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THE UNITED STATES' NEW CROWDFUNDING RULES: A PANDORA'S BOX?

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Abstract:
The Securities Act of 1933 prohibits the sale of securities unless they are registered with the Securities and Exchange Commission (SEC) or are eligible for an exemption. The act thus prohibits a person from attempting to sell stock over the Internet unless that person is willing to incur the cost and delays associated with registration. The Jumpstart Our Business Startups (JOBS) Act of 2012 creates a new registration exemption for offerings up to $1 million (each 12 months) which may be solicited in a limited way over the Internet. A variety of conditions apply, such as that the offering be conducted through an SEC-registered intermediary. This paper identifies the factors that led to the enactment of the JOBS Act, critiques the new exemption, and offers thoughts about its likely success.

Key words:
crowdfunding; securities law; Internet solicitation

INTRODUCTION

Small and start-up businesses are chronically starved for capital, a situation exacerbated by the lingering impact of the 2008 global financial crisis. Yet it is widely believed that small businesses are the primary engines of economic growth and job formation, causing policymakers in the US and elsewhere to search for new ways to stoke those engines with investment.[1] This craving for funding must be placed in the context of America's zeal for get-rich-quick schemes, its near reverence for entrepreneurship, its trend toward deregulation, and its growing resentment that lucrative initial public offerings (IPOs) are only available to the wealthy and well-connected (e.g., Twitter[2]). Add to the mix the realization that, through the ubiquitous Internet, the public is now effortlessly joining to provide the resources to create works of art, assist the poor [2], engage in science [3], create an encyclopedia (Wikipedia) [4], and develop innovative products [5]; i.e., the world has awakened to the potentialities of "crowdsourcing."

Is it any wonder that fledgling and would-be entrepreneurs began to envision raising capital using the same approach—by soliciting individually small investments from a large number of individuals over the Internet? Even the US' polarized, dysfunctional Congress could see the economic (and political) advantages of promoting this movement. With President Obama leading the way, the Jumpstart Our Business Startups Act (JOBS Act) became law on April 5, 2012,[3] its Title III legalizing "securities crowdfunding" for the first time.

This paper relates securities crowdfunding to the recent phenomenon of crowdsourcing, considers the problems faced by start-up and small businesses when attempting to raise capital, identifies why it was illegal to engage in securities crowdfunding in the US until the JOBS Act, critiques that law, and offers thoughts about its likely success.

THE GENESIS OF SECURITIES CROWDFUNDING—CROWDSOURCING

Crowdsourcing is "a type of participative online activity in which [a party] proposes to a group of individuals … via a flexible open call … the voluntary undertaking of a task." It derives from the microfinance movement pioneered by the 2006 Nobel Laureate Mohammed Yunus, who (with his Grameen Bank) has, over the past 30 years, microloaned over $9 billion to individuals in Third World countries to enable them to launch or expand their enterprises. [4]

1 President Obama said in his 2012 State of the Union Message, "Most new jobs are created in start-ups and small businesses. So let's pass an agenda that helps them succeed. Tear down regulations that prevent aspiring entrepreneurs from getting the financing to grow." [1]

2 Twitter's stock jumped from its initial price of $26 to end the first day of trading at $44.90 (up 73%). Virtually none of this "pop" was enjoyed by ordinary investors. Instead, as usual, the underwriters hand-selected the fortunate participants from their best (i.e., largest and wealthiest) clients.

3 The bill passed easily in the Democrat-controlled Senate (73-26) and the Republican-controlled House of Representatives (390-26).

The 2008 financial crisis led to the extension of this idea to charities, although the model inverted: Instead of a few providing small amounts to a large number, a large number provide small amounts to a few. From there crowdsourcing (now often called "crowdfunding") evolved to support artists and finance innovative products. Contributors receive a token of appreciation (e.g., a poster for the crowdfunded movie) or one of the first items resulting from the crowdfunded production operation (either free or at a substantial discount).

