(6). They also cannot anticipate their future capital needs[26] and how any future

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[21] C. Steven Bradford, *Transaction Exemptions in the Securities Act of 1933: An Economic Analysis,* 45 EMORY L.J. 591, 649 (1996). *See also* Darryl B. Deaktor, *Integration of Securities Offerings*, 31 U. FLA. L. REV. 465, 473 (1979).

[22] *See, e.g.,* Non-Public Offering Exemption, Securities Act Release No. 4552, 1 Fed. Sec. L. Rep. (CCH) ¶¶ 2770-83 (Nov. 6, 1962).

[23] *See* Bradford, *Transaction Exemptions in the Securities Act of 1933*, *supra* note 21, at 651–52 (discussing the lack of clarity in SEC releases that detail the standard for integrating offerings).

[24] *See* Bradford, *Expanding the Non-Transactional* Revolution, supra note 20, at 463, and authorities cited therein.

[25] Rutheford B Campbell, Jr., *The Plight of Small Issuers (and Others) Under Regulation D: Those Nagging Problems That Need Attention*, 74 KY. L.J. 127, 164 (1985-86). *See also* Subcommittee on Partnerships, Trusts and Unincorporated Associations, *Integration of Partnership Offerings: A Proposal for Identifying a Discrete Offerings*, 37 BUS. LAW. 1591, 1605 (1982) (no-action letters dealing with integration are "difficult to reconcile even when dealing with similar fact situations involving the same subject matter").

[26] *See* Stuart R. Cohn & Gregory C. Yadley, *Capital Offense: The SEC's Continuing Failure to Address Small Business Financing Concerns*, 4 N.Y.U. J. L. & BUS. 1, 50 (2007) (small companies' capital needs "are often sporadic and immediate").

fundraising might retroactively destroy the crowdfunding exemption. Absent regulatory protection, the integration doctrine could therefore function as a trap for unsophisticated entrepreneurs, who might not even be aware of the issue.

Issuers using other Securities Act exemptions can avoid the five-factor integration test by using integration safe harbors the SEC has included within those exemptions.[27] These safe harbors protect offerings pursuant to those exemptions from integration with other offerings. The SEC should provide a similar safe harbor for crowdfunded offerings. I would suggest something like the following, based on the integration safe harbor in Regulation A:

> *Offerings and sales made in reliance on the section 4(6) exemption will not be integrated with:*
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> *(1) Prior offers or sales of securities; or*
> *(2) Subsequent offers or sales of securities that are:*
> *a. Registered under the Securities Act;*
> *b. Made in reliance on Rule 701;*
> *c. Made pursuant to an employee benefit plan;*
> *d. Made in reliance on Regulation S; or*
> *e. Made more than three months after the completion of the section 4(6) offering.*

4. The SEC Should Clarify that a Purchaser's Violation of the Resale Restrictions Does Not Destroy the Issuer's Exemption

With some exceptions, purchasers in a section 4(6) offering may not resell the securities for a year from the date of purchase.[28] That resale restriction is not a condition of the exemption,[29] so the issuer's exemption should be safe even if a purchaser subsequently resells crowdfunded securities in violation of the resale prohibition. However, the SEC has sometimes taken the position that resales

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[27] *See* Securities Act Rule 147(b)(2),17 C.F.R. § 230.147(b)(2) (2012); Rule 251(c), 17 C.F.R. § 230.251(c) (2012); Rule 502(a), 17 C.F.R. § 230.502(a) (2012).
[28] Securities Act of 1933 § 4A(e)(1), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(e)(1)).
[29] The restriction on resales is in section 4A(e) of the Securities Act. *See* Securities Act of 1933 § 4A(e), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(e)). Section 4(6) conditions the issuer's exemption on compliance with sections 4A(a) and (b), but not subsection 4A(e). *See* Securities Act of 1933 § 4(6)(C),(D), JOBS Act, Pub. L. 112-106, § 302(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d(6)(C),(D)).

shortly after an exempt offering are to be considered part of the issuer's offering, with the effect of destroying the issuer's exemption.[30]

Crowdfunding issuers cannot prevent their purchasers from reselling in violation of the resale restrictions, so issuers should not be penalized for such resales. The SEC should make it clear that resales of crowdfunded securities in violation of the statutory prohibition do not retroactively destroy the issuer's section 4(6) exemption.

