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U.S. Securities Crowdfunding

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A Way to Economic Inclusion for Low-Income Entrepreneurs?

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Introduction

Crowdfunding represents the financing side of digital entrepreneurship. Its online platforms, typically the province of digital entrepreneurs, are designed to effortlessly bring together businesses (archetypally, startups and small businesses) and those who desire to provide funding to them. Funders can be donors, consumers, investors, or a combination of two or all three.

In its most elemental and broad form, crowdfunding is a representative component of the sharing economy. It democratizes capital formation from the standpoint of both the funded and the funders. It allows those without prototypical capital raising networks at their disposal to finance the startup or continued operation of their business—or a part of it—by identifying and deploying unutilized or underutilized investment capital. It invites new types of funders from new communities. The technological developments and enhancements of digital entrepreneurs are at the heart of it all, catalyzing a variety of crowdfunding models and compelling related regulatory change (Pollman & Barry, 2017). Where crowdfunding involves the offer and sale of equity, debt, or other financial investment instruments classified as securities under applicable law, it is commonly known, and referred to in this chapter, as "securities crowdfunding" (but is also sometimes referred to in whole or in part as "equity crowdfunding" or "investment crowdfunding").

This chapter examines the legal aspects of U.S. securities crowdfunding under the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act (2012), commonly known as the "CROWDFUND Act" (Title III of the Jumpstart Our Business Startups Act) and related federal securities regulations. The CROWDFUND Act represents specific, targeted federal legislation that was designed to facilitate digital business finance in the U.S. sharing economy. The possible two-way benefits (i.e., the democratization of capital raising for the funded and funders through digital means) and profit-sharing incentive associated with securities crowdfunding together imply a relatively cost-effective way to enhance funding capacity that may be attractive to entrepreneurs and investors, including especially those of modest means.

Given that crowdfunding can be a means to level the capital-raising playing field, it seems important to ask whether U.S. securities crowdfunding—a distinctive type of internet finance—is, in fact, a promising avenue for funding entrepreneurial ventures. More specifically, as economic challenges continue to put pressure on financial and labor markets, this chapter explores whether U.S. securities crowdfunding is a viable and efficient means for low-income entrepreneurs to raise capital for their startups and small businesses and offers related observations. Overall, although securities crowdfunding may be a tempting choice for U.S. entrepreneurs, U.S. law and regulation create obvious and non-obvious costs and yield somewhat uncertain benefits. Yet, market pressures and innovations introduced by digital entrepreneurs may play a role in increasing the efficacy of U.S. securities crowdfunding as a financing option for low-income entrepreneurs.

With the foregoing in mind, this chapter begins by describing the research method employed in support of the included analysis and resulting observations and proposals. The chapter next isolates a number of socio-legal issues at the intersection of financial hardship and business finance that highlight the uncertain, yet potentially important, economic role of limited means entrepreneurs. After presenting those issues, the chapter continues by offering perspectives on the potential use of U.S. securities crowdfunding to fund entrepreneurship for those in financial need. Finally, the chapter suggests possible ways forward in addressing identified shortcomings inherent in the securities crowdfunding solution to financing business startups and innovations in the U.S. in times of economic distress. Overall, the chapter aims to shine light on the role that crowdfunded securities offerings may play in promoting entrepreneurship in the U.S.

Research Method

The analysis and observations in this chapter are founded principally on traditionally applied legal research methods and related analytical frameworks. These methods are typically characterized as a form of desk research. The primary objective is problem-solving. The applied legal research employed in this chapter involves canvassing a specific area of law for relevant legal rules and assessing their efficacy in a specific context.

The method involves a review of both primary sources of law or regulation and secondary sources of legal commentary. Primary sources most typically include statutory and decisional law, but also may include regulatory principles and constitutional law. For example, because U.S. securities crowdfunding is regulated at the federal level through legislatively enacted provisions in the U.S. Code, rules of the U.S. Securities and Exchange Commission, and decisional law generated by U.S. federal courts, each of these primary sources was canvassed to formulate the analysis shared in this chapter. Secondary sources include empirical, theoretical, policy-oriented, and practical literature generated in academic and nonacademic settings. The assessment provided in this chapter, for instance, is informed by reading an assortment of secondary sources, including principally law review and journal articles, as well as industry studies and academic publications from economics, finance, management, and other business research traditions.

The analysis that follows from the review of primary and secondary sources identifies legal rules germane to the research question, describes their significance in context (by relating them to factual circumstances relevant to the research question), and offers a legal conclusion or critique and, optimally, proposed solutions to identified problems. Thus, the support for the analysis includes the applicable legal rules themselves, as well as related studies, commentaries, and predecessor analyses. The legal conclusion, critique, and solutions also incorporate a knowledge of applicable norms and the exercise of professional judgment founded in practical or academic experience.

