INTERESTED PARTY TESTIMONY OF THE OHIO STATE BAR ASSOCIATION

CONCERNING HOUSE BILL 10

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Chair – Securities Law Subcommittee / Corporation Law Committee

Ohio State Bar Association

Before the Senate Transportation, Commerce and Workforce Committee

Frank LaRose, Chair

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Chairman LaRose, Vice Chair Kunze, Ranking Member Schiavoni, and members of the Senate Transportation, Commerce and Workforce Committee: thank you for allowing me to present interested party testimony regarding House Bill 10, which will permit Intrastate Equity Crowdfunding in Ohio. I am Thomas Geyer, Chair of the Securities Law Subcommittee of the Corporation Law Committee of the Ohio State Bar Association. House Bill 10 sponsor Representative Arndt graciously invited our participation in the review process for HB 10, along with the Ohio Division of Securities and other interested parties. I am pleased to testify today regarding amendments to the Bill that address concerns brought forward during the review process. The changes make the Bill better for Ohio and Ohioans.

Crowdfunding is a relatively new and evolving method of using the Internet to raise capital to support a wide range of ideas and ventures. An entity or individual raising funds through Crowdfunding typically seeks small individual contributions from a large number of people. Individuals interested in the Crowdfunding campaign – members of the “crowd” – may share information about the project, cause, idea or business with each other and use the information to decide whether to fund the campaign based on the collective “wisdom of the crowd.”

The offer and sale of investment opportunities that promise a return on such investment through the efforts of others is subject to regulation under both the federal and state securities laws. This is primarily because the investment opportunity is intangible – one cannot “kick the tires” of an investment opportunity – and thus the securities laws require full and truthful disclosure of all material facts regarding the investment.

In May 2016, regulations permitting Crowdfunding under the federal securities laws took effect. Those federal regulations established standards for:

* Disclosure obligations by the Issuer (including advertising);
* The nature of the investors in a Crowdfunding venture;
* The “intermediaries,” that is, the websites through which the offerings are made; and
* Civil liability

House Bill 10 is similarly structured and provides a method for offering Crowdfunding securities within Ohio.

The Bill allows for Ohio Crowdfunding offerings:

* By an “OhioInvests Issuer,” a company based in, or with substantial assets or revenues in, Ohio;
* Through an “OhioInvests Portal,” which is a website run by a “portal operator” regulated by the Ohio Division of Securities;
* In a manner that ensures investments are made by Ohio residents, and that the investors understand and acknowledge the risks of the investment;
* That are limited to $5,000,000 in any 12-month period;
* That are generally limited to an investment of not more than $10,000 by any one investor in a 12-month period; and
* That require the issuer to use at least 80% of the net proceeds of the offering in connection with the operation of its business in this state.

Required disclosures to potential investors include information about the issuer’s:

* History, management, business plan, and capital structure;
* Current finances, including a current balance sheet and income statement;
* Material risks to the issuer and its business plan; and
* The intended use of the offering proceeds (which must be placed in escrow unless and until the minimum offering amount is raised).

Additional investor protections are provided by the existing anti-fraud standards of the Ohio Securities Act, along with a new civil remedy applicable to Crowdfunding offerings.

This new civil remedy, in new R.C. 1707.50, is the primary part of the Bill that has been revised. The amendments simplify the process for pursuing civil remedies, and align the remedies with Ohio Division of Securities enforcement authority. Additional amendments: revise the culpable mental state for violations of the Crowdfunding provisions from recklessly to knowingly, in order to align with the existing provisions of the Ohio Securities Act; and clarify the conditions that a company must meet to qualify as an “OhioInvests Issuer.”

I believe that House Bill 10, as amended, appropriately balances capital formation and investor protection for Intrastate Equity Crowdfunding in Ohio.

Mr. Chairman and Members of the Committee, thank you for the opportunity to offer interested party testimony regarding House Bill 10. I would be happy to answer any questions.

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