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The Nonfinancial Returns of Crowdfunding

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Introduction

Securities crowdfunding—the sale of unregistered securities to the public over the Internet pursuant to Title III of the federal JOBS Act or analogous state legislation—has come under attack before it has even begun.[1] Scholars and policymakers have criticized crowdfunding as a nefarious scheme to give "middle class families the same oppor-

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[1] *See, e.g.*, Joan MacLeod Heminway & Shelden Ryan Hoffman, *Proceed at Your Peril: Crowdfunding and the Securities Act of 1933*, 78 TENN. L. REV. 879, 961 (2011) ("Investor protection and the perception of fair and honest investment markets-key policies underlying the Securities Act-are sources of concern as the crowdfunding market rapidly develops in the absence of a clear regulatory framework or response.").

tunities that millionaires have always had to lose their money."[2] Legal scholars in particular have expressed concern that investors will lose any money they invest in crowdfunding companies.[3] While this may be true from a purely financial perspective, these critics are missing an important point: Crowdfund investors with negative returns will not simply have *lost* their money, but rather they will have *spent* it (at least in part) on nonpecuniary benefits, including entertainment, political expression, and community building.[4] These nonfinancial returns of crowdfunding are readily apparent in the donation and reward context, where backers have proved willing to contribute billions of dollars on websites like Kiva and Kickstarter with no chance of financial gain. And this sentiment may well carry over to the emergent context of securities crowdfunding where, on top of nonpecuniary benefits, the investors might even earn a financial return.

This Article proceeds as follows: Part I provides background on securities crowdfunding and its originating statute, the JOBS Act of 2012.[5] Part II catalogs the critics' concern that investors are likely to experience severely negative financial returns. Finally, Part III enumerates and briefly analyzes some of the nonfinancial benefits that may accrue to crowdfund investors.

I. Crowdfunding Securities

Securities crowdfunding is a new idea that builds off of the earlier concept of crowdsourcing.[6] Crowdsourcing is where the public—the "crowd"—is invited to contribute to an online project without compensation.[7] Wikipedia is a famous example of an Internet-based encyclopedia, in which many workers, each adding just a bit, collectively created an amazing resource.[8] "Crowd*funding* differs from

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[2] 157 CONG. REC. H7286 (daily ed. Nov. 3, 2011) (statement of Rep. Polis).
[3] *See infra* note 61.
[4] *See infra* Part III.
[5] Jumpstart Our Business Startups Act (JOBS Act), Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified as amended in scattered sections of 15 U.S.C.).
[6] *See* DAREN C. BRABHAM, CROWDSOURCING 3 (2013); Andrew A. Schwartz, *Crowdfunding Securities*, 88 NOTRE DAME L. REV. 1457, 1459–77 (2013).
[7] *See* Brabham, *supra* note 6, at 2-4; *Crowdsourcing*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, http://en.wikipedia.org/wiki/Crowdsourcing (last visited Jan. 20, 2015), *archived at* http://perma.cc/DH6G-75L2.
[8] *See Wikipedia*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, http://en.wikipedia.org/wiki/Wikipedia (last visited Jan. 20, 2015), *archived at* http://perma.cc/T2RR-ZCU6 (discussing the origins and methods of Wikipedia).

crowdsourcing in that the crowd is asked to contribute capital, as opposed to labor, to the project."[9] To date, most crowdfunding projects have been in the form of "reward" crowdfunding where, in return for capital, the funding participants receive the fruits of the project, such as a book, CD, or video game.[10] Websites such as Kickstarter have been doing reward crowdfunding for the past five years, during which time it has quickly grown into a $1.5 billion market.[11]

Securities crowdfunding also will take place on the Internet, but will "take the concept one step further."[12] Funding participants will receive a security, such as a share of stock, a bond, or any other investment contract.[13] For example, in exchange for an investment of $100, each investor might receive a share in a rock band's profits from their upcoming tour, which is itself financed through these investments.[14] Until the passage of recent federal legislation as discussed immediately below, however, crowdfunding securities in this way would violate the Securities Act of 1933 as an unregistered public offering.[15]

The law allows a person to solicit investments from the public if all that is promised is a CD or concert tickets, as in the case of reward crowdfunding.[16] But in order to sell securities to the public, the Securities Act generally mandates that you first register the securities with the Securities and Exchange Commission ("SEC"), otherwise the securities will be cancelled and the money returned.[17] That is, unless the offering is made under an "exemption" found in the Securities Act.[18] "Exempt" offerings are exactly what they sound like; offerings

