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CROWDFUNDING ISSUERS IN THE UNITED STATES

Andrew A. Schwartz*

INTRODUCTION

Startup companies can now legally sell shares of stock, bonds, or other securities to the broad public using equity crowdfunding, a new type of online capital market modeled on Kickstarter and other reward crowdfunding websites. Through equity crowdfunding, entrepreneurs can go directly to the broad public (the “crowd”) for investment, without having to go through the usual (and costly) process of an initial public offering (IPO). Equity crowdfunding thus offers a chance for all entrepreneurs, regardless of their physical location, gender, or anything else, to solicit investors and raise capital.

In 2012, new federal legislation—the Jumpstart Our Business Startups (JOBS) Act—amended the original Securities Act of 1933 to allow for equity crowdfunding.¹ Three years later, in late 2015, the Securities and Exchange Commission (SEC) promulgated a set of rules and regulations that companies must follow, known as “Regulation Crowdfunding,” and a corresponding official form through which offerings are filed (Form C).² Equity crowdfunding officially commenced in America in May 2016.³

Now that more than three years have elapsed, it seems an appropriate moment to consider the state of equity crowdfunding in the United States.⁴ Which types of companies—“issuers” in the parlance of securities law—are

* Professor of Law, University of Colorado Law School. For outstanding research assistance, I thank Savanna Griffis, and for helpful editorial assistance, I thank Kathryn Yazgulian. This Article is dedicated to the memory of my uncle, Leonard Goldstein.

1. Jumpstart Our Business Startups Act, Pub. L. No. 112-106 tit. III, 126 Stat. 306 (2012); see Andrew A. Schwartz, *Crowdfunding Securities*, 88 NOTRE DAME L. REV. 1457, 1460-66 (2013) (describing relevant portions of the JOBS Act).

2. Crowdfunding, 80 Fed. Reg. 71,388 (Nov. 16, 2015) (to be codified at various parts of 17 C.F.R.); see Press Release, U.S. Sec. & Exch. Comm’n, SEC Adopts Rules to Permit Crowdfunding (Oct. 30, 2015), <http://www.sec.gov/news/pressrelease/2015-249.html> [<https://perma.cc/7V8G-99BL>] (announcing Regulation Crowdfunding).

3. See Crowdfunding, 80 Fed. Reg. at 71,388 (providing for an effective date of May 16, 2016).

4. Cf. Andrew A. Schwartz, *Equity Crowdfunding in New Zealand*, 2018 N.Z. L. REV. 243 (reporting on the early experience of equity crowdfunding in New Zealand).

actually using Regulation Crowdfunding? Are they early-stage startups or more mature issuers? What is their legal form? How many of them are women-led? Where are they based? Using an original data set collected by the author and his research assistant from all of the Forms C filed with the SEC from 2016 to 2018,⁵ this Article provides answers to these questions and more.

According to our data, crowdfunding issuers are overwhelmingly early-stage companies with just a couple of employees and little to no revenue or assets. Most are corporations, though many are LLCs, and almost none are public benefit corporations. There is significant geographic diversity among the issuers, although California and New York still lead the pack. Finally, but perhaps most significantly, we found that twenty-eight percent of equity crowdfunding issuers have a woman on their executive team, a much higher percentage than in the traditional forms of startup finance, namely venture capital and angel investing.⁶ These findings are reported in Part III below.⁷

5. For a more detailed description of the data and our collection method, *see infra* Part II.

6. *See generally, e.g.*, Darian M. Ibrahim, *The (Not So) Puzzling Behavior of Angel Investors*, 61 VAND. L. REV. 1405 (2008) (describing and comparing venture capital and angel investing); *id.* at 1406 (“Angel investors are wealthy individuals who personally finance the same high-risk, high-growth start-ups as venture capitalists but at an earlier stage.”).

7. *See infra* Part III. Regulation Crowdfunding itself directs the SEC staff to provide a similar three-year review to the Commission. Crowdfunding, 80 Fed. Reg. at 71,390 (“The staff will undertake to study and submit a report to the Commission no later than three years following the effective date of Regulation Crowdfunding on the impact of the regulation on capital formation and investor protection.”). The SEC staff published its report in June 2019, which was after we collected the data for this Article, thus allowing the present Article to serve as an outside and independent complement to the staff’s internal account. *See* STAFF OF THE U.S. SECURITIES AND EXCHANGE COMMISSION, REPORT TO THE COMMISSION: REGULATION CROWDFUNDING (June 18, 2019), https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf [<https://perma.cc/3RLH-REQY>]. And, to the extent we covered the same ground in Part III as the SEC staff, such as the average age of crowdfunding issuers or the average number of employees, we found numbers that were very close to, if not exactly the same, as those presented in the staff report. *See id.*