5. Issuers and Crowdfunding Intermediaries Should Be Able to Rely on Self-Certification by Investors of their Annual Income and Net Worth

The amount each investor may invest in crowdfunded securities offerings depends on the investor's net worth and annual income.[31] The issuer and the crowdfunding intermediary will not, of course, know each investor's net worth and annual income. That information must be obtained from the investor

Crowdfunding, by its nature, will usually involve a large number of investors. If the issuers and crowdfunding intermediaries have to take significant steps to verify the net worth and annual income of each of those investors, the cost of using the exemption will skyrocket. A more sensible approach would be the approach taken in the original House crowdfunding bill: to allow the issuer and the intermediary to rely on the annual income and net worth reported by the investor, with no additional steps required to verify those numbers.[32]

6. Crowdfunding Intermediaries Should Be Able to Rely on Self-Certification by Investors of their Total Crowdfunding Investment

Crowdfunding intermediaries are required to "make such efforts as the Commission determines appropriate, by rule, to ensure" that investors do not exceed the individual investment limits.[33] The limits include all crowdfunding purchases "in the aggregate, from all issuers."[34] Thus, to enforce the limits, the crowdfunding intermediary must know not only how much the investor is investing in the current

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[30] *See, e.g.*, Thomas Lee Hazen, 1 TREATISE ON THE LAW OF SECURITIES REGULATION 490, 573 (6TH ED. 2009).
[31] Securities Act of 1933 §§ 4(6)(B),4A(a)(8), JOBS Act, Pub. L. 112-106, § 302(a),(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. §§ 77d(6)(B), 77d-1(a)(8)).
[32] *See* Entrepreneur Access to Capital Act , H.R. 2930, § 2(b), 112th Cong. (as passed by House, Nov. 3, 2011) (proposed section 4A(c) of the Securities Act).
[33] Securities Act of 1933 § 4A(a)(8), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(8)).
[34] *Id.*

offering, but how much the investor has invested in all crowdfunded offerings in the last twelve months.

The intermediary's records will show how much each investor has purchased through the intermediary's web site, but investors might also have purchased in section 4(6) offerings through other intermediaries. The intermediary has no way of knowing how much the investor has invested through other channels. The only cost-effective way to make this determination is to ask the investor. Unless crowdfunding intermediaries have direct knowledge to the contrary, they should be able to rely, without further verification, on the total amount of crowdfunding investment reported by the investor.

7. The SEC Should Not Add to the Issuer's Disclosure Burden

The statute requires crowdfunding issuers to provide substantial disclosure, including financial statements, to the SEC and to investors.[35] The Act authorizes the SEC to add to the issuer's required disclosure any other information the SEC feels is necessary "for the protection of investors and in the public interest,"[36] and also allows the SEC to impose other requirements on the issuer "for the protection of investors and in the public interest."[37]

The SEC should use this authority sparingly, if at all. The mandatory disclosure requirements of the new crowdfunding exemption are already extensive—probably the most burdensome part of the exemption. Adding additional disclosure requirements will increase the cost of using the exemption with little marginal gain. If the cost of using the exemption increases, it is less likely to be a viable option for very small offerings.

8. The Annual Reporting by Issuers Should Be Relatively Brief and Should Cease after a Short Time

In addition to the disclosures required at the time of the offering, issuers must file annual reports with the SEC and provide those reports to investors.[38] The content of those annual reports is left to the SEC. The Act merely requires such "reports of the

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[35] See Securities Act of 1933 § 4A(b)(1), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(b)(1)).
[36] Securities Act of 1933 § 4A(b)(1)(I), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(b)(1)(I)).
[37] Securities Act of 1933 § 4A(b)(5), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(b)(5)).
[38] Securities Act of 1933 § 4A(b)(4), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(b)(4)).

results of operations and financial statements of the issuers, as the Commission shall, by rule, determine appropriate."[39] The SEC is also authorized to create exceptions to the annual reporting requirement and to specify a date after which the reporting obligation terminates.[40]

These annual reports should be relatively short and simple, preferably a fill-in-the-blank, check-the-box form. They should not be anything like the Form 10-K annual reports required to be filed by public companies. If the SEC regulations try to make crowdfunding annual reports similar to the full-blown annual reports required of public companies under the Exchange Act, the crowdfunding exemption will simply not be used. The cost of the annual reporting requirement would be too high for the small business issuers attracted to crowdfunding.

Requiring crowdfunding issuers to file detailed annual reports would also be inconsistent with what Congress did in the rest of the JOBS Act. The JOBS Act made it easier for small business issuers to avoid Exchange Act reporting, increasing the threshold for Exchange Act reporting[41] and requiring the SEC to exclude section 4(6) purchasers from counting towards that threshold.[42] Requiring crowdfunding issuers to file the equivalent of Exchange Act annual reports would be inconsistent with the thrust of those changes.

Instead, the SEC should make the required annual report as simple to complete as possible. The Commission should not require annual financial statements, and certainly not audited financial statements, and it should only require a brief summary of the company's operations during the previous year. Moreover, the annual reporting requirement should terminate after a couple of years if the issuer has engaged in no further crowdfunding.