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[9] Schwartz, *supra* note 6, at 1459.
[10] *See id.* at 1459–60.
[11] *See Kickstarter Stats*, KICKSTARTER, https://www.kickstarter.com/help/stats (last visited Mar. 14, 2015), *archived at* https://perma.cc/W9FQ-YVPG?type=live (reporting over $1.5 billion pledged on Kickstarter alone as of March 14, 2015).
[12] Schwartz, *supra* note 6, at 1460.
[13] *Id.*
[14] *See id.*
[15] *See* Securities Act of 1933 § 5, 15 U.S.C. § 77e (2012) (requiring registration before the offer or sale of nonexempt securities).
[16] Purchasing a CD or concert tickets from a reward crowdfunding website would not qualify as a "security" under the Securities Act, and was allowed before the recent legislative changes. Edmund W. Kitch, *Crowdfunding and an Innovator's Access to Capital*, 21 GEO. MASON L. REV. 887, 890 (2014).
[17] *See* 15 U.S.C. §§ 77e, 77t, 77h–1 (2012).
[18] *See* 15 U.S.C. § 77d (2012).

of securities without prior registration. Two important and long-standing exemptions are the private placement exemption, where one sells securities only to family and friends, and the accredited investor exemption, where one sells securities solely to wealthy people (millionaires).[19]

In Title III of the JOBS Act of 2012, also known as the CROWDFUND Act, Congress created a new exemption specifically to allow for the crowdfunding of securities.[20] Securities crowdfunding has two primary goals. The first is to enable entrepreneurs to use social networks and the Internet to raise business capital at a reasonable cost.[21] The second is to democratize the market for financing speculative companies by inviting ordinary people to make investments that are currently offered solely to accredited (wealthy) investors.[22]

The CROWDFUND Act includes a number of limitations on the crowdfunding of securities,[23] including the following: Companies may not raise more than $1 million annually via crowdfunding;[24] investors may only invest a maximum of 5% of their annual income or net worth in all crowdfunded securities each year;[25] crowdfunding transactions must be consummated between an intermediary broker dealer or "funding portal;"[26] issuers may not advertise to the public directly;[27] investors who have pledged to invest may cancel their commitment before the deal closes.[28]

The emphasis of the statute is on startup companies, although this is not a strict requirement.[29] Almost any corporation or other business organized under state law will be authorized to issue securities through crowdfunding.[30] Crowdfunding issuers must provide some basic

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[19] 15 U.S.C. § 77d(a)(2), (5) (2012).
[20] 15 U.S.C. § 77d-1(c)(1)(A). The CROWDFUND Act is Title III of the broader "JOBS Act," which President Obama signed into law in April 2012. JOBS Act, tit. 3 (codified as amended in scattered sections of 15 U.S.C.).
[21] Schwartz, *supra* note 6, at 1466-73.
[22] *Id.* at 1473-76.
[23] For a more complete discussion, see *id.* at 1460–66.
[24] JOBS Act § 302(a) (codified as amended in 15 U.S.C. § 77d(a)(6)(A)).
[25] *Id.* § 302(a) (codified as amended in 15 U.S.C. § 77d(a)(6)(B)(i)). Wealthy investors can invest up to 10%. *Id.* (codified as amended in 15 U.S.C. § 77d(a)(6)(B)(ii)).
[26] *Id.* (codified as amended in 15 U.S.C. § 77d(a)(6)(C)).
[27] *Id.* § 302(b) (codified as amended in 15 U.S.C. § § 77d-1(b)(2)).
[28] *Id.* § 302 (codified as amended in 15 U.S.C. § § 77d-1(a)(7)).
[29] *See infra* Part III.B.
[30] JOBS Act § 302 (codified as amended in 15 U.S.C. § 77d-1(f)(1)).

disclosures to the public, including (a) the name, address, and website of the company; (b) the names of directors, officers, and substantial investors; (c) a description of the business and the anticipated business plan; and (d) a description of the issuer's financial condition.[31] Issuers must also provide a description of the purpose and intended use of the proceeds, the target offering amount,[32] the price of the securities to be offered, and a description of the ownership and capital structure of the issuer.[33] Following a crowdfunding round, an issuer must annually file with the SEC, and make financial statements and a report on the results of operations available to investors.[34]