I. EQUITY CROWDFUNDING IN THE UNITED STATES

*A. Background and Origins*⁸

Equity crowdfunding, a new method for raising business capital over the internet, grew out of the prior practices of “crowdsourcing” and “reward crowdfunding.”⁹ Through crowdsourcing, the public at large—the “crowd”—is invited to contribute to an online project. The most famous example may be Wikipedia, the crowdsourced online encyclopedia.¹⁰

Crowdfunding, for its part, differs from crowdsourcing in that the crowd is asked to contribute money, rather than labor, to the collective effort. Until three years ago, all crowdfunding projects were in the form of so-called “reward crowdfunding,” where funding participants receive the fruits of the project, such as a book, CD, or video game. Websites such as Kickstarter have been doing reward crowdfunding for about a decade, during which time the practice has grown into a multibillion-dollar market.¹¹ Donation-type crowdfunding, where the funders receive nothing tangible in return for their contributions, has also fared well on websites, including GoFundMe, with total funding amounting to billions of dollars.¹²

Having seen the success of reward and donation crowdfunding, people began to suggest that crowdfunding could and should be used to sell a share in the producing company itself. Thus, sometime in the late 2000s, the idea of equity crowdfunding (also known as “securities crowdfunding” or “investment crowdfunding”) was born. There was only one problem—but it was a big one: absent a legislative exemption, equity crowdfunding directly violates the first rule of securities law, namely that all securities

8. This subsection is adapted from Andrew A. Schwartz, *Social Enterprise Crowdfunding in New Zealand*, in THE CAMBRIDGE HANDBOOK OF SOC. ENTER. L. 209, at 209-10 (Benjamin Means & Joseph W. Yockey eds., Cambridge Univ. Press, 2018).

9. See generally Schwartz, *supra* note 1, at 1459–60.

10. See *Wikipedia: About*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Wikipedia:About> [<https://perma.cc/PK8N-UG6E>] (“Wikipedia [is] one of the largest reference websites People of all ages, cultures and backgrounds can add or edit article[s.]”).

11. See, e.g., *Kickstarter Stats*, KICKSTARTER, <https://www.kickstarter.com/help/stats> [<https://perma.cc/N85S-PG4M>] (reporting over \$4.5 billion in total pledges to Kickstarter projects).

12. See, e.g., *Press & Media*, GOFUNDME, <https://www.gofundme.com/press> [<https://perma.cc/9RCH-PSFQ>] (reporting over \$5 billion in total donations via GoFundMe).

must be registered with the Securities and Exchange Commission (SEC) prior to being sold to the public in an IPO.

*B. Legal Authorization*¹³

Yet, securities laws can be changed at any time, and that is precisely what happened. The idea to let startup companies and other small businesses seek public capital without having to comply with all the rules and regulations governing a traditional IPO began to garner broad support. In response, Congress authorized equity crowdfunding in Title III of the Jumpstart Our Business Startups (JOBS) Act of 2012 by exempting crowdfunded offerings from the ordinary registration required under the Securities Act of 1933.¹⁴ This statute was passed with bipartisan support, and many foreign countries, as well as individual states, have since followed with similar legislation. Although it is often called “equity crowdfunding,” companies may actually offer any type of security, whether common stock, bonds, or even SAFEs (simple agreements for future equity).¹⁵

While the JOBS Act authorized equity crowdfunding, it also imposed many limits and rules on the practice.¹⁶ There are hard monetary limitations both for issuers and for investors. As for the former, issuers may only raise about one million dollars each year. As for the latter, the law provides a hard cap on the amount of crowdfunded securities that any one investor may purchase per year. The maximum amount an investor may contribute is premised on a sliding scale that is based on income and net worth; for most people, this will calculate out to about \$2,000 to \$5,000 in a twelve-month period.¹⁷ The purpose of this investment cap is to protect investors from putting more at risk than they can reasonably afford.

13. This Subsection is adapted from Schwartz, *supra* note 8, at 210-12.

14. Jumpstart Our Business Startups Act §§ 302, 304.

15. See generally SEC v. Howey, 328 U.S. 293 (1946) (laying out the classic definition of “security” under the Securities Act).

16. Jumpstart Our Business Startups Act § 302 (crowdfunding exemption); *id.* § 304 (funding portal regulation); see generally Robert B. Thompson & Donald C. Langevoort, *Redrawing the Public-Private Boundaries in Entrepreneurial Capital Raising*, 98 CORNELL L. REV. 1573, 1605 (2013) (instead of creating “a regulation-free zone,” the JOBS Act imposed “a quite heavy and costly set of responsibilities on both issuers and any intermediaries that assist them”).