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[39] *Id.*
[40] *Id.*
[41] Prior to passage of the JOBS Act, Section 12(g)(1) of the Exchange Act, as modified by Rule 12g-1, required an issuer to register any class of equity security held of record by 500 or more shareholders if the issuer has total assets exceeding $10 million. *See* Securities Exchange Act of 1934 § 12(g)(1)(B), 15 U.S.C. § 78l(g)(1)(B) (2010), *amended by* JOBS Act, Pub. L. 112-106, §§ 303(a),501,601(a) 126 Stat. 306 (2012) (total assets exceeding $1 million and a class of equity security held of record by five hundred or more persons); Exchange Act Rule 12g-1, 17 C.F.R. § 240.12g-1 (2012) (increasing the total assets threshold to $10 million). The JOBS Act changed the record holder threshold to 2,000 persons or 500 persons who are not accredited investors. *See* JOBS Act, Pub. L. 112-106, § 501, 126 Stat. 306 (2012).
[42] Securities Exchange Act of 1934 § 12(g)(6), JOBS Act, Pub. L. 112-106, § 303(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78l(g)(6)).

9. The Investor Education Requirements Should Be Designed to Educate Investors, Not to Limit Crowdfunding to Sophisticated Financiers

To participate in a section 4(6) offering, investors must review investor-education information, although the exact content of that information is left to the SEC.[43] Investors must also answer questions demonstrating an understanding of

- the risk of investments in startups and other small businesses;
- the risk of illiquidity; and
- any other matters the SEC deems appropriate.[44]

I believe that the purpose of these requirements is not to certify that the investor is sophisticated, but to give notice to investors of the risks involved in crowdfunded investments. The investor-education materials and the required questions should be designed by the SEC with that purpose in mind. The questions investors are required to answer should not be designed to test the investor's knowledge, but leading questions designed to inform the investor of the risks.

Clarity and brevity are also important; the required materials should be neither so complex nor so long that investors lose sight of the basic message. Investors should not have to pass through an informational minefield to invest in crowdfunding. The goal is not to drive away investors, but to educate them. Ideally, the required educational materials and questions should take no more than ten minutes to complete.

Finally, the regulations should make it clear that investors only have to meet these education requirements once. I see no value in having investors repeat this experience each time they wish to invest.

10. The "Risk Reduction" Steps Required by Crowdfunding Intermediaries Should Not be Unduly Burdensome

Crowdfunding intermediaries must "take such measures to reduce the risk of fraud" in section 4(6) transactions as the SEC shall establish by rule.[45] The Act specifically

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[43] A crowdfunding intermediary is required to ensure that each investor "reviews investor-education information, in accordance with standards established by the Commission." Securities Act of 1933 § 4A(a)(4)(A), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(4)(A)).

[44] Securities Act of 1933 § 4A(a)(4)(C), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(4)(C)).

requires that these steps must include background and securities enforcement regulatory history checks on the issuer's officers, directors, and persons holding more than 20 percent of the issuer's outstanding equity.[46]

I believe that intermediaries should not be required to conduct independent background checks, but should be able to rely on material supplied by third parties—particularly credit reporting agencies and the Financial Industry Regulatory Authority (FINRA). At most, intermediaries should be required to do an ordinary credit check on the persons listed and a FINRA regulatory check. Unless one of those reports raises a red flag, they should not have to do any further investigation. The cost of any independent investigation is likely to be passed on to issuers, and the cost would unnecessarily increase the cost of using the exemption.

11. The SEC Should Clarify the Restriction on Solicitation by Funding Portals

A funding portal is not allowed to "solicit purchases, sales, or offers to buy the securities offered or displayed on its web site or portal"[47] or to "compensate employees, agents, or other persons for such solicitation."[48] The SEC takes a very broad view of solicitation under the Securities Act,[49] and the exact bounds of what is or is not an offer to sell a security is unclear.

Read literally, the prohibition on solicitation could prevent funding portals from operating crowdfunding sites at all, since issuers' listings on crowdfunding sites are soliciting purchases and offers to buy the issuers' securities. Since the statute clearly allows funding portals to operate crowdfunding sites,[50] the listings themselves must not violate this prohibition. But what else would the prohibition on solicitation cover? Could a funding portal advertise its site? If so, would it be barred from mentioning particular offerings in those advertisements? Could it contact

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[45] Securities Act of 1933 § 4A(a)(5), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(5)).
[46] *Id*.
[47] Securities Exchange Act of 1934 § 3(a)(80)(B), JOBS Act, Pub. L. 112-106, § 304(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78c(a)(80)(B)).
[48] Securities Exchange Act of 1934 § 3(a)(80)(C), JOBS Act, Pub. L. 112-106, § 304(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78c(a)(80)(C)).
[49] *See, e.g., Publication of Information Prior to or After the Effective Date of a Registration Statement*, Securities Act Release No. 3844, 1957 WL 3605 (Oct. 8, 1957). *See also* Thomas Lee Hazen, 1 TREATISE ON THE LAW OF SECURITIES REGULATION § 2.3[2] (6th ed. 2009).
[50] *See* Securities Act of 1933 § 4A(a)(1)(B), JOBS Act, Pub. L. 112-106, § 302(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 77d-1(a)(1)(B)).

prospective investors by e-mail and provide a link to the site? Could it do anything more than just provide that link? Even if such communications did not solicit people to buy *particular* securities, they would be soliciting people to purchase "the securities offered or displayed on its web site."