Issuers are prohibited from advertising the offering themselves, and any solicitation of the offering must go through the registered funding portal.[35] Crowdfunded securities cannot be transferred or sold by investors for one year after the date of purchase, unless being transferred to the issuer, as part of an offering registered by the SEC, or to an accredited investor or family member.[36] The CROWDFUND Act authorizes civil actions for fraud against issuers, directors, and officers.[37] Finally, the Act expressly pre-empts state Blue Sky laws, effectively prohibiting states from adding additional reporting requirements for crowdfunded securities.[38]

The SEC is in the process of drafting "Regulation Crowdfunding," as commanded by the CROWDFUND Act. Shortly after the SEC

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[31] *Id.* (codified as amended 15 U.S.C. § 77d-1(b)(1)) (outlining all the information that must be made "available to potential investors"). The disclosure requirements concerning the financial condition of the issuer vary depending on the size of the offering. Offerings under $100,000 or less must provide income tax returns for the last fiscal year and unaudited financial statements certified as accurate by the principle executive officer. For offerings between $100,000 and $500,000, financial statements reviewed by an independent public accountant are required. For offerings between $500,000 and the maximum of $1 million, audited financial statements are required. *Id.* (codified as amended in 15 U.S.C. §§ 77d-1(b)(1)(D)(i)-(iii)).

[32] Issuers must also announce the deadline to reach their target amount as well as regular updates regarding the progress of the issuer meeting its target amount. *Id.* (codified as amended in 15 U.S.C.A. § 77d-1(a)(7)). If the issuer fails to reach the goal, the whole transaction is cancelled. *Id.*

[33] *Id.* (codified as amended in 15 U.S.C. §§ 77d-1(b)(1)(E)-(H)).

[34] *Id.* (codified as amended in 15 U.S.C. § 77d-1(b)(4)).

[35] *Id.* (codified as amended in 15 U.S.C. § 77d-1(b)(2)).

[36] *Id.* (codified as amended in 15 U.S.C. § 77d-1(e)).

[37] *Id.* (codified as amended in 15 U.S.C. §§ 77d-1(c)(1)(A), (c)(3) (2012)).

[38] *Id.* (codified as amended in 15 U.S.C. §§ 77r(a)(1)(A), (b)(4)(C) (2012)).

promulgates the final regulations, which are expected in late 2015, crowdfunding will commence.[39] Many are optimistic that this new form will fund successful companies and democratize financing. This optimistic group includes the bi-partisan Congress that passed the JOBS Act,[40] the President who signed it,[41] along with at least a few scholars.[42] Many academics, however, predict crowdfunding investors will lose their money.[43] It is to this critique that we now turn.

II. Criticism of Securities Crowdfunding

The concept of securities crowdfunding and its originating statute, Title III of the JOBS Act, have been the subject of substantial criticism. The dominant line of attack has been that most crowdfunding investors will lose most of their money, for one reason or another.[44]

[39] Mark D. Wood et al., *SEC Sets October 2015 Target Date for Certain Dodd-Frank and JOBS Act Rulemaking*, NAT'L L. REV. (Dec. 5, 2014), http://www.natlawreview.com/article/sec-sets-october-2015-target-date-certain-dodd-frank-and-jobs-act-rulemaking, *archived at* http://perma.cc/9N4W-TM3Q. In addition, a number of states, including Tennessee and Wisconsin, have established intra-state securities crowdfunding regimes that are already up and running. *See* Jenny Bergal, *Startups, Crowdfunding and the States: Potent New Mix*, FISCAL TIMES (Aug. 21, 2014), http://www.thefiscaltimes.com/Articles/2014/08/21/Startups-Crowdfunding-and-States-Potent-New-Mix, *archived at* http://perma.cc/ACE5-3F49. ("Other states [aside from Wisconsin] that have similar laws or regulations allowing intrastate crowdfunding include Alabama, Georgia, Idaho, Kansas, Maine, Maryland, Michigan, Nebraska, Tennessee and Washington.").

[40] Rick Romell, *A New Way of Investing Opens to Businesses*, MILWAUKEE. J. SENTINEL (Apr. 18, 2012), http://www.jsonline.com/business/a-new-way-of-investing-opens-to-businesses-gg505i1-147866515.html, *archived at* http://www.perma.cc/Y76L-SK4R (reporting on bipartisan support).