17. See Schwartz, *supra* note 1, at 1461-66.

Under the JOBS Act, transactions must be executed via a financial intermediary registered with the SEC; thus, they cannot be consummated directly between issuer and investor. These financial intermediaries (also known as “platforms” or “portals”) have numerous responsibilities under the law, including ensuring that each investor reviews certain educational information and positively affirms particular statements, such as acknowledging that they are risking the loss of their entire investment. Also, issuers may not advertise their own offerings; any solicitations must go through the intermediary.¹⁸

Any private domestic company may invoke the JOBS Act’s crowdfunding exemption. Public companies, such as those that trade on the New York Stock Exchange, as well as foreign companies, are excluded, as are “investment companies” regulated by the Investment Company Act of 1940. Issuers must provide numerous disclosures to investors, intermediaries, and the SEC, including the name, address, and website of the company; the names of directors, officers, and substantial investors; a description of the business and the anticipated business plan; a description of the issuer’s financial condition (which varies based on amount raised); a description of the purpose and intended use of the proceeds; the price of the securities; and a description of the ownership and capital structure of the issuer.¹⁹

The JOBS Act further provides that companies must state a target for their fundraising goal, and they are to receive the money only if the target is met or exceeded. During the pendency of an offer, all investors have the right to cancel their order at any time. If the funding campaign succeeds, the company must provide annual reports to investors and the SEC for as long as the securities remain outstanding. Also, 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” (i.e., wealthy) investor²⁰ or family member.²¹

18. *See id.* at 1462–63.

19. *See id.* at 1464.

20. To qualify as an accredited investor under the law, one must generally possess a net worth that exceeds one million dollars (excluding one’s primary residence) or an annual income that exceeds \$200,000 individually or \$300,000 jointly for each of the past two years. 17 C.F.R. § 230.501(a)(5)-(6) (2015).

21. *See Schwartz, supra* note 1, at 1463-64.

Finally, to protect investors, the JOBS Act specifically authorizes civil actions for fraud against issuers, directors, and officers of companies that mislead crowdfunding investors. State and federal government authorities, including the SEC, likewise are empowered to take action against wrongdoers.²²

The JOBS Act created the basic framework for equity crowdfunding in 2012, but many issues were delegated to the SEC to flesh out through rulemaking, a process that took several years to complete. The SEC published 585 pages of proposed regulations in October 2013 and invited public comment thereon. Two years later, in November 2015, the SEC promulgated the final version of Regulation Crowdfunding, which weighed in at nearly 700 pages. Equity crowdfunding under the JOBS Act and Regulation Crowdfunding finally commenced in May 2016.

*C. Policy Goals*²³

Equity crowdfunding has two primary policy goals, one relating to entrepreneurs and one relating to investors. First, crowdfunding is designed to empower entrepreneurs, regardless of their location, to use social networks and the internet to obtain business capital at a reasonable cost. Second, it is meant to democratize the market for financing speculative companies by inviting retail investors to make investments that are currently offered solely to accredited (wealthy) investors.

On the first point, there is widespread agreement that entrepreneurship is vital to innovation, economic growth, and employment in the contemporary United States.²⁴ Even so, startup companies commonly face significant difficulty obtaining the financing they need.²⁵ This lack of access to financing disproportionately affects certain types of entrepreneurs—

22. *See id.* at 1464-65.

23. This Subsection is adapted from Andrew A. Schwartz, *The Digital Shareholder*, 100 MINN. L. REV. 609, 619-26 (2015).

24. *E.g.*, Barack Obama, *Toward a 21st-Century Regulatory System*, WALL STREET J., Jan. 18, 2011, at A17.

25. PERI PAKROO, *THE WOMEN'S SMALL BUSINESS START-UP KIT* 98-99 (2010) (noting banks' reluctance to lend to first-time entrepreneurs).

especially women²⁶ and racial minorities,²⁷ those of modest means,²⁸ and those who live far from Silicon Valley and other concentrations of venture capital and angel investment.²⁹

Equity crowdfunding offers a new and inclusive way to bring needed financing to startups all across America, from coast to coast, in areas rural and urban, to entrepreneurs rich and poor, young and old, of every gender, race, ethnicity, and religion. Because it is internet-based and so much less costly than a traditional public offering, equity crowdfunding provides an opportunity for anyone with an idea to go online and seek funding to make it a reality.