Theoretical Framework and Analysis

The Contextual Economic Role of the Financially Disadvantaged Entrepreneur

Small business entrepreneurship has historically been a positive driver of the economy in the U.S. (Kobe & Schwinn, 2018). As a result, the financing, financial health, and overall well-being of startups and small businesses compel attention. Law or regulation may be a valuable tool in encouraging or discouraging entrepreneurship.

Entrepreneurship also is responsive to the economy. Economic downturns, including significant economic dislocations like those resulting from the 2008 global financial crisis and the 2020 COVID-19 pandemic, may affect business finance both directly and indirectly. Investors may be less likely to make certain types of investments, including investments in new or small firms. Among other economic effects, labor markets typically are hard hit by economic downturns. The resulting changes in unemployment rates may complicate the entrepreneurship picture.

Among other things, the number of necessity entrepreneurs is likely to increase with increased unemployment. Necessity entrepreneurship is compelled by economic factors. Nikolaev *et al.* (2018, p. 246) defined necessity entrepreneurs as '[i]ndividuals who engage in necessity-based entrepreneurship . . . do so because they have to, owing to the lack of other options. . . . [T]hey are all *pushed* into entrepreneurship because they have no other employment prospects.' Necessity entrepreneurship often is contrasted with opportunity entrepreneurship, which is more a product of creative ideation and innovation. Although both types of entrepreneurs may be low-income entrepreneurs, necessity entrepreneurs are by their very nature at substantial financial risk.

Increased entrepreneurship should result in a classic "win-win" outcome. The successful encouragement of entrepreneurship should boost the economy generally and may also have positive effects on the unemployment rate specifically. A flourishing market for entrepreneurship should provide a special benefit to necessity entrepreneurs suffering financial challenges, offering a way to alleviate poverty more generally. However, the overall rationale for encouraging entrepreneurship may be complicated by, among other things, studies that indicate differences in the economic contribution of necessity and opportunity entrepreneurship (Acs, 2006; Acs, Desai & Hessels, 2008).

Nevertheless, aspects of socio-political economic theory predict that encouraging low-income entrepreneurship—and more specifically encouraging its funding through capital markets—may have positive economic effects. Capabilities theory and binary economics, read together, may predict that the broad and consistent engagement of low-income entrepreneurs in business finance will have positive wealth and economic effects. Specifically, under a capabilities approach, 'poverty alleviation depends on the expansion of the freedoms that people have to use their capacities in ways that satisfy their personal objectives' and urges attention in this context to 'quality of life and the freedoms associated with social justice' (Dyal-Chand & Rowan, 2014, p. 884). Importantly, this freedom may not exist for necessity entrepreneurs (Gries & Naudé, 2011. Under binary economic theory, '[c]apital has a strong, positive, distributive relationship to growth, such that the more broadly capital is acquired, the more it can be profitably employed to increase output' (Ashford, 2012, p. 3). 'It envisions broadening access to the existing system of corporate finance to people who have historically encountered barriers to such systems . . . by securing more equal access to competitive, individual property rights' (Fleissner, 2018, p. 203). Accordingly, over time, increased and sustained participation in entrepreneurship by financially disadvantaged entrepreneurs, including notably those who derive personal satisfaction from their businesses, should both enhance capabilities and increase outputs, alleviating poverty and stimulating economic growth.

Yet, entrepreneurship opportunities have a somewhat unclear relationship to poverty relief in the U.S. (Dyal-Chand & Rowan, 2014). Entrepreneurial ventures are not typically seen as a panacea for poverty's ills—at least not in the sense of widespread financial wealth enhancement for the individuals involved. Similarly, entrepreneurial endeavors are not normally seen as a "sure bet" for general economic recovery in low-income communities that may redound to the benefit of individual low-income entrepreneurs.

Although theoretically or practically there may be much to gain from encouraging entrepreneurship as a means of enhancing personal financial wealth for low-income entrepreneurs, obtaining financing presents a true challenge. Entrepreneurs and promoters who are themselves of limited financial means are unlikely to be able to use or significantly rely on traditional personal credit and friends-and-family funding sources to finance their business ventures. External startup financing and small business capital are difficult to get for all in the U.S. U.S. entrepreneurs with limited personal financial resources and a lack of financial connections find it very challenging to fund their businesses (Hwang *et al.*, 2019). Among other things, low-income entrepreneurs are unlikely to regularly cross paths with angel funds or venture capitalists, investment banking firms, or the like. Although special programs have existed from time to time to bring business finance prospects and related resources to resource-challenged entrepreneurship, access to business capital continues to be a challenge. Accordingly, 'many entrepreneurs with good ideas, particularly those who are not in the upper and middle classes, have very little access to funds' (Bradford, 2012, p. 101).