[41] President Barack Obama, Remarks by the President at JOBS Act Bill Signing (Apr. 5, 2012), *available at* http://www.whitehouse.gov/the-press-office/2012/04/05/remarks-president-jobs-act-bill-signing, *archived at* http://www.perma.cc/J5QW-WMT7 (remarking that as a consequence of the JOBS Act, "small business will now have access to a big, new pool of potential investors—namely, the American people. For the first time, ordinary Americans will be able to go online and invest in entrepreneurs that they believe in.").

[42] *See, e.g.*, Schwartz, *supra* note 6, at 1489.

[43] *See infra* Part II.

[44] *See, e.g.*, MacLeod & Hoffman, *supra* note 1, at 935.

Fraud is a driving concern. Many critics focus on the possibility that investors will lose their money through fraud or deception on the part of promoters. One treatise's discussion of securities crowdfunding suggests that crowdfunding may become "a fraud-laden stock bazaar where large numbers of lower-net worth individuals are defrauded."[45] Professor Hazen, in a leading article written before the JOBS Act, forcefully conveyed his concern that "scammers" would defraud crowdfunding investors.[46] Another leading piece expends much effort addressing the "capacity for fraud in crowdfunding."[47] Beyond these examples, many others have raised the concern that securities crowdfunding will "open[] the floodgates to securities fraud."[48]

Beyond fraud, scholars also express concern over self-dealing and other types of "agency costs"[49] between corporate management and their crowd of investors.[50] At crowdfunded companies, due to the separation of ownership and control,[51] there will be a temptation for management to engage in self-dealing, for example paying themselves abusively high compensation out of the funds provided by the crowd.[52]

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[45] 7 ALAN R. BROMBERG ET AL., BROMBERG AND LOWENFELS ON SECURITIES FRAUD § 13:206 (2d ed. 2014).

[46] Thomas Lee Hazen, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws—Why the Specially Tailored Exemption Must Be Conditioned on Meaningful Disclosure*, 90 N.C. L. REV. 1735, 1765-68 (2012) ("It is naïve to assume that limiting offerings to small amounts per investor will deter scammers from taking advantage of investors via crowdfunding. . . . Fraud in small packages can be just as effective and damaging to the victims, many of whom may be least able to bear the risk of even a small investment in a speculative business. . . . Furthermore, if an overly permissive crowdfunding exemption were recognized, what is to prevent scammers from repeatedly going to the same investors for purportedly different investments? . . . The Internet and social networking offer fertile ground for scammers.").

[47] Heminway & Hoffman, *supra* note 1, at 935.

[48] Michael B. Dorff, *The Siren Call of Equity Crowdfunding*, 39 J. CORP. L. 493, 507 n.116 (2014) (collecting sources critical of securities crowdfunding).

[49] *See generally* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

[50] *See, e.g.*, Andrew A. Schwartz, *The Digital Shareholder*, 100 MINN. L. REV. (forthcoming 2015).

[51] *See generally* ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932).

[52] C. Steven Bradford, *Crowdfunding and the Federal Securities Laws*, 2012 COLUM. BUS. L. REV. 1, 107 (2012) (suggesting that crowdfunding will

Other scholars raise the issue that a more sophisticated group of investors may abuse the crowdfunding investors.[53] For instance, the arrival of venture capitalists in a later round of financing may dilute the holdings of the crowd or exclude them from remunerative transactions.[54]

Still other scholars suggest that a focus on fraud and agency costs is misplaced[55] and criticize crowdfunding on the separate ground that investors will lose their money because the businesses will honestly fail.[56] These critics correctly point out that many crowdfunding businesses will founder on their merits, simply because even well-meaning managers of small and early-stage companies are often unsuccessful in the marketplace.[57] Professor Michael Dorff, a severe critic of securities crowdfunding,[58] wrote that the real "problem" with crowdfunding is not fraud but rather that "the companies that participate will be terrible prospects."[59] As such, the entire project is flawed and investors would be wise to steer clear.[60]

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provide "entrepreneurs with opportunities for self-dealing, excessive compensation, [and] misuse of corporate opportunities").

[53] John S. (Jack) Wroldsen, The Social Network *and the Crowdfund Act: Zuckerberg, Saverin, and Venture Capitalists' Dilution of the Crowd*, 15 VAND. J. ENT. & TECH. L. 583, 615 (2013) (discussing "the economic risks [to crowdfunding investors] posed by start-up companies' follow-on rounds of financing and potential exit events").

[54] *Id.* at 616 ("When growing crowdfunded companies seek additional financing from other investors, such as venture capitalists, the arrival of the new investors can severely impact the existing stockholders (*i.e.*, crowdfunders). Two of the most pronounced and interrelated effects include (1) dilution of crowdfunders' ownership percentages when the company issues new shares to new investors . . . and (2) exclusion of crowdfunders when other stockholders resell (or the company sells) shares to new investors.").