The second goal of crowdfunding is to democratize the market for investing in startup companies. For decades, the chance to invest in private startups has been effectively available only to wealthy investors and friends of the founders, due to certain aspects of the federal securities laws.³⁰ The practical effect is that non-millionaires have been left out, effectively barred from investing in strangers' startup companies, thanks to this regulatory apparatus. Crowdfunding is designed to break down this barrier by empowering ordinary retail investors—whom I have called “digital shareholders” in prior work—to take a chance and invest in the same type of unregistered securities of a stranger's startup.³¹

26. *Id.* at 96–100 (describing special difficulties of female entrepreneurs).

27. ALICIA ROBB, U.S. SMALL BUS. ADMIN., ACCESS TO CAPITAL AMONG YOUNG FIRMS, MINORITY-OWNED FIRMS, WOMEN-OWNED FIRMS, AND HIGH-TECH FIRMS 2-3, 6-7 (Apr. 2013) (reporting on difficulties for minority-owned firms to obtain outside capital).

28. *Id.* at 4-5 (noting that “much of the financial capital used to start businesses comes from the owners themselves”).

29. Andrew Wong, *Angel Finance: The Other Venture Capital*, in VENTURE CAPITAL 71, 73 (Douglas Cumming ed., 2010) (explaining that angel investors often limit their investments to startups within a three-hour drive from home); Angus Loten, *For Startups, Bootstrapped Startups Risk a Lack of Connections; Financial Self-Reliance Can Come Back to Haunt Entrepreneurs if They Suddenly Need Investors*, WALL ST. J., Feb. 5, 2015, at B5 (reporting on “the clubby venture-capital world,” the importance of connections and introductions, and the reality that finding venture capital funding is challenging for those who are “not very well connected”).

30. Usha Rodrigues, *Securities Law's Dirty Little Secret*, 81 FORDHAM L. REV. 3389, 3389 (2013) (“Securities law's dirty little secret is that rich investors have access to special kinds of investments . . . that everyone else does not.”).

31. Schwartz, *supra* note 23, at 619-26.

II. DATA

After more than three years of equity crowdfunding under the JOBS Act and Regulation Crowdfunding, it is an opportune moment to pause and assess the types of companies using it.³² In order to examine the types of companies that use equity crowdfunding, the author and his research assistant generated an original dataset using information filed with the SEC by crowdfunding companies themselves.

A. Data Collection Methodology

Regulation Crowdfunding requires that each issuer complete an internet-based form, known as Form C, and file it with the SEC before commencing its offering.³³ Form C calls for the disclosure of revenue, assets, and a good deal of other information about the issuer.³⁴ Issuers must also file a Form C when amending an offering, when filing a required progress update or annual report, and when terminating reporting requirements.³⁵

Each quarter, the SEC compiles the information provided by issuers provided on Form C for that quarter and organizes it into quarterly datasets which are available to the public.³⁶ Presumably because of the large amount of information provided by issuers, the SEC divides each quarterly dataset into seven separate files.³⁷ This allowed us to download and combine both

32. See *supra* note 4 and accompanying text.

33. There are actually multiple variations of Form C. See *Form C*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/files/formc.pdf> [<https://perma.cc/5C66-TNN2>].

34. See *id.*

35. *Id.*; see also U.S. SEC. & EXCH. COMM'N, CROWDFUNDING OFFERINGS DATA SETS 4, <https://www.sec.gov/dera/data/crowdfund.pdf> [<https://perma.cc/AEV3-5R7P>] (listing various types of Form C submissions). Issuers who reach at least fifty percent of the target amount are required to file at least one progress update on how much of the target amount was reached, which is where we derived information regarding amounts raised. *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers*, U.S. SEC. & EXCH. COMM'N (Apr. 5, 2017), <https://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm> [<https://perma.cc/QHW5-Q3C4>].

36. See *Crowdfunding Offerings Data Sets*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/dera/data/crowdfunding-offerings-data-sets> [<https://perma.cc/P2VN-UHXY>]; U.S. SEC. & EXCH. COMM'N, *supra* note 35.

37. One downside to splitting this information across seven files is that some files did not include the name of the issuing company, but rather an "accession number" assigned to the filing. Thus, in order to accurately analyze companies on an individual level, we had to manually sort filings by accession

offering and issuer information in a format that we then transposed to an Excel spreadsheet, thereby generating an original and fairly comprehensive dataset of all information issuers have provided on Form C. We collected data for the roughly two-and-a-half-year period from May 16, 2016 (when Regulation Crowdfunding went into effect), to the end of 2018.

B. Number of Observations

From 2016 to 2018, 1,451 American companies filed a Form C and launched a crowdfunding campaign. Because a few issuers made multiple offerings, we found a total of 1,478 crowdfunding offerings during that time span.