Startups, including entrepreneurial ventures in poor communities, have historically had trouble finding early stage investors for a variety of reasons (Alexander, 2013; Rezin, 2014). Digital entrepreneurship in the form of crowdfunding is designed to address that difficulty. By effectively combining the power of ecommerce platforms and social media outreach and engagement, crowdfunding has been successful in helping some new and young business ventures identify previously unknown funders. Bradford (2012, pp. 103–104) notes:

> Crowdfunding makes new sources of capital available to small businesses. It opens business investment to smaller investors who have not traditionally participated in private securities offerings. Those investors have less money to invest, so they would be willing to fund smaller business opportunities that the venture capitalists and angel investors would not touch. Crowdfunding also gives poorer entrepreneurs whose friends and family lack the wealth to provide seed capital somewhere else to turn.
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> In essence, crowdfunding, by its nature, has the capacity to provide a more inclusive source of funding for business formation and development. More specifically, securities crowdfunding may make a difference in this environment by introducing low-income entrepreneurs to a wider scope of potential funders who, because they are seeking a financial return on their investment, may be in a position to provide some or all of the necessary capital.

The Promise of Crowdfunding for Financially Disadvantaged Entrepreneurs

Crowdfunding has been variously defined for use and analysis in different contexts. For purposes of this chapter, crowdfunding is an online method of financing business ventures and projects through a general public solicitation of funding from a broadly inclusive set of funders. This definition is in accord with Belleflamme *et al.* (2014, p. 588), who describe crowdfunding as 'an open call, mostly through the Internet, for the provision of financial resources either in the form of donation or in exchange for the future product or some form of reward to support initiatives for specific purposes.'

Securities crowdfunding, the core focus of this chapter, is accomplished through a crowdsourced offering of investment interests classified as securities—typically, equity, debt, or investment contracts. Securities crowdfunding has been facilitated in the U.S. by the CROWDFUND Act. The CROWDFUND Act exempts compliant offerings of securities from expensive and time-consuming federal and state offering registration requirements that otherwise would be applicable (Heminway & Hoffman 2011).

Although the CROWDFUND Act was signed into law in 2012, it did not become operative until four years later, upon the effectiveness of Regulation Crowdfunding (2016), as approved by the U.S. Securities and Exchange Commission (referred to in this chapter as the "SEC"). The registration exemption has now been operative for over four years. Yet, few widely published studies have been done on offerings commenced or completed under the CROWDFUND Act. Some overall data is, however, publicly available.

According to a recent summary industry report published by Crowdfund Capital Advisors, LLC (2020), over 1,500 firms from a variety of industries (including application software, beverages, entertainment, consumer, and more) have raised an aggregate of over $367,000,000 in gross proceeds through securities offerings made under the CROWDFUND Act during its first four years in operation, and an average of 60% of those CROWDFUND Act offerings were successful in reaching their goals. The same report noted a significant increase in the number of investors and aggregate amount invested in the most recent (fourth) year of offerings under the CROWDFUND Act as compared to those in the first year of offerings made under the CROWDFUND Act. 'In the very first year . . . there were only 61,000 investors that deployed $56 million. This past year those figures jumped to 265,000 and $138 million respectively' (ibid., p. 3). The report (ibid., p. 7) recorded increased year-over-year funding commitments for January and February 2020 and projected a year-over-year increase for May 2020.

The SEC's initial report on CROWDFUND Act offerings (2019, pp. 4), which covers campaigns undertaken between May 2016 and December 2018, describes the number of offerings (1,351) and total amount of capital sought as 'relatively modest' (while also noting year-to-year increases during the period studied). Only 519 of the 1,351 offerings included in the SEC's study were actually completed (ibid., p. 15). The SEC report also noted in a summary fashion that, '[w]hile there was variation among issuers undertaking Regulation Crowdfunding offerings during the considered period, the typical issuer was small and at an early stage of its lifecycle' (ibid., p. 17). The overall success of the CROWDFUND Act remains to be seen and may be measured in many different ways.

Although the use and utility of the CROWDFUND Act for offerings by low-income entrepreneurs have not been studied empirically in any rigorous way, Crowdfund Capital Advisors (2020, p. 6) notes that the average capital raise for an offering under the CROWDFUND Act would effectively replace the amount typically raised by an entrepreneur through 'personal access to capital.' The report also notes that these firms are largely startups and early stage ventures that may find it difficult to raise capital from other sources (ibid, pp. 12–13). Moreover, Crowdfund Capital Advisors (ibid., p. 6) reports that firms using the CROWDFUND Act to raise capital 'have supported over 100,000 jobs since inception' and, in light of the unemployment rate increase resulting from the pandemic, urges the U.S. government to promote and invest in securities crowdfunding under the CROWDFUND Act for this reason. (The SEC (2020b) in fact adopted temporary rules (applicable to offerings commenced by August 31, 2020) that allow for expedited offerings under the CROWDFUND Act if eligibility criteria are met).