[55] Dorff, *supra* note 48, at 493 (fraud is "the wrong concern.").

[56] Bradford, *supra* note 52 ("Even in the absence of fraud or self-dealing, many crowdfunded small businesses will fail.").

[57] *See infra* notes 58-60 and accompanying text.

[58] Dorff, *supra* note 48, at 521 ("[E]quity crowdfunding is effectively going to be a con game."); *id.* at 523 ("[T]here is no way to rescue retail 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.").

[59] *Id.* at 493; *see also id.* at 498 (predicting a "very high likelihood that crowdfunding will offer poor investment opportunities.").

[60] *Cf. id.* at 523 (given that congressional repeal of the JOBS Act is unlikely, the "best option" is for the SEC "to kill retail crowdfunding with excessive regulation.").

Taking a step back, we can see that the common concern of all of these critical scholars is that crowdfunding investors will "lose their money" one way or another.[61] Whether because of fraud, agency costs, business reversals, or any other reason, many scholars worry that the crowd will "lose" the money they invest in crowdfunding companies. In other words, the prevailing view among legal scholars is that crowdfunding investors will suffer dramatic negative financial returns on their money. This may be true, as far as it goes, but it misses an important part of the picture, as the next and final Part will explain.

III. Securities Crowdfunding Will Provide Nonfinancial Benefits

Part II showed that scholars of securities crowdfunding anticipate that crowdfunding investors will tend to lose any money they invest through an online portal. As a matter of financial return, this may prove accurate, but it misses the important point: investors can, and likely will, receive nonfinancial returns from participating in crowdfunding. Even if there is little or no economic return, crowdfund investments may pay off in a variety of nonfinancial ways. In other words, crowdfund investors will not lose their money, but rather will *spend* their money on nonfinancial benefits. This Part surveys six such benefits and concludes that they will likely prove significant enough to satisfy many investors.

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[61] 157 CONG. REC. H7286 (daily ed. Nov. 3, 2011) (statement of Rep. Polis); Bradford, *supra* note 52, at 112 ("[N]o matter how an exemption is framed, many crowdfunding investors will lose money."); David M. Cromwell, Comments on Proposed Rule: Crowdfunding, Release No. 33-9470, (Oct. 27, 2013), *available at* http://www.sec.gov/comments/s7-09-13/s70913-22.htm, *archived at* http://perma.cc/2GXJ-PYFT; Dorff, *supra* note 48, at 520 ("[R]etail crowdfunders are virtually certain to lose their money."); Heminway & Hoffman, *supra* note 1, at 933 ("[I]nvestors are likely to lose all of their investment."); Scott Bailey, Comment, *A Job Creator or an Investor Peril?: A Texas Practitioner's Guide to the Crowdfunding Exemption Under Title III of the Jobs Act*, 46 TEX. TECH L. REV. ONLINE EDITION 1, 16 (2014) ("The word is out about crowdfunding, and the doors have been opened for a surge of people to lose their money . . . ."); Thomas G. James, Note, *Far from the Maddening Crowd: Does the Jobs Act Provide Meaningful Redress to Small Investors for Securities Fraud in Connection with Crowdfunding Offerings?*, 54 B.C. L. REV. 1767, 1779 (2013) (addressing the "probability that potential investors, especially small unsophisticated investors, will lose all or part of their investment").

It is important to note that current practice in reward-based and donation-based crowdfunding reveals that these sorts of nonfinancial benefits exist in practice. On websites like GoFundMe and Kickstarter, people have successfully raised substantial sums from strangers to fund everything from a clown performance[62] to pet surgery,[63] and even sorority dues.[64] Donors to such crowdfunded projects "are guaranteed to 'lose' all of their money and receive nothing in return."[65] Yet the money rolls in.[66] The same can be said of Kiva and similar websites where donors make no-interest loans to small business people generally located in developing countries.[67] Their best hope is to get their principal back, that is, a zero-percent return.[68] Even so, Kiva investors contributed more than $600 million over the past decade.[69]

Investors in reward crowdfunding, those who do so "in return for small rewards or to pre-purchase a product,"[70] likewise appear to have additional reasons other than a simple economic exchange. These transactions are not ordinary consumer transactions.[71] Experience shows that, in sharp contrast with buying a known product from a known brand, the investor "might never receive the promised reward,

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[62] Mark Gindick, *KISS-Start Mark Gindick's Wing-Man!*, KICKSTARTER, https://www.kickstarter.com/projects/wing-man/kiss-start-mark-gindicks-wing-man (last visited Mar. 15, 2015), *archived at* https://perma.cc/85P6-RJWU.