These represent three of the five crowdfunding models: 1) donation-based, 2) reward-based and 3) prepurchase. [6, 7] Their success has been impressive. For example, Kickstarter raised $250 billion from two million people in 2012. [5] Pebble Technology, wanted to build smartwatches (which pair with smartphones). It offered a free watch to those who contributed at least $115. The funding goal was $100,000. In a day $1 million was raised; in five weeks, $10.3 million. [8]

Before long, entrepreneurs began to look to the "crowd" for more conventional financing: debt and equity investment. A fourth type of crowdfunding appeared: zero-interest lending, in which the public provides non-interest-bearing loans to new or small businesses. In 2011 $1 billion was generated, and pundits predict as much as $5 billion within a few years. [2] Note that these loans have a donative flavor because there is no interest. That formulation resulted from the fear of violating US law—any "investment" that generates a "return" is a "security," subjecting it to onerous regulation. The stage was set, however, for the fifth model—securities crowdfunding: soliciting profit-seeking debt and equity investments from the general public (discussed shortly).

THE PLIGHT OF SMALL BUSINESSES AND START-UPS

Entrepreneurs involved in small businesses and start-ups typically seek capital from: 1) personal resources, 2) friends and family, 3) banks, and 4) venture capitalists and business angels. Such entrepreneurs often have inadequate personal resources to launch or expand their enterprises. Friends and family can only provide limited assistance. Before the 2008 financial crisis, banks were usually unwilling to lend absent the entrepreneur having significant collateral because of the weak track record of economic success, a situation that worsened in the crisis' aftermath. Venture capitalists and business angels not only typically eschew the kinds of small, early-stage investments such entrepreneurs seek, they also tend to restrict their involvement to certain high-density zones of innovation, such as the Silicon Valley and New York City. Indeed, research indicates that the radius of involvement could be as little as 70 miles, [7] which is particularly troublesome for rural ventures. [2] Thus, many entrepreneurs are unable to turn their ideas into reality or to enable their businesses to reach their full potential, all arguably to the detriment of general economic growth and job formation.

In response to this thirst for capital, securities crowdfunding has begun to appear elsewhere in the world, with governments occasionally taking notice but thus far remaining hesitant to intervene. [6] In the US, however, the SEC has reacted promptly to stop such activities. For example, in 2011 two individuals used the Internet to solicit equity investors to purchase a well-known brewery. They received pledges for $200 million from five million individuals. Upon becoming aware of this attempt at securities crowdfunding, the SEC brought it to an abrupt halt. [2] The problem: A profit-seeking opportunity offered to the public is subject to US securities regulation, which prohibits general solicitation.

SECURITIES CROWDFUNDING VS. US SECURITIES LAW

After the stock market crash of 1929, the US's historical laissez-faire policy toward the capital markets came under severe scrutiny. The two core US securities laws resulted: the Securities Act of 1933 (1933 Act) and the Securities Exchange Act of 1934. The former regulates IPOs; the latter regulates secondary securities sales.[4] The 1933 Act is of direct relevance to securities crowdfunding.

The SEC's mandate is to promote the "public interest" in the capital markets. The primary goal is investor protection. The additional goals are to "promote efficiency, competition, and capital formation." [9] With respect to IPOs, the following rule from the 1933 Act is intended to achieve those goals: "Unless a registration statement is in effect …, it shall be unlawful" to sell, offer to sell, buy, or offer to buy any "security" in the US. [10]

"Security" includes traditional stocks and bonds, as well as a powerful catchall—"investment contracts," [11] which the US Supreme Court defined as an arrangement "whereby a person invests his money in a common enterprise and is led to expect profits [primarily through] the efforts of … a third-party." [12] An equity interest sold via securities crowdfunding (regardless of how labeled[5]) is an "investment contract." The Internet is being used to induce the public to pool its resources to support an activity (i.e., there is an "invest[ment] in a common enterprise"), expecting to profit primarily through the efforts of the solicitor of those funds (i.e., "a third-party"). Since the arrangement constitutes a "security," buying, selling, or offering to buy or sell the interest is illegal unless "a registration statement is in effect."