On the one hand, this is a very small number, considering that there are more than thirty million American companies eligible to use equity crowdfunding.³⁸ It also compares unfavorably to leading equity crowdfunding markets overseas, including New Zealand, which (scaled for its size) boasts more than ten times as many offerings as the United States.³⁹ It even looks poor relative to the number of full IPOs (more than 400) during the same stretch, an era known for its “dearth of IPOs.”⁴⁰

On the bright side, while equity crowdfunding got off to a slow start—perhaps due to the long delay between the JOBS Act of 2012 and the full implementation of Regulation Crowdfunding in 2016—it has shown significant growth as the market has developed over the past three years. We counted 192 offerings in 2016, 514 offerings in 2017, and 764 offerings in 2018. As a percentage basis, this is huge: the number of offerings grew

number, match them to the company name, and then copy and paste the remainder of the filing information from each of seven files onto one spreadsheet to analyze an offering completely. The process of combining these files was tedious.

38. See *United States Small Business Economic Profiles for 2018*, U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf> [<https://perma.cc/NJD3-NMVY>] (reporting a total of 30,212,670 “small firms” in the United States as of 2015).

39. Schwartz, *supra* note 4, at 252.

40. Richard Waters, *Disconnect Between Volatility and Boom in Venture Capital Investing*, FIN. TIMES (London), Dec. 28, 2018, at 14 (reporting that “[t]he dearth of IPOs may finally be coming to an end”); Jason M. Thomas, *Where Have All the Public Companies Gone?*, WALL STREET J., Nov. 17, 2017, at A15 (“Over the past two decades, the number of annual IPOs has fallen sharply, to 128 in 2016 from 845 in 1996.”).

nearly fifty percent from 2017 to 2018.⁴¹ If this trend continues, thousands of companies will soon be using this new form of capital raising each year, and equity crowdfunding may become an important component of our capital markets.⁴² At present, however, equity crowdfunding represents only a tiny proportion of the capital markets in the United States.

III. CROWDFUNDING ISSUERS: THE FIRST THREE YEARS

Using our original dataset gathered from the issuers' SEC filings,⁴³ this Part reports on the types of companies that have sought to raise capital via equity crowdfunding in the market's first three years.

A. Maturity

Almost any American company is legally entitled to use equity crowdfunding,⁴⁴ but the focus and intent was to provide a new and inclusive means for small startup companies to raise capital.⁴⁵ Indeed, the very name of the statute is the Jumpstart Our Business *Startups* Act. The data indicates that this has largely played out as planned.

Almost all issuers that use crowdfunding are early-stage startups. Forty percent of issuers were under one year old at the time of filing their Form C and eighty percent were less than four years old.⁴⁶ The median age of a crowdfunding issuer was 1.5 years and the average age was just under three. There were more issuers under one month old than over ten years old, and

41. The growth from 2016 to 2017 may appear even more impressive, but 2016 was only a partial year, as equity crowdfunding commenced on May 16 of that year, so it is not a fair comparison.

42. Cf. *StartEngine, Offering Circular Dated March 11, 2019*, U.S. SEC. & EXCH. COMM'N (2019), https://www.sec.gov/Archives/edgar/data/1661779/000114420419013344/tv515967_253g2.htm [<https://perma.cc/J46F-2TUF>] ("Our objective is that by 2025, we will facilitate funding for the startup and growth of 5,000 companies every year.").

43. See *supra* Section II.A (describing compilation of dataset).

44. The exceptions are investment companies and those that are publicly traded. Jumpstart Our Business Startups Act § 302.

45. See generally Andrew A. Schwartz, *Inclusive Crowdfunding*, 2016 UTAH L. REV. 661, 661.

46. To determine the "age" of an issuer, we calculated the number of days between the date a company was incorporated and the date it filed its Form C, and then translated that into months and years.

only twelve issuers (out of roughly 1,500) were twenty years or older.⁴⁷ Further, this has remained constant over time. Looking just at the offerings during 2018, the companies were an average of three years old, with a median of 1.6 years.

In short, our data shows that equity crowdfunding is generally being used by startups in their earliest days.

B. Employment

As part of the JOBS Act, one policy goal of crowdfunding was to create jobs and boost employment among startups and other small companies. In practice, equity crowdfunding has indeed been used by very small companies. On average, each crowdfunding issuer employs five people. Almost all (eighty-nine percent) crowdfunding issuers have ten or fewer employees and the majority (fifty-five percent) employ no more than three. Even so, the true impact of equity crowdfunding on employment in the United States can be seen when totaling this number. Overall, 7,698 people were reported as employed by companies using equity crowdfunding.