[63] *E.g.*, *Animals & Pets*, GOFUNDME, http://www.gofundme.com/Animals-Pets/ (last visited Mar. 15, 2015), *archived at* https://perma.cc/U3HN-BCM4?type=source.

[64] Charlie Wells, *Click Here to Pay for My Trip to Italy*, WALL ST. J., Oct. 23, 2014, at D1.

[65] Bradford, *supra* note 52, at 116.

[66] *See* Wells, *supra* note 64 (noting that a couple raised $1,900 towards their honeymoon through crowdfunding, while actor Zach Braff raised $3.1 million to fund an independent film).

[67] *About Us*, KIVA, http://www.kiva.org/about (last visited Feb. 10, 2015), *archived at* http://perma.cc/BTU7-FYDA.

[68] Bradford, *supra* note 52, at 116. ("People who make no-interest loans on Kiva may never recover their principal.").

[69] *About Us*, KIVA, *supra* note 67.

[70] Bradford, *supra* note 52, at 116.

[71] Elizabeth Gerber & Julie Hui, *Crowdfunding: Motivations and Deterrents for Participation*, 20 TRANSACTIONS ON COMPUTER-HUMAN INTERACTION, no. 6, Dec. 2013, at 14 ("Supporters exhibit consumer behavior, expressing interest in receiving a reward in exchange for giving money. However, the fact that they are willing to pay prior to reward creation and wait weeks or months sets this type of transaction apart from traditional consumer transactions.").

or the reward or product may not be as valuable as they anticipated."[72] Even so, this market has bloomed into the billion-dollar range.[73]

The point is that crowdfund investors/donors have proved themselves willing to contribute substantial sums without any apparent expectation to receive much of financial substance in return. Why would they do that? The remainder of this Part catalogs some of the nonfinancial motivations that drive donation and reward crowdfunding and suggests that they may translate well to securities crowdfunding. This list is not meant to be complete, nor are the categories mutually exclusive. It is merely an attempt to show that securities crowdfunding, like reward and donation crowdfunding before, can provide investors with significant nonfinancial benefits of various types.

A. Entertainment Value

Securities crowdfunding can provide entertainment value to investors. In this way, it is analogous to horse-racing, sports, craps, and other gambling endeavors where a person makes a "pick" and then either wins or loses. Take the state lottery for instance. By its nature, the lottery must be a net-negative investment for the players.[74] Yet our law allows people to "lose" their money in this way presumably because it provides entertainment value to the players.[75] Those who play (and lose) get to enjoy the excitement of selecting their numbers and hearing the announcement of the winning numbers.

Investing in securities through crowdfunding can provide a similar experience and analogous entertainment value. Watching whether the company one picked succeeds may be just as "fun" to some people as it is to pick horses or football teams to win. The time

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[72] *Id.*

[73] Kickstarter alone has funded about $1.5 billion in projects since 2009. *Kickstarter Stats*, KICKSTARTER, https://www.kickstarter.com/help/stats (last visited Mar. 14, 2015), *archived at* https://perma.cc/W9FQ-YVPG?type=live.

[74] Ronald J. Rychlack, *Lotteries, Revenues, and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 14 (1992) ("Gambling consists of three elements: consideration, chance and reward. A typical lottery, which involves the sale of chances to win a prize based on a random drawing, clearly involves all three elements.").

[75] *See, e.g.*, *About Us*, COLORADO LOTTERY, https://www.coloradolottery.com/ABOUT/SERVING-COLORADO/ (last visited Jan. 20, 2015), *archived at* https://perma.cc/C9LV-ZEDE ("It is our mission to efficiently create and sell entertaining games of chance while committing to the highest standards of integrity to maximize proceeds for the people of Colorado.").

frame (years rather than days or weeks) changes the experience, but the fundamental concept is the same. It is exciting to make a pick and see if you are a winner, and the same will be so for securities crowdfunding. By selecting a few investments to make from the many available on offer, and then seeing how the company develops, crowdfunding investors may receive significant entertainment value from their investments.