The production of a registration statement (which must be approved by the SEC) is burdensome. It can take months and cost several hundred thousand dollars. The registration statement contains extensive disclosures about the business, its principals, the potential risks, and numerous additional matters. It also includes audited financial statements. Lawyers, bankers, accountants, and others are involved. Given the comparatively small amount typically sought by start-up and small business entrepreneurs, the ratio of transaction costs to proceeds is prohibitively high (and the delay alone can thwart a business plan). This is not a problem only for very small-scale

4 It also establishes the SEC.

5 Usually the Internet description does not call an equity interest "stock;" instead, it characterizes the interest as a share of profits and/or revenues.

entrepreneurs. There are other circumstances in which, given the relatively modest amount sought (e.g., $5 million), the transaction costs of producing a registration statement are deemed too high. As a result, Congress authorized the SEC to carve out exemptions from the registration requirement:

- Intra-State Offerings [13]
  - Required: Company and all offerees reside in a single state[6]

    Problem: The exemption cannot be used for securities crowdfunding because the Internet is global, making it impossible to guarantee that all offerees reside in the same state
- Non-Public Offerings [14] and Regulation D[7] [15]
  - Required: No public solicitation of investors
  - Problem: The exemption cannot be used because securities crowdfunding is achieved by seeking investors over the Internet—a public solicitation
- Regulation A [16]
  - Required: Offering circular (i.e., a culled-down version of the registration statement)
  - Problem: The exemption is not useful because the cost of preparing the document, while less, is still prohibitive given the small amount being sought by start-up or small businesses

Thus, none of the pre-existing exemptions from the registration requirement apply to securities crowdfunding.

THE NEW CROWDFUNDING EXEMPTION

In 2011 the SEC chair said: "I recently asked the staff to take a fresh look at our [securities] offering rules in light of changes in the operation of the markets, advances in technology and the acceleration in the pace of communications. I also requested that the staff think creatively about what the SEC can do to encourage capital formation, particularly for small businesses, while maintaining important investor protections." [17]

Later that year legislation to establish a securities crowdfunding exemption was introduced, culminating in the JOBS Act in April 2012. It required the SEC to produce implementation rules by the end of 2012. Unfortunately, the draft rules (known as Regulation Crowdfunding) did not appear until October 2013. They circulated for public consideration until February 2014, with over 250 comments being received. It appears that the SEC will be unable to produce final rules until late 2014.

Frustrated with the SEC's delays, four states enacted securities crowdfunding provisions,[8] but these are of little value since they require both the company and the offerees to be same-state residents. Very few entrepreneurs have thus far used the state options (perhaps 30). [18]

As it stands, securities crowdfunding will be accomplished by "issuers" (i.e., those seeking to raise debt and/or equity capital through the issuance of securities) who will work with SEC-registered intermediaries that will: 1) post on their webpages descriptions of the securities being offered, and 2) provide a "communication channel" (analogous to a chat room) for the issuer and interested investors to post comments, questions, etc. The intermediaries' webpages will be visible by anyone, but only the issuer and those who open an "account" with the intermediary will be able to post (thereby introducing an element of accountability into the communication stream).

There are two kinds of intermediary: "brokers" and a new form, "funding portals." A "broker" is a "person engaged in the business of effecting transactions in securities for the account of others." [19] A "funding portal" is a "person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to" the new exemption. [20] Brokers are full-service financial professionals who are permitted to give investment advice, pay referral fees, and hold and manage investors' funds and securities. Funding portals are permitted to do none of these things. They can only list (without substantive commentary) issuers' offerings and provide "communication channels." Brokers and funding portals will charge a fee (amount unknown as yet) for these two basic services. Brokers will charge additional fees for the other permissible services.

Issuers can raise up to $1 million annually using the new exemption. [21] Investors will be limited in the annual amount they can put at risk [22]:

- Those whose income and net worth are both less than $100,000 can invest the greater of:

  5% of the larger of the two, or

  $2000
- All other investors can invest the greater of:

  10% of the larger of the two, or

  $100,000

The issuer will be required to: [23]

- Provide disclosures at the outset, including:
  - Name, legal status, address and website
  - Names of directors and officers, along with their business experience during the past three years
  - Names of shareholders holding more than 20% of the voting power ("20% shareholders")
  - How the interests of investors might be undermined as a result of the rights held, or actions that might be taken, by the issuer, its directors, officers and 20% shareholders
  - Amount intended to be raised ("target offering amount"), the deadline for reaching it,[9] and whether contributions in excess will be accepted
  - Intended use of the funds
  - Description of the business, the business plan, and scaled financial disclosures:
    - Target offering amount $100,000 or less:
      - Most recent income tax return
      - Financial statements certified by the CEO

6 There are 50 states in the US (e.g., New York, California, Texas).

7 Commonly referred to as Rules 504, 505 and 506.

8 Kansas in 2011, Georgia in 2012, and Wisconsin and Michigan in 2013. Washington and North Carolina introduced legislation late in 2013; New Jersey, Alabama and Maine did so in 2014.