The SEC regulations should, to the extent possible, clarify exactly what crowdfunding intermediaries may and may not do without violating the prohibition on solicitation. A safe harbor listing activities that do not constitute solicitation for purposes of this restriction would be particularly helpful.

12. The SEC Should Make it Clear that Non-Broker Funding Portals Do Not Lose Their Status Because Some of the Transactions They Handle Fail to Qualify for the Crowdfunding Exemption

Non-brokers may operate section 4(6) crowdfunding sites, as long as they register as funding portals.[51] To be a funding portal, the entity must act as an intermediary in transactions "solely pursuant to section 4(6)."[52] This language should not be interpreted to disqualify a funding portal if a single transaction on its site does not meet all of the requirements of section 4(6) and therefore does not qualify for the exemption.

If a funding portal limits itself to offerings attempting to qualify for the section 4(6) exemption, it should retain its status as a non-broker funding portal even if some of those transactions ultimately fail to meet the requirements of the exemption. Funding portals cannot control the actions of issuers and investors using their sites. As long as the funding portal makes a good faith effort to insure that all transactions meet the requirements of section 4(6), it should not be penalized if some of them ultimately do not.

13. The SEC Should Adopt a Safe Harbor Protecting Funding Portals from Being Treated as Investment Advisers

Funding portals may not "offer investment advice or recommendations."[53] If they do, they not only risk losing their Exchange Act status, but they could also be

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[51] Securities Exchange Act of 1934 § 3(h)(1), JOBS Act, Pub. L. 112-106, § 304(a), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78c(h)(1)).
[52] Securities Exchange Act of 1934 § 3(a)(80), JOBS Act, Pub. L. 112-106, § 304(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78c(a)(80)).
[53] Securities Exchange Act of 1934 § 3(a)(80)(A), JOBS Act, Pub. L. 112-106, § 304(b), 126 Stat. 306 (2012) (to be codified at 15 U.S.C. § 78c(a)(80)(A)).

investment advisers within the meaning of the Investment Advisers Act.[54] Unfortunately, the meaning of investment advice under the Advisers Act is murky at best,[55] and the provisions added by the JOBS Act do nothing to clarify that uncertainty. If, for example, a funding portal places a few offerings in a "featured offerings" section, would that constitute investment advice or a recommendation? What if it offered a search engine that allowed investors to identify offerings that met certain criteria?

Even funding portals that do not "offer investment advice or recommendations" could still be investment advisers for purposes of the Advisers Act. Under the Advisers Act, anyone who, "for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities" is also an investment adviser.[56] One who merely provides information about companies and investment opportunities can be an investment adviser under this part of the definition even if no formal recommendation is made.[57] The SEC staff has indicated in several no-action letters that providing investors with information of this type falls outside the definition of investment adviser only if certain conditions are met.[58]

The SEC regulations should provide detailed guidance to funding portals, preferably in the form of a safe harbor, about what they may do without violating these restrictions. Funding portals would know that, if they stayed within the bounds of the safe harbor, they would not violate the restriction on investment

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[54] *See* Investment Advisers Act of 1940 § 202(a)(11), 15 U.S.C. § 80b-2(a)(11) (2010).
[55] *See* Bradford, *Crowdfunding and the Federal Securities Laws*, *supra* note 2, at 69-73, and authorities cited therein.
[56] Investment Advisers Act of 1940 § 202(a)(11), 15 U.S.C. §
[57] *See* Abrahamson v. Fleschner, 568 F.2d 862, 870 (2D Cir. 1977) (general partner providing financial reports on the partnership's investments to limited partners); SEC v. Saltzman, 127 F.Supp.2d 660, 669 (E.D. Pa. 2000) (same). The general partners in both cases were also making investment decisions for the partnerships, but the courts apparently held that the reports alone were sufficient to make the partners investment advisers.
[58] The information provided must be readily available to the public in its raw state; the categories of information presented may not be highly selective; and the information may not be organized or presented in a manner that suggests the purchase, holding, or sale of any security. *See*, *e.g.*, Angel Capital Elec. Network, SEC No-Action Letter, 1996 WL 636094 (Oct. 25, 1996); Mo. Innovation Ctr., Inc., SEC No-Action Letter, 1995 WL 643949 (Oct. 17, 1995); Media Gen. Fin. Servs., Inc., SEC No-Action Letter, 1992 WL 198262 (July 20, 1992); Investex Inv. Exch. Inc., SEC No-Action Letter, 1990 WL 286331 (Apr. 9, 1990); Charles St. Sec., Inc., SEC No-Action Letter, 1987 WL 107616 (Jan. 28, 1987). *See generally* HOWARD M. FRIEDMAN, SECURITIES REGULATION IN CYBERSPACE 17-3 (3d ed. 2005); THOMAS P. LEMKE & GERALD T. LINS, REGULATION OF INVESTMENT ADVISORS 7 (2011).

advice or become investment advisers subject to regulation under the Investment Advisers Act.