The size of the issuers has stayed fairly static over time with the average in 2018 being six employees. However, one issuer from 2018 reported a total of one hundred employees,⁴⁸ demonstrating that equity crowdfunding is not limited to small startups. In 2018 alone, companies that issued offerings employed a total of 4,260 people. This represents a large increase from the first calendar year of equity crowdfunding, where a total of only 1,574 people were employed by companies that issued offerings.⁴⁹

C. Revenue

Consistent with their small size and early stage, a large majority of issuers were not generating revenue at the time of filing their Form C. For the period

47. Seventy companies were over ten years old, while eighty were thirty-one days or younger, at the time of filing.

48. That was C. Meyers Feldman and Co.

49. Lindsay M. Abate, *One Year of Equity Crowdfunding: Initial Market Developments and Trends*, U.S. SMALL BUS. ADMIN. OFF. OF ADVOC. ECON. RES. SERIES, (2018), https://www.sba.gov/sites/default/files/advocacy/Crowdfunding_Issue_Brief_2018.pdf [<https://perma.cc/5D37-RAA5>].

of our study, thirty-two percent of issuers reported having zero revenue and an additional fifty-eight percent reported having negative revenue. Putting these together, only about ten percent of the issuers were profitable, and, of these, their average annual revenue was \$140,424, with almost all reporting less than \$100,000 in the most recent fiscal year. However, there were a few outliers to this number—the lowest amount of revenue reported by any issuer was just one dollar, while the highest was nearly five million dollars.

This picture has remained largely static over the first three years of crowdfunding. Looking at 2018 in isolation, fifty-seven percent of companies reported having negative revenue, while thirty-two percent reported having zero revenue, and just ten percent reported having any revenue. This is almost precisely the same as for the entire 2016 to 2018 period. For profitable issuers, however, their average revenue in 2018 was over \$200,000, representing a sizable increase.

D. Assets

Many issuers (twenty-six percent) reported having zero assets, although most reported having at least some valuable assets owned by the company at the time of filing. Thirty-seven percent reported having between at least one dollar worth of assets and \$100,000 worth of assets, while an additional twenty-one percent reported having between \$100,000 and \$500,000. Only fourteen percent of issuers claimed over \$500,000, with 102 of those companies claiming over \$1,000,000, and five companies claiming over \$10,000,000. The highest asset value claimed by any company was a staggering \$58,129,370, which was more than double the next highest asset value.

Looking just at the Forms C filed in 2018, the findings are similar. Twenty-seven percent of issuers reported zero assets, thirty-seven percent reported having between one dollar and \$100,000, and twenty-one percent reported having between \$100,000 and \$500,000. Additionally, thirteen percent reported having over \$500,000, with fifty-one of these issuers reporting over \$1,000,000. All of these data points are what we would expect from a group of issuers that are overwhelmingly early-stage startup companies.

E. Legal Structure

While any type of business entity, whether organized as a corporation, limited partnership, or anything else, may participate in equity crowdfunding. In our data, however, we found that nearly all issuers were organized either as corporations or limited liability companies (LLCs). Our data indicates that ninety-nine percent of offerings were issued by businesses formed either as a corporation (sixty-five percent) or an LLC (thirty-four percent). Only a handful of offerings came from alternative entities: three general partnerships, six limited partnerships, and five public benefit corporations.

This data confounds expectations in at least two ways. First, new businesses, in general, tend to favor the LLC over the corporate form. In Delaware, for instance, over seventy percent of new businesses are incorporated each year as LLCs, three times as many as those that elect the corporate form.⁵⁰ However, there may be a good explanation for the popularity of corporations among crowdfunding companies. Every LLC is different from every other; there is no standard form for LLCs. Corporations, by contrast, are standardized business entities. When seeking to sell securities to the public, it is simpler and more straightforward if the company is a standard corporation rather than a bespoke LLC that requires extra research to understand.

Second, the present author has previously theorized that “social enterprises” are particularly well suited to equity crowdfunding,⁵¹ and even found some supportive evidence for this theory in the New Zealand market.⁵² Since the public benefit corporation is a legal entity specifically designed for social enterprises, we might have expected to see many such entities on our list of crowdfunding issuers. Yet only five public benefit companies are on the list, seeming to undermine the theory. On the other

50. *Annual Report*, DEL. SEC’Y OF STATE DIV. OF CORP. (2018), <https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2018-Annual-Report.pdf> [<https://perma.cc/58AN-M7M7>] (reporting about 157,000 new LLCs in 2018, compared with about 45,000 new corporations, out of a total of roughly 216,000 total business entities, meaning that seventy-three percent of all new entities were LLCs and only twenty-one percent were corporations).