9 The issuer must provide timely, ongoing updates on progress in obtaining "investment commitments" in that amount.

to be true and complete in all material respects
    - Target offering amount $100,001 to $500,000: Financial statements reviewed by a certified public accountant (CPA)[10]
    - Target offering amount $500,001 to $1,000,000: Audited financial statements
  - Security price (or the price-setting methodology)
- Provide ongoing annual disclosures: A host of information related to prospects and performance, including financial statements certified, reviewed or audited pursuant to the above rules

The intermediary will be required to: [25]

- Prohibit any direct investment by itself (or its directors or officers) in the issuer (to avoid conflicts of interest)
- Perform background checks on the issuer's directors, officers and 20% shareholders
- Make reasonable efforts to ensure that the issuer is complying with the exemption's requirements (the intermediary may accept the issuer's representations that it is in compliance, unless circumstances indicate that such reliance is unwarranted)
- Remove any offering if it appears that the issuer or the offering itself presents the potential for fraud or otherwise raises concerns about investor protection
- Provide educational materials to investors, including:
  - How the security acquisition process works, emphasizing the investor's right to cancel its investment commitment any time prior to 48 hours before the funding deadline
  - The risks associated with the investment, taking care to ensure that the investor understands:
    - The high risk associated with start-up and small businesses in general
    - The risk that the entire investment may be lost (the investor must represent that it is able to bear such loss)
    - The risk that there may ultimately be no market for the security after acquisition and that, as a general rule, the security cannot be disposed of for one year[11]
- Ensure that no investor exceeds its annual investment limit (the intermediary may accept the investor's representations that it is in compliance, unless circumstances indicate that such reliance is unwarranted)
- Not permit investor funds to reach the issuer unless the target offering amount has been achieved (if it is not achieved, all investor funds must be returned)
- Ensure that no securities are issued until at least 21 days after the issuer has provided the required disclosures (thereby providing at least three weeks for the "crowd" to digest the disclosures and express its "wisdom" as to the investment's merits)
- Disclose how it is being compensated

DOES THE NEW SECURITIES CROWDFUNDING EXEMPTION MAKES SENSE?

The SEC acknowledged its dilemma in Regulation Crowdfunding: "We understand that these proposed rules … could significantly affect the viability of crowdfunding as a capital-raising method for startups and small businesses. Rules that are unduly burdensome could discourage participation[.] Rules that are too permissive, however, may increase the risks for individual investors, thereby undermining the facilitation of capital raising for [these] businesses."

On the whole, commentators look negatively upon the securities crowdfunding exemption—and for good reason.

Transaction Costs

The securities law emphasizes the disclosure of all material information (and the preclusion of any material omissions) as its primary means of safeguarding investors. Reflecting that policy, the JOBS Act and Regulation Crowdfunding impose substantial disclosure requirements on issuers, both at the outset and on an on-going basis. These disclosures come at a cost; and at some point, that cost is so large as a proportion of the funding raised that the economic arrangement becomes nonsensical. That appears to be the case here. The SEC estimates the initial cost for offerings at the $100,000 level to be $15,000 (15%); $500,000 could cost $63,000 (13%); $1 million might cost $149,000 (15%). Worse, a large proportion of these costs[12] would have to be pre-funded by the entrepreneur—the very person deemed so illiquid as to require the creation of the securities crowdfunding exemption in the first place. It would seem likely that most entrepreneurs will find prohibitive both the amount and timing of these costs. Add to this the ongoing annual disclosure costs, which in many cases will include financial statement reviews or audits. As one commentator said, "equity crowdfunding … has the worst 'bang for your buck' in all of corporate finance." [26]

Liability

Beyond disproportionately heavy transaction costs, the liability provisions will make intermediaries and issuers think twice about utilizing the securities crowdfunding

10 Reviews, like audits, are designed to give comfort to readers as to the quality of the information presented. They are, however, much less extensive and therefore provide only "limited assurance that there are no material modifications that should be made to the financial statements." Audits, on the other hand, provide "a high … level of assurance that the financial statements are free of material misstatement," allowing the auditor to opine "on whether the financial statements are presented fairly in all material respects." Understandably, reviews are less expensive than audits. [24]

11 Exceptions are made for, among other things, transfers pursuant to death and divorce, redemptions by the issuer, and sales to "accredited investors" (institutional investors and individuals with, in general, an income of at least $200,000 and a net worth of at least $1 million).