Conclusion

Whatever the SEC does to implement the crowdfunding exemption, I hope that Congress, and this subcommittee in particular, will revisit crowdfunding at some point in the future. I am concerned that the cost of the exemption's regulatory requirements, especially after those requirements are augmented by the SEC rules, may be excessive—that small businesses, especially very small startups, may find the crowdfunding exemption too expensive to use.

I hope I am wrong because I believe crowdfunding has extraordinary promise for small business capital formation, but experience will show how well the crowdfunding rules work. Congress can take advantage of that experience to hone the exemption, eliminating unnecessary, overly burdensome requirements and shoring up the exemption as needed to correct any problems.

Thank you for the opportunity to talk with you today. I would be happy to discuss these ideas further with any member of the Subcommittee or with any staff member.

C. STEVEN BRADFORD

Current Affiliation

University of Nebraska-Lincoln College of Law

- Earl Dunlap Distinguished Professor of Law, 2002-present
- Hevelone Research Chair, 2005-06
- Cline, Williams, Wright, Johnson & Oldfather Professor of Law, 1999- 2002
- Professor, 1995-99
- College Distinguished Teaching Award, 1995
- Associate Professor, 1991-95
- Assistant Professor, 1987-91
- Courses (current rotation in italics): *Business Associations*, *Securities Regulation*, *Securities Brokers, Mutual Funds, and Investment Advisers*, *Accounting for Lawyers*, *Mergers and Acquisitions*, Corporations Seminar, Law and Economics, Conflict of Laws, Commercial Law, Deregulation Seminar, Statutory Interpretation (noncredit; with Bill Lyons).

Education

Harvard University

- J.D., *magna cum laude*, Harvard Law School, 1982.
- M.P.P., Kennedy School of Government, 1982.

Utah State University

- B.S., *summa cum laude*, Pre-Law (Political Science), 1978.
- Valedictorian, College of Humanities, Arts, and Social Sciences
- National Merit Scholar
- John S. Welch Pre-law Scholar
- Lettered two years, track and field

Other Legal Employment

Southern Methodist University School of Law

- Visiting Associate Professor of Law, Southern Methodist University School of Law, May-July, 1994 (Course: Business Enterprise)
- Visiting Assistant Professor of Law, Southern Methodist University, 1986-87 (Courses: Business Associations, Commercial Paper)

Jenkens & Gilchrist

- Associate attorney, 1982-86 (Civil business litigation)

Law School and University Activities

Faculty Senate, University of Nebraska-Lincoln

- President, 2007-08
- Executive Committee, 2004-05, 2006-09
- Senator, 1990-92, 2000-09, 2012-present
- Ad Hoc Committee on Academic Senate Bylaws, 2004-05 (Chair)
- Ad Hoc Committee on Academic Honesty, 2008-2010

University of Nebraska System-Wide Committees

- Student Information Systems Advisory Committee, 2007-08
- Employee Benefits Committee, 2003-06

University of Nebraska-Lincoln Committees

- Academic Rights and Responsibilities Committee, 2008-2010 (elected by full University faculty) (Co-chair, 2009-2010)
- Telecommunications Advisory Committee, 2007-08
- Initiative for Teaching and Learning Excellence Advisory Committee, 2007
- Distinguished Educational Service Award Committee, 2007
- Faculty Compensation Advisory Committee, 2006-09 (Chair, 2008-09)
- Employee Assistance Program Advisory Committee, 2001-2008
- Employee Benefits Committee, 2001-04 (Chair, 2002-04)
- Committee on Committees, 1992-94

College of Law Committees

- Ad Hoc Faculty Blog, 2011-2012
- Honor, 1996-99; 2009-2012 (Alternate, 1993-96, 2006-09) (Members and alternates elected by the faculty)
- Appointments, 1990-92, 2009-2011
- Building, 2003-04; 2008-09
- Ad Hoc Teaching Evaluation, 2007-08
- Continuing Legal Education, 1987-1992, 2006-08
- Curriculum, 1992-96, 1997-2003, 2004-06 (Chair, 1992-93, 1997-99, 2002-03)
- Ad Hoc Classroom, 2002-04 (Chair, 2002-03)
- Grade Appeals, 2000-03 (Members elected by the faculty) (Chair, 2002-03)

- Law and Psychology, 1999-2000
- Dean's Strategic Planning, 1998-99
- Lectureship, 1996-98
- Committee on Committees, 1991-97, 2012-present (Members elected by the faculty)
- Long-Range Planning, 1991-96
- College of Law Centennial, 1990-91
- Admissions, 1988-90