The SEC's data on issuers of crowdfunded securities (2019, pp. 17–18), as alluded to above, offers a similar startup and small business profile that could include (but is not focused on) low-income entrepreneurs.

The median offering was by an issuer that was incorporated approximately two years prior to the offering and employed about three people. The median issuer had total assets of approximately $30,000, cash holdings of approximately $4,000, and no revenues (just over half of the offerings were by issuers with no revenues). Approximately 59% of issuers had some debt prior to the offering (approximately 51% had some short-term debt and approximately 36% had some long-term debt).

The SEC report also observed that 'the majority of issuers have had no, or very limited, prior experience with securities offerings and Commission filings' (ibid., p. 28).

The findings and observations recounted in the Crowdfund Capital Advisors and SEC reports indicate that U.S. entrepreneurs of limited means may be able to use (and may even already be using) securities crowdfunding to their advantage in obtaining financing for their ventures. Yet, the incomplete publicly reported data are not targeted to the funding of these specific ventures. Accordingly, based on these studies, securities crowdfunding under the CROWDFUND Act cannot be categorically embraced or discarded as a way of promoting or supporting entrepreneurial efforts in low-income communities. Having said that, securities crowdfunding deserves serious consideration as a financing option for low-income entrepreneurs in the U.S.

In sum, securities crowdfunding under the CROWDFUND Act may be an important financing option for entrepreneurs whose businesses are marginalized in the quest for traditional sources of investment capital or do not qualify for other types of funding (Alexander, 2013; Bradford, 2012). While securities crowdfunding is still relatively young and rare in the U.S., some foresee that it, as a form of digital finance, will be successful in funding significant and increasing numbers of new and early stage businesses and projects. Digital entrepreneurship has enabled low-income entrepreneurs to tap into securities crowdfunding to enjoy some of that envisioned success.

Importantly, the analysis and observations provided in this chapter are intended to facilitate—but not necessarily recommend—the use of securities crowdfunding by necessity entrepreneurs and other entrepreneurs who face financial challenges because of their low-income status. More specifically, the legal and practical reflections in the chapter are not necessarily meant to encourage widespread use of securities crowdfunding by financially disadvantaged entrepreneurs or promote the use of securities crowdfunding by any individual low-income entrepreneur. The use of any business finance alternative must be carefully evaluated for its efficacy in any individual case.

Discussion

Although crowdfunding has enjoyed a positive existence in the sharing economy for a number of years, U.S. securities crowdfunding has not achieved its potential. An informed examination reveals that the capacity of internet finance, and U.S. securities crowdfunding more specifically, to democratize the market for capital has been limited by a number of factors. These impediments, together with ideas for overcoming them, are reviewed, in turn, below.

Barriers to the Success of U.S. Securities Crowdfunding for Low-Income Entrepreneurs

Given the promise of the CROWDFUND Act in meeting the needs of necessity and other low-income entrepreneurs, what may be preventing these founders and promoters from using securities crowdfunding to finance their businesses? The answer to that question is reasonably simple: the potential for securities crowdfunding as a source of financing for limited means entrepreneurs may not be realized because securities crowdfunding is too expensive, too speculative, and too complex. Although the CROWDFUND Act and Regulation Crowdfunding are deregulatory in nature, they include reporting and recordkeeping requirements that require the expenditure of human and financial capital. Moreover, as the Crowdfund Capital Advisors and SEC data indicate, the probability of a successful campaign is relatively low. Consequently, the costs of securities crowdfunding may not be rewarded with offsetting benefits. Overall, the reporting and recordkeeping requirements under the

CROWDFUND Act, taken together with the related liability provisions and instructional mandates, represent a formidable set of legal rules to digest and apply, even for attorneys. Regulatory complexity adds to compliance and other costs.

Expense of Regulatory Compliance

The cost of starting up and sustaining a business can be substantial in relation to an entrepreneur's income. That expenditure is more significant for some business venturers than for others. Laney *et al.* (2013, p. 17) observe that '[s]tarting a business takes an estimated 4.4 times the median net worth of the average [A]frican-[A]merican household ($5,677) and four times the median net worth of the average Latino household ($6,325), compared to just 22 percent of the median net worth of the average White household ($113,149).' The cost of financing is only one component (albeit an important one) of a business firm's startup and maintenance costs.