12 Probably all costs other than the intermediary's fee (e.g., financial statement audits, and the estimated $6000 cost to prepare the SEC paperwork).

exception. The JOBS Act permits investors to sue to recover their investment if the issuer "by any means of … written or oral communication, in the offering or sale of a security makes an untrue statement of a material fact or omits to state a material fact required to be stated … in order to make the statements … not misleading[.]" [27] Information is "material" if "there is a substantial likelihood that a reasonable investor would attach importance [to it] in determining whether to purchase the security[.]" [28] There are only two defenses: 1) the purchaser knew about the material misrepresentation, and 2) the issuer can prove it "did not know, and in the exercise of reasonable care could not have known, of [the] untruth or omission." [29]

Even an innocent (i.e., merely negligent) material misrepresentation subjects the issuer to this liability. It should be expected that well-intentioned, but unsophisticated, entrepreneurs will innocently, but misleadingly, draft some portion of the bevy of disclosures required for participation in securities crowdfunding; or will make amateurish mistakes in the intermediary's chat room when touting their offerings or responding to questions and comments. If a "reasonable investor would attach importance" to the matter innocently misrepresented, the issuer can be compelled to return the entirety of the investors' contributions. In short order issuers will come to realize that avoiding this liability will require seeking professional advice in advance, significantly increasing the pre-funded cost to utilize the exemption.[13]

"Issuer" is defined to include "any person who offers to sell the security[;]" [30] and in Regulation Crowdfunding the SEC said, "it appears likely that intermediaries … would be considered issuers for purposes of this liability provision." This somewhat surprising statement means that intermediaries will need to undertake costly due diligence to ensure that they can raise the defense that they "did not know, and in the exercise of reasonable care could not have known, of [the] untruth or omission." It does not appear that the SEC included this enhanced due-diligence cost when deriving its estimate of intermediary fees. Thus, the already high expected transaction costs are probably greater than indicated in the SEC's projections. Intermediaries will certainly pass these additional costs on to issuers in the form of higher fees.

Remedies

One must also wonder whether investors will be able to recover their losses should the issuer commit fraud or engage in material misrepresentation. The most any issuer can be liable for is $1 million (the maximum amount the investors as a whole can provide the issuer). [31] Investors will have individually contributed comparatively small amounts, amounts far too low to warrant engaging an attorney to press a legal action. The typical response to such a situation in the US is to form a class-action lawsuit, compensating the attorney with contingent fees of 20-40% of the damages recovered. However, given the up-front cost to bring such an action and the relatively low potential payout to the attorneys, it seems unlikely that lawyers will be willing to take on such suits. Thus, it seems probable that investors will usually be unable to redress their grievances against fraudulent or materially misrepresenting issuers through private actions.

Even if an attorney can be found to take on the class action, if an allegation of fraud is made, the investors face hurdles under the Private Securities Litigation Reform Act of 1995. It requires investors to identify the specific facts which demonstrate scienter (i.e., intent to do harm) on the part of the issuer, as well as to identify the specific facts which show that the investors' losses directly resulted from the issuer's intentional actions. These are frequently insuperable obstacles.

Later Funding Rounds

Issuers using securities crowdfunding will discover that, if their ventures are successful, obtaining additional rounds of financing will be more difficult. Among the last things venture capitalists and business angels want to deal with is a large number of unsophisticated, potentially unruly equityholders. Their presence typically impedes the quality and speed of decision-making, and increases the possibility of equityholder disputes which can disrupt the company's management.

In addition, if the issuer's equityholder registry is not maintained with great accuracy, potential providers of later-round funding may be disinclined to participate because it may be overly difficult to determine who actually holds an equity interest in the company, making it a challenge to secure equityholder consent to various major actions the venture capitalist or business angels believe the entity should take.

Thus, the entrepreneur initially grateful for seed or expansion capital may come to regret its decision when subsequent funding rounds become necessary.