Professional Associations

Center for Computer-Assisted Legal Instruction (CALI)

- Board of Directors, 2006-present
- Treasurer, 2009-2011
- Audit Committee, 2008-present
- Editorial Board, 1997-present (Leave of absence 2001-02).
- Business Organizations Fellow, 2001-02

Villanova Journal of Law & Investment Management

- Editorial Board, 1998-2002

American Bar Association

- Legal Education Committee, Section of Business Law, 1994-present
- Committee on Federal Regulation of Securities, Section of Business Law, 1989-present
    - Subcommittee on Proxy Solicitations and Tender Offers, 1989-present.
    - Subcommittee on Investment Companies and Investment Advisers, 1998-present
    - Task Force on Small Business Issuers, 1994-present
- Committee on Private Equity and Venture Capital, Business Law Section, 2008-present
    - Subcommittee on Governmental Regulation and Legislation, 2008-present
    - Programs Subcommittee, 2008-present

Association of American Law Schools

- Web Site Committee, Section on Teaching Methods, 2006-07
- Delegate to House of Representatives, 1995

National Association of Securities Dealers

- Arbitrator, 1994-2002

Nebraska State Bar Association

- Executive Committee, Corporate Counsel section, 1989-92

Dallas Bar Association

- Speakers Committee, 1986

Texas Young Lawyers' Association

- State Moot Court Committee, 1985-86
- Consumer Law Committee, 1985-86
- Legislative Committee, 1983-84

Publications

Digital Books and Other Digital Publications

- Business Law Prof Blog (http://lawprofessors.typepad.com/business_law)
  - Contributing editor, Feb.-Dec. 2011
  - Guest blogger, Jan.-Feb. 2011
- *Digital Securities Law: Statutes and Regulations*
  - Published biannually, Dec. 2008-Dec. 2011

Books

- *Basic Accounting Principles for Lawyers* (2d ed. 2008)
- *Basic Accounting Principles for Lawyers: With Present Value And Expected Value* (1996) (with Gary Adna Ames)
- Co-Editor (with William Lyons), *Nebraska "How-To" Practice Manual* vols. 3-4 (Business Organizations) (2d ed. 1996)

Legal Articles

- *The New Federal Crowdfunding Exemption: Promise Unfulfilled*, forthcoming, SEC. REG. L. J., vol. 40, no. 3 (Fall 2012), available at http://ssrn.com/abstract=2066088
- *Crowdfunding and the Federal Securities Laws*, 2012 COL. BUS. L. REV. 1 (2012), available at http://ssrn.com/abstract=1916184
- *The Uniform and Model Act Lineage of Nebraska's Business Associations Statutes*, 89 NEB. L. REV. 493 (2011)
- *Digital Statutory Supplements for Legal Education: A Cheaper, Better Way*, 59 J. LEGAL EDUC. 515 (2010)
- *Does Size Matter? An Economic Analysis of Small Business Exemptions from*

Regulation, 8 J. SMALL AND EMERGING BUS. L. 1 (2004)
- *The Cost of Regulatory Exemptions*, 72 UMKC L. REV. 857 (2004)
- *Securities Regulation and Small Business: Rule 504 and the Case for an Unconditional Exemption*, 5 J. SMALL AND EMERGING BUS. L. 1 (2001), *reprinted in* Securities and Exchange Commission, TWENTIETH ANNUAL GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION: PROGRAM MATERIALS (Sept. 6-7, 2001), and in 34 SECURITIES L. REV. 408 (2002)
- *Expanding the Non-Transactional Revolution: A New Approach to Securities Registration Exemptions*, 50 EMORY L. J. 437 (2000)
- *Expanding the Investment Company Act: The SEC's Manipulation of the Definition of Security*, 60 OHIO ST. L. J. 995 (1999)
- *The SEC's New Regulation CE Exemption: Federal-State Coordination Run Rampant*, 52 U. MIAMI L. REV. 429 (1998)
- *Transaction Exemptions in the Securities Act of 1933: An Economic Analysis*, 45 EMORY L. J. 591 (1996)
- *Regulation A and the Integration Doctrine: The New Safe Harbor*, 55 OHIO ST. L. J. 255 (1994), reprinted in 27 SECURITIES L. REV. 3 (1995)
- *What Happens if* Roe *is Overruled? Extraterritorial Regulation of Abortion by the States*, 35 ARIZ. L. REV. 87 (1993)
- *Rule 144A and Integration*, 20 SEC. REG. L. J. 37 (1992)
- *The Possible Future of Private Rights of Action for Proxy Fraud: The Parallel Between* Borak *and* Wilko, 70 NEB. L. REV. 306 (1991), reprinted in 24 SECURITIES L. REV. 355 (1992)
- *Conflict of Laws and the Attorney-Client Privilege: A Territorial Solution*, 52 U. PITT. L. REV. 909 (1991)
- *Following Dead Precedent: The Supreme Court's Ill-Advised Rejection of Anticipatory Overruling*, 59 FORDHAM L. REV. 39 (1990)
- *Stampeding Shareholders and Other Myths: Target Shareholders and Hostile Tender Offers*, 15 J. CORP. L. 417 (1990)
- *The Nebraska Shareholders' Protection Act: Economic Protectionism*, in C.W. Bowmaster, ed., *Outlook '89: Issues and Perspectives* (6th Annual Midwest Conference on Business 1989)
- *Protecting Shareholders From Themselves? A Policy and Constitutional Review of a State Takeover Statute*, 67 NEB. L. REV. 459 (1988)