Among other things, U.S. securities crowdfunding involves compliance with significant documentation and disclosure requirements (for which retention of legal counsel and an accounting firm typically are advisable, if not necessary) and the engagement of a mandatory intermediary—a broker or funding portal that hosts the digital platform through which the offering is conducted. These obligations (especially when viewed together with the completion and litigation risks associated with U.S. securities crowdfunding) likely outweigh the potential benefits of securities crowdfunding for many, if not most, low-income entrepreneurs (Alexander, 2013; Heminway, 2013–2014; Lee, 2016; Oranburg, 2015). The SEC (2019, p. 25) estimates that an average offering of securities under the CROWDFUND Act may cost upwards of $20,000. This average amount includes the cost of disclosure as well as marketing, legal, accounting, video, and campaign copy expenses, but it does not include digital platform fees (i.e., the cost of the mandatory intermediary—a federally registered broker dealer or funding portal). These costs alone may marginalize the utility of securities crowdfunding for necessity and other low-income entrepreneurs.

Offering Risk

Even if limited means entrepreneurs are willing to look into securities crowdfunding as an option, they may be dissuaded from pursuing a CROWDFUND Act offering because the prospect of a successful offering, given the expense of conducting the offering, is too limited. Although the 60% success rate reported by Crowdfund Capital Advisors (2020) may be impressive as compared to venture capital success rates (depending on how those success rates may be measured), crowdfunded securities may not find a market. An issuer of crowdfunded securities or the securities themselves may carry more risk than investors desire to bear. They may have surer bets for their capital investments, based on their calculation of a risk-adjusted return.

In terms of risk, business failure or fraud is a distinct possibility. '[W]e must recognize that most small businesses fail—a fact that is particularly noteworthy considering the startups that will likely utilize crowdfunding are generally riskier than other startups …' (Hamermesh & Tsoflias 2013, p. 470). In addition, 'first-time investors, borrowers, and entrepreneurs often will not have perfect information in these markets, and thus cannot be assured that the institutional or organizational forms of the for-profit cyberfinancing intermediaries will deter opportunism and fraud' (Alexander 2013, p. 367). As a general matter, crowdfunded securities offerings are speculative and typically illiquid, and the issuers of crowdfunded securities may not have the management or professional advisory support needed to succeed and limit fraudulent practices or conduct (U.S. Securities and Exchange Commission 2013).

The type of security offered in a CROWDFUND Act offering also may add speculative risk to the offering that limits its potential success. Simple Agreements for Future Equity (SAFEs) and other investment contracts may be especially risky to both issuers and investors, for example, because 'inexperienced retail investors may mistakenly believe that they are receiving something simple and safe, . . . and make an investment without fully understanding the risks that they are assuming' (Green & Coyle 2016, p. 174). The SEC (2019) reports that 21% of the CROWDFUND Act offerings involved the offer and sale of SAFEs.

Regulatory Complexity

Finally, the overall complexity of the regulatory structure may be a barrier to some low-income entrepreneurs. The expertise, time, patience, and other resources needed to understand the salient aspects of the CROWDFUND Act may be unavailable or in short supply. Even with the relatively light level of required disclosure and diligence provided for under the CROWDFUND Act, the possibility of noncompliance and related adverse effects on the business in this environment adds to the perceived—and potentially the actual—cost and overall risk of the offering. The SEC's report (2019) recognized and described—but declined to evaluate—this risk of noncompliance.

A More Positive Way Forward for Crowdfunded Securities Offerings by Low-Income Entrepreneurs in the United States.

Is it possible to clear away, or at least mitigate, the downsides of securities crowdfunding for the benefit of ventures started or promoted by low-income entrepreneurs? There do appear to be several paths forward—some representing long-term (legislative and regulatory) solutions and some representing short-term (market-based) solutions. However, the most promising solutions depend on action by the U.S. government—action which may not occur in the near term or long term.

Potential Federal Legislative and Regulatory Solutions

First, and perhaps most obviously, the CROWDFUND Act should be modified to better serve entrepreneurs of limited means. Muhammad Yunus's words from over a decade ago ring true today in this context: 'There is no better time for a serious discussion of how the law and lawyers can enable the poor to help themselves— . . . especially in the United States' (Yunus, 2008). In particular, a reduction in the burdens and costs on securities issuers under the CROWDFUND Act could be engineered that would increase the affordability of securities crowdfunding to low-income entrepreneurs while, at the same time, generating an appropriate level of risk for investors. Alexander (2013), for example, made a specific proposal along these lines, suggesting lighter regulatory burdens for issuers selling an aggregate of no more than $100,000 of securities to investors and no more than $250 of securities to any individual investor, in each case over a 12-month period. Heminway (2013–2014) also has proposed that less regulation be imposed on smaller dollar-value offerings and investments.