B. Political Expression

People often make political statements through their spending choices. Many of those who buy organic vegetables, cycle to work, or purchase their power from a solar co-operative, do so—at least in part—to make a political statement, presumably about the type of society they favor. This ability to send a message through consumption choices has value to these people, although not a clear financial one.

In the same vein, crowdfunders could invest in companies whose business or style they wish to advance.[76] Indeed, crowdfunding may prove to be an important means of funding political speech in the post-*Citizens United* world.[77] *Citizens United* and crowdfunding are complementary in that they both seek to create a framework where people of modest means can collectively contribute a sum sufficient to complete a political project that none of them could afford to finance on their own.[78]

For example, fans of solar energy could invest in securities of a new company formed to build a solar array. Part of the funds raised from these crowdfunders could properly be used to engage with the local legislature for permits, rights of way, et cetera. If necessary (for instance if there is a popular vote), some of the money could be used to convey their message to the people of the state through letters, billboards, Internet ads, and any other means of communication. In all of these ways, the investors can advance their nonfinancial political goal of advancing solar power.

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[76] *See* Gerber & Hui, *supra* note 71, at 16 ("[Reward] crowdfunding supporters are motivated to support causes analogous with their personal beliefs.").

[77] *See* Citizens United v. FEC, 558 U.S. 310 (2010) (holding that the government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity).

[78] *Cf.* Gerber & Hui, *supra* note 71, at 16 ("Some supporters even decide to forgo the reward and have 100% of their funds go directly to the project cause.").

Other examples could be given, but the point is that the securities crowdfunders can use the form to engage in valuable political expression. In such cases, the investment can "pay off" whether or not the business succeeds as a financial matter.

C. Patron of the Arts

Artists—from painters to punk rockers—commonly cannot support themselves from sales alone, and require the financial backing of one or more "patrons" in order to practice their art. This is true even for august institutions like the New York Philharmonic, which have financial backers who make donations over and above the cost of tickets.[79] These donors are inducted into societies like "Golden Circle" and the "Friends of the New York Philharmonic."[80] These names, and the privileges they entail, clearly have value to the donors, as they are *de rigueur* among such institutions.

This type of giving has played a major role in reward crowdfunding, which has funded countless movies, books, CDs, and other products of artistic expression—with no potential for financial return.[81] It can be expected to play a similar role in securities crowdfunding, where artistic endeavors might even turn a profit. The

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[79] *Patron Membership Details*, N.Y. PHILHARMONIC, http://nyphil.org/support/become-a-member/become-a-patron/membership-details (last visited Feb. 12, 2015), *archived at* http://perma.cc/FE55-D6RK.

[80] *Id.*

[81] *See, e.g.*, Zach Braff, *Wish I Was Here*, KICKSTARTER, https://www.kickstarter.com/projects/1869987317/wish-i-was-here-1 (last visited Mar. 15, 2015), *archived at* https://perma.cc/B5JH-BX7X?type=source (funding an independent film); David Godlis, *CBGB Punk Photos by GODLIS 1976-1979/The BOOK*, KICKSTARTER, https://www.kickstarter.com/projects/1745732143/cbgb-punk-photos-by-godlis-1976-1979-the-book?ref=category_most_funded (last visited Mar. 15, 2015), *archived at* https://perma.cc/SL47-WGJE?type=source (funding a photography book); Bradley Grimm, *Goodnight Lad: Augmented Reality Children's Book*, KICKSTARTER, https://www.kickstarter.com/projects/1223734313/goodnight-lad-augmented-reality-childrens-book?ref=nav_search (last visited Mar. 15, 2015), *archived at* https://perma.cc/P437-A843?type=source (funding the publishing of an interactive children's book); TLC, *TLC is BACK to make our FINAL ALBUM with YOU!*, KICKSTARTER, https://www.kickstarter.com/projects/1507621537/tlc-is-back-to-make-our-final-album-with-you?ref=category_most_funded (last visited Mar. 15, 2015), *archived at* https://perma.cc/83DA-NT6F?type=source (funding a the production of a musical album).

names may be different—"Beta Tester" rather than "Golden Circle"—but the idea is more or less the same.

Securities crowdfunding offers a twenty-first century method of patronizing the arts. Crowdfunders who support artistic companies may obtain the prestige and other nonfinancial benefits that patrons of the arts traditionally receive.

D. Altruism

There are many ways to give charity these days, ranging from dropping a quarter in a Salvation Army bucket to sending a text message to the Red Cross. Furthermore, it is well known that people tend to receive a psychic benefit when they provide funds to a person or organization in need.[82] Securities crowdfunding offers a new route for people to satisfy their philanthropic impulse.

