Senator Jeff Merkley

THE CROWDFUND ACT

Funding Startups Online, Protecting Investors from Fraud

In April 2012, Senator Jeff Merkley's Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure (CROWDFUND) Act was signed into law by President Obama as part of a broader package of securities law changes. The CROWDFUND Act updates our securities laws to allow entrepreneurs and start-up companies to raise capital through online platforms and social media. It also provides strong investor protections aimed at minimizing the risk of fraud and establishing a strong healthy market.

With small businesses struggling to acquire capital from banks and other traditional sources, now is the right time to help small businesses harness the power of social media in a responsible way. The CROWDFUND Act seeks to do just that, permitting small companies to raise money through internet-based intermediaries, while still maintaining important protections for the ordinary investors.

Crowdfunding is not without risks, in particular, the risk of loss, irrespective of fraud. Investors need to understand the risks they are taking, and that requires good disclosures appropriate to the amounts being put at risk. Getting this balance right is critical to allowing a healthy marketplace emerge where investors feel confident they understand what they are investing in, while companies can raise the necessary amounts in an efficient manner.

Major Elements of the CROWDFUND Act

- Companies: Raise up to $1 million per year through crowdfunding.
- Investors: Anyone can invest up to $2000 across all crowdfunded companies, annually. Investment caps scale up as investors can bear a greater risk profile, allowing companies to raise more money per person yet protecting lower-income investors. Crowdfunding is a new marketplace, and one way to protect against the risk of loss is to start out with small investment amounts relative to a person's income.
- Basic investor protections: Companies seeking crowdfunding must provide basic disclosures to investors.
    - Disclosures must include descriptions of the business and business plan, financial condition of the company, use of proceeds, offering amount, price, and rights in the securities.
    - Entrepreneurs are accountable for the accuracy of the disclosures.
- Appropriate oversight: Regulation is critical to preventing fraud and abuse. Web-based intermediaries must register with the Securities and Exchange Commission (SEC), either as broker-dealers or as funding portals. Funding portal registration provides a streamlined process for websites that simply provide a passive platform to match entrepreneur and investor and facilitate the appropriate disclosures.

Next Steps: The SEC is currently accepting public input on how to craft regulatory guidance to implement the new crowdfunding marketplace. Final rules are due by January 2013 and comments can be submitted to the SEC at their website. Senator Merkley welcomes your ideas on this new law as well.