Unfortunately, proposals brought before the U.S. Congress to date are unlikely to be helpful to low-income entrepreneurs in financing their startups and young businesses. Instead, proposals have focused on *raising* the maximum aggregate dollar amount of crowdfunded securities offerings (which recently was accomplished by the SEC, as noted below) and clarifying or instituting more limited regulation of funding portals—together with brokers, the intermediaries that may be involved in crowdfunding (Crowdfunding Enhancement Act, 2017) or on permitting pooled investment funds to use the registration exemption under the CROWDFUND Act (Crowdfunding Amendments Act, 2018). With a targeted lobbying effort, however, it may be possible to focus Congress on modifications to the current law that would make securities crowdfunding more useful and attractive to these entrepreneurs. Digital entrepreneurs could contribute positively to effective lobbying efforts.

Absent action by Congress, the SEC may be able to use its expansive regulatory authority to decrease the regulatory cost of crowdfunding. These changes may require effective rewriting of certain terms and provisions of the CROWDFUND Act through agency regulation. As a result, if Congress is either not consulted or is hostile to any proposed changes, the SEC's authority may be challenged, or the reform effort may be abandoned to keep or restore regulatory peace.

In fact, cost reductions for smaller offerings under the CROWDFUND Act have already been under active discussion among legal professionals and industry representatives. The SEC is required by § 503(a) of the

Small Business Investment Incentive Act of 1980 to 'conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation' (Annual Government-Business Forum on Capital Formation, 1980). This legal requirement has resulted in an annual SEC Government-Business Forum on Small Business Capital Formation.

At the forum held in November 2017, the need for cost-reduction regulation for low-dollar-value offerings under the CROWDFUND Act was raised and discussed at length. A related regulatory request was made to the SEC through the final report for the annual forum required under § 503(d) of the Small Business Investment Incentive Act of 1980 (Annual Government-Business Forum on Capital Formation, 1980). That request suggested rationalizing the Regulation Crowdfunding requirements for debt offerings (by, e.g., limiting periodic reporting obligations to actual holders of the debt securities, rather than to the general public) and small offerings under $250,000 (by, e.g., right-sizing regulatory burdens to reduce currently inelastic offering costs—including the cost of required professional services) (2017 SEC Government-Business Forum on Small Business Capital Formation, 2017). Although the SEC is not compelled to act on matters included in the report, members of the SEC present at the forum indicated a desire to seriously consider taking action based on matters arising from the proceedings (Clayton, 2017; Piwowar, 2017).

Yet, as with the congressional reform proposals, the SEC's most recent rulemaking relating to Regulation Crowdfunding (2020a, 2020c) is focused on policy objectives seemingly unlikely to support low-income entrepreneurs. The most recent initiative, proposed early in 2020 and adopted later that same year, provided for an increase in the 12-month maximum aggregate offering amount applicable to CROWDFUND Act offerings (from the current $1,070,000 to $5,000,000), a removal of the investment limits currently applicable to accredited investors, and a change in the way in which the investment limit applicable to other investors is calculated (allowing investors to rely on the greater of their income or net worth in making that calculation). These changes cater more to the capital raising aspect of offerings under the CROWDFUND Act. For example, the SEC reported (2019) that 'accredited investors comprised approximately 9% of investors in this sample but accounted for approximately 40% of amounts invested in funded offerings due to investing higher amounts on average.' Increasing maximum aggregate offering amounts and eliminating accredited investor limits may allow for accredited investors to increase their funding of any one or more business. It is not clear how these changes may benefit or detriment issuers founded or promoted by necessity or limited means entrepreneurs, but they do not directly or unambiguously address barriers to the use of U.S. securities crowdfunding by those entrepreneurs.

To be most effective in clearing away impediments to the use of U.S. securities crowdfunding by those entrepreneurs, changes to law or agency rules governing securities crowdfunding should be undertaken with low-income entrepreneurs—especially necessity entrepreneurs—expressly in mind. In this regard, Yunus (2008, p. 24) advises that '[l]aws should be kept as simple as possible for low-income people in particular, to motivate them to take the next steps to help themselves.' In general, it seems prudent to suggest that legislative or regulatory changes should focus on simplifying the regulatory system and processes for use in financially and economically challenged settings.

Productive, targeted, legislative, or regulatory action may not be forthcoming, however, at any time in the near future, if at all. A number of reasons exist for ostensible legislative and regulatory inaction on these issues. First, getting a majority of legislators to support change is always a complicated and expensive political issue (Buchanan & Tullock, 1965). Second, any innovation causes change and may be a source of systemic risk that could cause a risk-averse legislator to hesitate in introducing or supporting new legislation (Ashta, 2017a). Third, the innovation may concern only a minority of legislators and their constituents, resulting in unlikely support from the majority in facilitating a legislative initiative unless it can produce some demonstrable direct or indirect value to its members (Ashta, 2017b). Regulatory paralysis also is likely, given the historical aversion of the SEC to facilitating securities crowdfunding (although that aversion has abated somewhat in recent years, and the emergence of digital entrepreneurship has had a role in that change).