"Terrible" Investments

A question thus far unasked is: What is the probable quality of the investments that will be funded through the new securities crowdfunding exemption? Investments in start-up and small businesses are well known to be exceptionally risky, with most failing (or proving so non-remunerative as to not warrant keeping them in existence) within in a few years. The entrepreneurs seeking to utilize securities crowdfunding will often be those who have not been able to access capital through conventional sources (banks, venture capitalists and business angels) because: 1) they lack collateral and/or a successful economic track record; and 2) startup and early-stage ventures are, as just noted, so notoriously risk-laden.

Even businesses funded by venture capitalists and business angels fail 90% of the time, despite an average of 1200 hours of due diligence by persons generally familiar with the industry involved. Were it not for the 10% of investments that are exceptionally profitable (and which are held pursuant to a deliberate diversification strategy—

13 The SEC uses $400 per hour as its estimate of the cost of legal services.

one most small investors may not pursue), even expert funders would lose money. Why expect better results from businesses pruned out by such professionals during their due-diligence process? [5]

In addition, the average securities crowdfunding investor typically will: 1) have no background in business or investment matters, 2) have little or no real knowledge of the industry, 3) be unwilling to spend meaningful amounts of time performing due diligence, and 4) not properly diversify. These persons will also tend to be among those least able to comfortably absorb the losses they are almost certain to suffer.

Beyond the dismal prospects for success, both the Internet and small business investment are widely understood to be vulnerable to fraudsters. Joining the two would seem to amplify the risk that investors will come away empty-handed.

As one commentator said, "[T]here is no way to rescue [securities] crowdfunding. The problem is not with how Congress set up the system or how the SEC will eventually implement it. The problem is that this was always a terrible idea." [5]

THE YEARS AHEAD

Given the recent passage of the JOBS Act and the hype and mystique surrounding securities crowdfunding, it seems improbable that either the SEC or Congress will acknowledge the problems with the new exemption and take appropriate remedial action at this time. The SEC will finalize Regulation Crowdfunding toward the end of 2014 and securities crowdfunding will "go live" in the US.

Brokers may well not be interested in acting as intermediaries because of the low fee potential and the disproportionate risks. Funding portals will undoubtedly arise, but will shortly discover that they are subject to liabilities so substantial that, given the practical limits on the fees they can charge, the business model may not be viable.

Issuers will rush to list their proposals, but probably for amounts below $100,000 to avoid having to prefund costly financial statement reviews and audits. Many will get financed, but in a year or two the media will begin reporting a cascade of lawsuits and accusations as amateur investors attempt to hold amateur business persons accountable for relatively innocent mistakes in language and business judgment. To the extent disgruntled investors can induce attorneys to take on their actions, issuers will discover the downside of equity securities crowdfunding—protracted distraction and the emotional and financial cost of defending under the exemption's negligence-threshold liability provision.

Investors will flock to fund, over time coming to realize that the odds of real, breakout financial success are more akin to playing the lottery than to "investment." As a group they could become wiser about financial matters, which may help them engage in more conventional, less risky investments. If the exemption survives, they may become more capable of performing due diligence, although they will almost certainly conclude that, given the small amounts involved, it is not cost-effective to do so to any significant extent—bringing into question the entire premise that the "crowd" will, through its collective "wisdom," make quality investment decisions.

It seems plausible that donation-based, reward-based and prepurchase crowdfunding will prosper. Non-interest-bearing lending through crowdfunding also shows promise. But the crowdfunding of securities seems to make no economic sense. Transaction costs will be disproportionately high, the likelihood of venture (and therefore investment) success is very low, fraud will shake investors' confidence, and intermediaries and investors will become disenchanted by the unexpected liabilities to which they find themselves subject.

It does not seem possible to cost-effectively regulate securities crowdfunding. There is no way to bring the transaction costs imposed by a useful regulatory regime down to a level that makes sense given the small amounts of capital sought to be raised. Perhaps a different model for dealing with securities crowdfunding should be considered—one analogous to the regulation of gambling (where, statistically speaking, everyone is going to lose; but those partaking generally do not feel put upon by their losses because they understand the "realities" and they simply enjoy the experience). In that environment the primary regulatory thrust would be fraud prevention, not costly disclosure. Transaction costs would decline dramatically, making participation by issuers rational. However, investors would need to truly take to heart the extremely speculative nature of the undertaking and cease thinking of their contributions as "investments."

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