Humor

- *Random Questions About Law School and the Law: The World's First Socratic Law Review Article*, 78 NEB. L. REV. 587 (1999)
- *As I Lay Writing: How to Write Law Review Articles for Fun and Profit*, 44 J. LEGAL EDUC. 13 (1994)
- *Ten Reasons to Attend Law School*, 1993 BRIGHAM YOUNG U. L. REV. 921 (1993)

- *The Gettysburg Address as Written by Law Students Taking an Exam*, 86 Nw. U. L. REV. 1094 (1992), reprinted in Robert M. Jarvis, et al, eds., *Amicus Humoriae: An Anthology of Legal Humor* (2003)

CALI Lessons

- *An Introduction to Depreciation* (forthcoming 2012)
- *Methods of Depreciation* (forthcoming 2012)
- *Inventory and the Cost of Goods Sold* (forthcoming 2012)
- *Inventory: The Lower-of-Cost-or-Market Rule* (forthcoming 2012)
- *Shareholder Voting Rights in Fundamental Changes* (2004)
- *Types of Business Combinations* (2003)
- *Shareholder Appraisal Rights* (2003)
- *Partnership Dissociation* (2003)
- *Partnership: Dissolution and the Article 7 Buyout Obligation* (2003)
- *Partnership: Winding Up, Partnership Accounts, and the Distribution of Profits and Losses* (2003)
- *What is a Director's Conflicting Interest Transaction?* (2002; revised 2007)
- *Judicial Review of Directors' Conflicting Interest Transactions* (2002; revised 2007)
- *Shareholder Voting: Straight vs. Cumulative* (2002)
- *Section 16(b) of the Securities Exchange Act of 1934* (2002)
- *Corporate Distributions* (2002)
- *Shareholder Agreements Under Section 7.32 of the MBCA* (2002)
- *Business Financing and the Federal Securities Laws* (2002)

Other Publications

- *Referee Abuse: Why We're Losing Good Referees*, THE 32ND PANEL (Capital Soccer Association newsletter) (Sept./Oct. 1999). Reprinted in 10 NEBRASKA SOCCER No. 4 (Nebraska State Soccer Association newspaper) (Nov. 1999).
- *Soccer's Hardest Rule (Even for Referees): Offside*, THE 32ND PANEL (Capital Soccer Association newsletter) (Jan./Feb. 1999).
- *Keep Your Hands Off That Ball*, THE 32ND PANEL (Capital Soccer Association newsletter) (Nov./Dec. 1998).
- *Why the Ref's So Slow to Call Fouls (Or Doesn't Call Them at All): The Advantage Rule*, THE 32ND PANEL (Capital Soccer Association newsletter) (Sept./Oct. 1998).

Presentations

Law-related

- *Everything You Need to Know About Crowdfunding*, Private Equity and Venture

Capital Committee, American Bar Association Annual Meeting, forthcoming, August 3, 2012