Potential State Regulatory Solutions

In the absence of federal legislative or regulatory action, advocates of crowdfunding as a means of poverty reduction may consider turning to state securities regulators for help in making U.S. securities crowdfunding a viable option for entrepreneurs of limited means, including necessity entrepreneurs. A number of U.S. states have adopted legislation or regulatory schemes colloquially known as "intrastate crowdfunding." Although offerings under these state-based rules are geographically restricted and have other limitations that low-income entrepreneurs may find undesirable, these intrastate securities offerings may represent a simpler, more cost-effective means of conducting a small, crowdfunded securities offering in or for the benefit of a particular community.

Potential Market-Based Solutions

Until a legislative or regulatory solution is proposed and implemented (and on an ongoing basis), it may be strategically productive to organize, through industry trade associations, as well as the Small Business Administration, the Service Corps of Retired Executives (SCORE), the local Chamber of Commerce, local law school legal clinics, the bar, or others, a focused educational and advisory campaign that helps low-income entrepreneurs assess whether a specific business or project is a good candidate for U.S. securities crowdfunding—or, perhaps more saliently, to determine that securities crowdfunding is not an appropriate means of financing a particular venture. The campaign also could focus on identifying and describing funding alternatives for businesses and projects that are not well suited for securities crowdfunding. Education and advice on negotiating fees with funding portals, brokers, and other intermediaries also may provide encouragement and support. In many cases, an educational and advisory campaign could be accomplished as an enhancement or adjunct to an existing small business development program.

Digital entrepreneurs, including funding portals, brokers, and other internet-based intermediaries, could also play a role in encouraging and supporting crowdfunded offerings by necessity and other low-income entrepreneurs. For example, by adopting sliding fee scales or other means of providing discounted services, digital entrepreneurs supplying offering platforms and other services to entrepreneurs of limited means can help encourage the use of crowdfunded offerings by these entrepreneurs. Lawyers, accountants, and others also can consider more closely tailoring the cost of their services to the financial resources of the entrepreneurs seeking them. Lawyers may even offer their services *pro bono*—free of charge—as a public service. Alternatively, a specialized market for digital platforms and other online service providers organized as social enterprises may develop to serve low-income entrepreneurs, among other populations.

Additionally, assuming that U.S. securities crowdfunding can be done cost-effectively by low-income entrepreneurs, combining it with pre-sale or rewards-based crowdfunding may hold promise for the generation of entrepreneurship opportunities and successes for those of modest means. For example, a low-income entrepreneur promoting a low-cost, valued service could offer or pre-sell that service to investors while also offering them a small financial interest in the firm. The most likely candidate for this type of combined financing would be a fan-funded venture (a business seeking capital from an enthusiastic public—likely, its existing or prospective customers or clients), a business with strong local ties seeking funding through a community capital offering (what Cortese (2011) calls 'locavesting'), or a social enterprise or other mission-driven firm designed to generate altruistic or positive emotional, as well as financial, gain. The combined investor-clients may see the offering as more appealing (and even less risky), enhancing the probability that they will invest, that the offering will be fully subscribed, and that the benefit of the offering will offset its cost. Woodard (2015) posits this combined crowdfunding scenario as a benefit to low-income investors—to help them rise from poverty.

Conclusion

The sharing economy's internet-based business finance offers the possibility of opening up new sources of funding for startups and small businesses. Crowdfunding's digital platforms, as two-way markets, have the capacity to enable businesses seeking funding to access larger and more diverse funding sources while offering funders a wider array of investment options. The offering of securities through crowdfunding further increases this array of investment options. The use of crowdfunding—and especially securities crowdfunding—may be especially advantageous to low-income entrepreneurs (including, without limitation, necessity entrepreneurs) who typically have less access to capital funding sources than other business founders and promoters.

Yet, digital entrepreneurs should understand that securities crowdfunding, as currently structured under U.S. law, is unlikely to be a comprehensive—or even entirely viable—solution to the challenges associated with funding business ventures founded or promoted by necessity entrepreneurs and other entrepreneurs of modest means. In fact, no single response to entrepreneurship originating out of poverty is likely to be sufficient. 'Successful poverty alleviation requires a multi-pronged strategy' (Coleman 2005, p. 187). Thoughtful modifications or accompaniments to current U.S. securities crowdfunding regulation (statutes or agency rules) may enable crowdfunded securities offerings to better serve the capital needs of necessity and other low-income entrepreneurs.