51. Andrew A. Schwartz, *The Nonfinancial Returns of Crowdfunding*, 34 REV. BANKING & FIN. L. 565, 575-80 (2015).

52. Schwartz, *supra* note 8, at 219.

hand, the public benefit corporation is so rarely used by anyone—only 200 or so have ever been formed in Delaware, compared to over 100,000 LLCs every year—that its absence among crowdfunding companies cannot really be taken as dispositive on the question.

F. Geography

One of the policy objectives of equity crowdfunding is to provide geographically isolated entrepreneurs with an opportunity to pitch their ideas to investors without having to physically relocate to where venture capitalists and angel investors are found (e.g., the San Francisco Bay Area).⁵³ Because equity crowdfunding is conducted entirely over the internet, entrepreneurs in states like Arkansas or Iowa are in as good a position as those in California or New York to raise capital using this method.⁵⁴ Has this democratization of capital-raising opportunities actually taken place? The data suggests so.

Companies based in forty-four different states pursued equity crowdfunding campaigns in 2018. Further, there have even been several offerings by companies with headquarters located in foreign countries—one in Spain, one in Kenya, one in Canada, and one in Suriname.⁵⁵

That said, companies based in California still dominate equity crowdfunding, just as they do venture capital and angel investing. In 2018, a significant plurality of the offerings came from companies based in California—twenty-six percent of the total market, collectively raising \$20.6 million. New York was the second most popular state for issuers, with eighty-nine total offerings, making up twelve percent of the market and a collective \$7.2 million raised. Texas came in third with seven percent of issuers and a total of eight million dollars. This data presents a modest change from the first full year of equity crowdfunding (May 2016 through May 2017), when California was also the most popular location for issuers, comprising thirty-five percent of the total market, while New York comprised seven percent.

53. Andrew A. Schwartz, *Rural Crowdfunding*, 13 U.C. DAVIS BUS. L.J. 283, 292-93 (2013).

54. *Id.*

55. All four of these companies are incorporated in a domestic jurisdiction, as required by statute. See Jumpstart Our Business Startups Act § 302.

Intermediaries, like issuers, are concentrated in California, Texas and New York. As of 2018, twenty-two percent of platforms were headquartered in California, sixteen percent in Texas, and fourteen percent in New York. However, 2018's intermediaries were located in thirteen different states, demonstrating that platforms are not just limited to those three states.

It is not surprising that we found California, New York, and Texas to be the top three states for both issuers and intermediaries. But our more important finding is that most crowdfunding companies are based in states other than those three and that nearly every state has participated (including Arkansas and Iowa). To a significant extent, then, equity crowdfunding appears to be living up to its promise to overcome geographic constraints and bring capital raising opportunities to entrepreneurs across this vast land.

G. Female Leadership

Women have traditionally received venture funding at much lower rates than men, with studies from the early 2000s showing that as few as one to six percent of venture capital-backed companies have at least one female founder.⁵⁶ More recently, a 2018 study found that only fifteen percent of companies that obtained venture capital had a woman “on their executive team.”⁵⁷

One of the primary goals of equity crowdfunding is to create an inclusive method of raising capital where any entrepreneur can have a chance to pitch their business idea to the crowd, regardless of their age, wealth, connections, or gender.⁵⁸ Hence, many commentators have identified equity crowdfunding as a way to enable more female-founded and female-led companies to access to startup capital.⁵⁹

56. Jason Greenberg & Ethan Mollick, *Activist Choice Homophily and the Crowdfunding of Female Founders*, 62 ADMIN. SCI. Q. 341, 343-44 (2017).

57. Lakshmi Balachandra, *Research: Investors Punish Entrepreneurs for Stereotypically Feminine Behaviors*, HARV. BUS. REV. (Oct. 19, 2018), <https://hbr.org/2018/10/research-investors-punish-entrepreneurs-for-stereotypically-feminine-behaviors> [<https://perma.cc/534U-S2NM>]; see also Elizabeth N. Brandt, *The Crowdfund Act's Impact on Women-Owned Businesses' Access to Capital*, 2017 COLUM. BUS. L. REV. 807, 822 (2017) (collecting similar statistics).