- *Crowdfunding, Small Business, and the New Federal Crowdfunding Exemption*, State Science and Technology Institute, June 21, 2012 (webinar)
- *Crowdfunding and Federal Securities Law,* National Council of Entrepreneurial Tech Transfer, April 18, 2012 (webinar)
- *Crowdfunding, Small Business, and Government Regulation*, Center for Entrepreneurship, College of Business Administration, University of Nebraska-Lincoln, Lincoln, Nebraska, April 13, 2012
- *Crowdfunding and Federal Securities Law*, Securities Regulation Committee, New York State Bar Association, New York City, New York, March 14, 2012 (via phone)
- *Crowdfunding*, SEC Government-Business Forum on Small Business Capital Formation, Washington, D.C., November 17, 2011
- *Creating Digital Statute Books*, CALI Annual Conference on Law School Computing, Boulder, Colorado, June 20, 2009
- *Writing CALI Lessons*, CALI Criminal Procedure Fellows, Association of American Law Schools Annual Meeting, New York, New York, Jan. 3, 2008
- *The Future of Casebooks: Can Anyone Deliver What I Want?*, (with Amanda Rockers and John Mayer). CALI Annual Conference on Law School Computing, Las Vegas, Nevada, June 18, 2007
- *CALI Lessons and Other Interactive Technology*, Section of Teaching Methods Program: Materials for the Classroom: The Usual Suspects and New Ideas, Association of American Law Schools Annual Meeting, Washington, D.C., January 4, 2007
- *Securities Regulation*, UNL undergraduate Government Regulation class, Nov. 10, 2006
- *Computer-Assisted Instruction in the Classroom*, Committee on Business Law Education Program: At the Intersection of Knowledge Management and Associate Development: Using Technology to Train Business Lawyers, ABA Section of Business Law 2006 Spring Meeting, Tampa, Florida, April 6, 2006
- *Corporate Crime*, Aurora Public Schools problem-solving team, Lincoln, Nebraska, May 23, 2005
- *Law School and Preparing for Law School*, University of Nebraska-Lincoln Pre-Law Club, Lincoln, Nebraska, February 15, 2005
- *Using CALI Lessons*, ABA Conference: Pedagogy to Practice: Maximizing Legal Education with Technology, Newark, New Jersey, October 16, 2004
- *Why Every Law Professor Should Author a CALI Lesson*, (with Mary LaFrance and Robert Lind), CALI Annual Conference on Law School Computing, Seattle, Washington, June 17, 2004
- *The Cost of Regulatory Exemptions*, Annual Meeting of the European Association of Law and Economics, Athens, Greece, September 19, 2002
- *Reviewing CALI Lessons*, (with Lawrence Wilkins). CALI Editorial Board

meeting, CALI Annual Conference on Law School Computing, Chicago, Illinois, June 20, 2002

- *An Economic Analysis of Small Business/Small Transaction Exemptions from Regulation*, Annual Meeting of the American Law and Economics Association, Georgetown University Law Center, Washington, D.C., May 12, 2001
- *Securities Regulation and Small Business: The Recent Case of the Rule 504 Exemption*, Forum on the Regulation of Small and Emerging Business, Lewis and Clark Northwestern School of Law, Portland, Oregon, October 6, 2000
- *Changes to Rule 504: The SEC's Small Offering Exemption*, University of Nebraska College of Law and School of Accountancy Estate and Business Planning seminar, Lincoln, Nebraska, May 11-12, 2000
- *Compliance Duties of Corporate Directors*, Corporate Counsel Section Luncheon, Nebraska State Bar Association Annual Meeting, Lincoln, Nebraska, October 17, 1997
- *Liability and Indemnification of Directors and Officers: Proposed Changes to the Nebraska Business Corporation Act*, Nebraska Continuing Legal Education Business Law seminar, Omaha, Nebraska, March 31, 1995
- *Business Ethics and Hostile Takeovers*, panel discussion presented in connection with the Nebraska Repertory Theatre's production of the play "Other People's Money," Lincoln, Nebraska, July 11, 1991
- *Duties of Directors, Officers, and Majority Shareholders*, Nebraska Continuing Legal Education, Counseling the Closely Held Corporation seminar, Omaha, Nebraska, February 22, 1991

Other

- *Welcome Address*, UNL Winter Ph.D. Hooding Ceremony, Dec. 21, 2007
- *Opening Address*, UNL Winter Commencement, Dec. 22, 2007
- *Faculty Service*, UNL New Faculty Orientation Luncheon, Aug. 22, 2007
- *Welcome Address*, UNL Summer Ph.D. Hooding Ceremony, Aug. 17, 2007
- *Opening Address*, UNL Summer Commencement, Aug. 18, 2007
- *Priorities of the Faculty Senate*, UNL Council of Student Affairs Directors, May 23, 2007
- *Welcome Address*, UNL Spring Ph.D. Hooding Ceremony, May 4, 2007
- *Opening Address*, UNL Spring Commencement, May 5, 2007

Other Activities

Refereeing

- United States Soccer Federation referee, 1997-2002
- Referee Commissioner, Capital Soccer Association, 1999-2000
- YMCA youth soccer referee, 1994

- Church league girls' basketball referee, 1997

Coaching

- YMCA youth soccer coach, 1989-90
- YMCA youth soccer assistant coach, 1991, 1993-94
- YMCA youth basketball coach, 1992-1993, 1996-98
- YMCA youth basketball assistant coach, 1994-1995
- YMCA youth T-ball coach, 1993

Other

- Treasurer, boys' under-12 select soccer team, 1998-99 (approximately $5,500 annual budget)
- Assistant Den Leader, Cub Scouts, 1990-92
- Elected delegate, Texas State Democratic Convention, 1986
- Elected delegate, Dallas senatorial district Democratic presidential nominating convention, 1984
- Duncanville, Texas Transportation Task Force, 1983

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: C. Steven Bradford

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2010. Include the source and amount of each grant or contract.

None.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

I am not testifying on behalf of any entity.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2010, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None.

I certify that the above information is true and correct.

Signature: C. Steven Bradford

Date: June 24, 2012