Specifically, securities crowdfunding may play a more central role in low-income entrepreneurship in the U.S. if (1) Congress makes properly targeted changes to the CROWDFUND Act or the SEC rethinks related agency rules to decrease regulatory costs, completion risks, or complexity or (2) interested industry participants and advisors, including digital entrepreneurs and legal counsel, explore and adopt innovative practices including or relating to securities crowdfunding that focus on entrepreneurs of limited means. Regardless, combining targeted legislative or regulatory solutions with, e.g., entrepreneur education—potentially resulting in different kinds of disclosure and outreach customized for use in optimizing the funding of ventures started or promoted by necessity or other low-income entrepreneurs—represents an intriguing and realizable approach. Focused education and advice may help ensure that crowdfunding occupies an appropriate, even if not prominent, place in the financing of new and early stage low-income entrepreneurial ventures across the U.S.

In evaluating proposals, consideration should be given to the positive effects that may result from both financial wealth generation and the capacity for increasing other resources (including, prominently, employment). Ideally, solutions should enhance both financial and human capital. They also should be highly customized. Poverty is a context-based problem. The navigation of financially disadvantaged entrepreneurship may need to be structured differently in different situations or communities; not every low-income entrepreneur is the same. For example, necessity entrepreneurs may benefit from different approaches than opportunity entrepreneurs, and the government structures and political environments in some communities may be more supportive or hostile than those in others. Tailored solutions may provide incremental, but efficacious, ways forward.

Regardless of the approach taken, there will be significant challenges. For example, proposals must focus on how to reduce cost and risk at the same time. Layered or combined solutions, while more complex, may have a greater chance of achieving both goals. Yet, they also may increase cost or risk. For instance, a combined securities/rewards-based crowdfunding solution generates additional complexity and may increase cost or risk.

In addition, it will be important to remember that entrepreneurs with limited investment and capital-raising capacity are not monolithic. Some may be necessity entrepreneurs; some may be passionate creators or innovators; some may be a bit of each. Some may be starting their ventures while unemployed; others may be engaging in entrepreneurship as a side business. Some may be experienced entrepreneurs; others may be engaging in their first entrepreneurial venture. Administrative burdens on low-income individuals and families are generally high; however, the exact nature of these burdens may differ as among various low-income entrepreneurs. Securities crowdfunding will only be a viable alternative for any individual type of low-income entrepreneur if the burdens are proportional to the expected benefits.

Resources other than money also will likely be at a premium. Low-income workers have limited time and energy to focus on matters other than their employment and personal lives. For example, necessity entrepreneurs may work more than one job or have challenging child-care or eldercare responsibilities. The 2020 global pandemic has focused attention on these and other issues affecting working families, including those of modest means. Under these circumstances, it may be difficult to engage low-income entrepreneurs in education or training. Creative responses—allowing for internet-based instruction or obtaining grants that would allow participants to be paid for the time they spend in education or training modules—may address these issues in part or for some.

There may also be prejudice against necessity and other low-income entrepreneurs in capital raising markets. On the other hand, there may be promotional benefits to leverage through focused attention to poverty alleviation through crowdfunded securities offerings involving entrepreneurs of limited means. Feasibility studies may help in determining how to best approach the creation of a successful, sustainable U.S. securities crowdfunding market for use by low-income entrepreneurs. Much is unknown about investor capacity and desires in the near term to fund entrepreneurship of any kind through securities crowdfunding. The creation of an unsuccessful or unsustainable securities crowdfunding market for low-income entrepreneurs in the U.S. could be counterproductive to the encouragement of low-income entrepreneurship.

Finally, the comparative novelty and relatively short track record of CROWDFUND Act offerings in the U.S. present a particularly difficult challenge in funding the businesses of necessity and other financially disadvantaged entrepreneurs through securities crowdfunding. Although experience with this form of digital business finance is increasing, relatively few examples exist of successful offerings that a particular firm can use as a model, and the applicable law and regulation remains largely untested. Moreover, both the national economy and the regulatory system may continue to be in a state of flux for a significant period of time after the COVID-19 crisis abates.

Yet, these challenges ultimately present opportunities for, rather than true barriers to, the use of securities crowdfunding by low-income entrepreneurs in the U.S. Crowdfunding's promise to serve necessity entrepreneurs and other entrepreneurs of limited means provides motivation for action, especially in light of the increase in unemployment and other economic effects of the COVID-19 pandemic. This chapter is designed to open doors to further inquiry and study into the effectual use of CROWDFUND Act offerings to promote and support low-income entrepreneurship, enabling securities crowdfunding to realize its full potential in this important online business finance setting.

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