Consider the old saying: "If you give a man a fish, he eats for a day. But if you teach a man to fish, he eats for a lifetime." The idea is that helping someone find gainful employment so he can support himself is the greatest form of charity, better than any payment.[83] As such, providing business capital to a fellow American in an earnest business endeavor would be seen by many as a virtuous act of philanthropy, regardless of the ultimate financial return on capital. The opportunities for altruism and philanthropy that crowdfunding provides has clearly been an important driver in the donation and reward context, and may well prove to be another significant nonfinancial benefit of securities crowdfunding.

It is possible that the mindset of crowdfund investors will fundamentally change once we move from rewards or donation to securities crowdfunding. Perhaps investors will look at these opportunities, not as a means for charitable giving, but as profit-focused alternatives to investing in the stock market or paying down debt. Without attempting to predict the future, it seems likely that different

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[82] *See, e.g.*, KRISTEN RENWICK MONROE, THE HEART OF ALTRUISM: PERCEPTIONS OF A COMMON HUMANITY 143-60 (1998); *see also Altruism*, MENTAL HEALTH FOUND., http://www.mentalhealth.org.uk/help-information/mental-health-a-z/A/altruisim/ (last visited Jan. 20, 2015), *archived at* http://perma.cc/YD3G-EASJ.

[83] The medieval Jewish scholar Maimonides listed eight forms of charity; the highest form was to provide the person in need with gainful employment. *E.g.*, ADIN STEINSALTZ, TESHUVAH, A GUIDE FOR THE NEWLY OBSERVANT JEW 170 (Michael Swirsky ed., trans., The Free Press 1987) (1982).

people will view their investments in different ways, and that many will view each investment in their portfolio differently—some as primarily a donation or a lark; others as a potentially profitable opportunity.

E. Community

Securities crowdfunding, like reward crowdfunding, also provides a way for investors to experience the positive feeling of being a part of a community.[84] In the Internet Age, the concept of community is not constrained by geography. A community can be created or strengthened online, through Facebook, e-mail, Instagram, et cetera, and the creation of a new community among the contributors is often critical to a successful crowdfunding campaign.[85] Crowdfunders want to feel that they are "part of a select group," and portals can help achieve this by, among other things, listing who has supported a project on the project supporter page.[86] In brief, securities crowdfunding can provide a community feeling for investors, a valuable nonfinancial benefit of the form.

F. Creativity

As anyone who has ever built with wooden blocks or Legos can attest, it is fun and satisfying to create something out of nothing. Especially in a time when we can consume the creations of others—TV shows, books, podcasts—at all times and places, the pleasure that comes from creating something is particularly desirable. Through securities crowdfunding, investors can do their part to create a new company or tackle a new business project, and if it comes to fruition,

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[84] *See* Gerber & Hui, *supra* note 71, at 12.
[85] *Cf. Why People Invest Through Crowdfunding*, EUR. CROWDFUNDING NETWORK, http://www.crowdfundingnetwork.eu/crowdfunding-101/why-people-invest-through-crowdfunding/ (last visited January 13, 2015), *archived at* http://perma.cc/G2YB-T29U ("[I]t is crucial that the web entrepreneur treats the community formed during the crowdfunding campaign in an exclusive and unique way, even when the campaign is over. Crowdfunders are not simple investors or customers. They are a bit of both and they want to feel part of an unique adventure.").
[86] Gerber & Hui, *supra* note 71, at 15.

they can receive the significant nonfinancial benefits of being a creator, including the so-called "pride of ownership."[87]

IV. Conclusion

This Article enumerated six potential nonfinancial benefits of securities crowdfunding: Entertainment value; political expression; patron of the arts; altruism; community; and creativity.[88] If these benefits do indeed accrue to securities investors, then securities crowdfunding will be even more attractive than reward and donation crowdfunding, because it encompasses their virtues *and* adds the chance of a financial return.[89]

[87] *Why People Invest Through Crowdfunding*, supra note 85 ("[C]rowdfunders want to feel part of your project, they want to have fun as they participate to the entrepreneurial adventure.").
[88] *See supra* Part III.A-F.
[89] *See* Bradford, supra note 52 ("Instead of making a donation or settling for some reward, investors in crowdfunded securities can receive interest or a share of the entrepreneur's profits. They may not receive the promised return, but even the possibility of interest or profit is better than no financial return at all.").