

FOREWORD

JOAN MACLEOD HEMINWAY*

Small businesses have historically been a part of economic recoveries in the United States.⁺ Aware of this fact, the U.S. Congress decided earlier this year that it was high time to foster the formation and growth of small businesses by affording them easier access to money capital. The result was the passage of the Jumpstart Our Business Startups (“JOBS”) Act, signed into law by President Barack Obama in early April 2012.

In the article that follows, James Bitter and Todd Skelton describe the key provisions of the JOBS Act and, in so doing, expose key tensions involved in the regulation of small business securities offerings. The JOBS Act is assuredly deregulatory in its purpose; yet, it imposes significant, new regulation in striving to achieve this purpose. Some of the additional regulation is attributable to the fear of increased fraud under the new offering regimes introduced in the JOBS Act—understandable, given that deregulation has the tendency to encourage opportunism of both positive and negative types. Even so, the complexity of the resulting regulatory structure is staggering Tennessee businesses and their counsel are well advised to understand the ways in which the JOBS Act markedly changes the nature and regulation of securities offerings.

At the time of this writing, many aspects of the JOBS Act remain in the hands of the U.S. Securities and Exchange Commission (“SEC”). As the saying goes, “the Devil’s in the detail.” The SEC’s rulemaking has the capacity to help effectuate congressional intent in a number of different ways—each of which may incentivize different market entrants and different behavioral responses. As the Bitter and Skelton article shows, the framework established by Congress has benefits and detriments. The SEC, through its rulemaking and enforcement functions, has the power to shape the contours of the foundation laid by Congress—for better or for worse. Time will tell.

* W.P. Toms Distinguished Professor of Law, The University of Tennessee College of Law. New York University School of Law, J.D. 1985; Brown University, A.B. 1982. Professor Heminway coauthored an article on crowdfunding in its early years. See Joan MacLeod Heminway & Shelden Ryan Hoffman, *Proceed at Your Peril: Crowdfunding and the Securities Act of 1933*, 78 TENN. L. REV. 879 (2011). In addition, she has blogged and presented at academic forums about the Jumpstart Our Business Startups Act since its passage. Pub. L. No. 112-106, 126 Stat. 306 (2012).

⁺ See Joan MacLeod Heminway & Shelden Ryan Hoffman, *Proceed at Your Peril: Crowdfunding and the Securities Act of 1933*, 78 TENN. L. REV. 879, 932 n.269 and accompanying text (2011).