58. Schwartz, *supra* note 45, at 625.

59. See, e.g., Andrew A. Schwartz, *The Gatekeepers of Crowdfunding*, 75 WASH. & LEE L. REV. 885, 906, 948 (2018); Schwartz, *supra* note 46, at 624 (“Is this inclusive vision realistic? Based on results in reward crowdfunding and related fields, there is good reason to expect it to come to fruition.”); Hollie

To determine the extent to which this goal has been achieved, we took a sample of 500 companies that sought financing through equity crowdfunding from 2016 to 2018 and examined the names of the executives who signed the official Form C. We reviewed 991 names in total. Apart from a few outliers, almost all companies had fewer than five people sign the Form. Based on our count, 141 of the 500 Forms (twenty-eight percent) included signatures of traditionally female names.⁶⁰ We take this to mean that at least twenty-eight percent of crowdfunding issuers have a woman on their executive team.⁶¹

Slade, *Why Is It So Hard for Female Entrepreneurs to Get VC Funding? Could Crowdfunding Be the Answer?*, FORBES (Nov. 29, 2013, 10:00 AM), <http://www.forbes.com/sites/hollieslade/2013/11/29/why-is-it-so-hard-for-female-entrepreneurs-to-get-vc-funding-could-crowdfunding-be-the-answer> [https://perma.cc/Q9VA-ZDEA]; Chris Lustrino, *The Pioneering Females of Equity Crowdfunding*, KINGSCROWD (Sept. 13, 2018), <https://kingscrowd.com/a/127/the-pioneering-females-of-equity-crowdfunding> [https://perma.cc/FL89-J9NF] (discussing successful female equity crowdfunders and comparing equity crowdfunding to traditional venture capitalism); Kerry Hannon & Next Avenue, *8 Ways Women Entrepreneurs Can Use Crowdfunding Successfully*, FORBES (May 18, 2018), <https://www.forbes.com/sites/nextavenue/2018/06/10/8-ways-women-entrepreneurs-can-use-crowdfunding-successfully/> [https://perma.cc/XM5N-64DZ] (discussing the participation of female entrepreneurs in all forms of crowdfunding and listing best practices for female campaigners); Amanda Greenberg, *Equity Crowdfunding is Changing the Landscape for Underrepresented Founders*, FORBES (June 10, 2018), <https://www.forbes.com/sites/amandagreenberg/2018/05/18/equity-crowdfunding-is-changing-the-funding-landscape-for-underrepresented-founders/#408dffe17fba> [https://perma.cc/GD26-Z5G4] (discussing the diversity of campaigners that utilize the platform Republic); Roodgally Senatus, *Equity Crowdfunding Changes Who Gets Financed*, IMPACTALPHA (May 21, 2019), <https://impactalpha.com/equity-crowdfunding-changes-who-gets-financed/> [https://perma.cc/9VN9-U9UL] (discussing research that shows women who crowdfund for scientific research purposes have higher success rates than men).

60. See generally, e.g., EMILY LARSON, *THE BABY NAMES ALMANAC* (2019) (listing popular names for boys (e.g., Noah, William, James, Elijah) and girls (e.g., Emma, Olivia, Ava, Isabella) based on data from the Social Security Administration). Our finding may be conservative, because names that are traditionally gender-neutral, such as Taylor or Jamie, see *id.* (presenting a “list of names that appeared on both the boys’ top 1,000 and the girls’ top 1,000” most popular names of 2017), were removed from the list, as were names that were difficult to assign to a gender because of unfamiliarity or cultural differences. On the other hand, our finding may be a generous one, since a filing that included one signature comprised of a traditionally female name and four signatures comprised of traditionally male names counted as a female-led firm. As a matter of rough justice these two considerations may well cancel each other out.

61. But cf. Mark Geiger and Seth C. Oranburg, *Female Entrepreneurs and Equity Crowdfunding in the US: Receiving Less When Asking for More*, 10 J. OF BUS. VENTURING INSIGHTS (2018) (empirical study of gender in equity crowdfunding where the researchers focused on the gender of the “primary signatory,” not all signers of the Form C).

This is a powerful finding and is nearly double what we have seen in the venture capital market.⁶² The fact that twenty-eight percent of issuers have a woman on their executive team is encouraging evidence that crowdfunding can live up to its inclusive ideals.⁶³

CONCLUSION

This Article provided an empirical report on the pioneering American companies who sought to raise funds through equity crowdfunding in the first three years of this new and untested market. Among other things, we found that crowdfunding has turned out to be fairly inclusive, at least for female and geographically diverse entrepreneurs, thus fulfilling, at least to some extent, a major policy goal of the form.

62. Balachandra, *supra* note 57 (reporting that “only 15% of companies receiving venture capital investment have a woman on their executive team”).

63. *But cf.* Geiger and Oranburg, *supra* note 61 (empirical study finding that female-led equity crowdfunding campaigns receive significantly less funding (average of \$152,918) than their male counterparts (average of \$258,098)).

