

The Changing Regulation of Equity-based Crowdfunding in Taiwan: From the GISA Board to Private Crowdfunding Platforms

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Abstract

The two goals of securities regulation are capital formation and investor protection. Before the JOBS Act (short for The Jumpstart Our Business Startups Act) of 2012, securities regulation in the United States has swung towards absolute investor protection. Nevertheless, the JOBS Act swung back towards the other side of the balance: promoting capital formation by small businesses, which is illustrated by the authorization of equity crowdfunding (“EC”). After the JOBS Act authorized private crowdfunding platforms, Taiwan’s government created the Go Incubation Board for Startup and Acceleration (“GISA”), run by the GreTai Securities Market, to play a role similar to a crowdfunding platform; thereafter in the end of April, 2015, private crowdfund platforms were authorized eventually in Taiwan. The two EC regulations in Taiwan were patterned after the JOBS Act but adapted to local conditions. Even though the goal of capital formation was mentioned in rhetoric under both the EC regulations, investor protection was focused and bolstered in reality, which could be exemplified by the Public Integrative Counseling Mechanism under Regulations Governing the Go Incubation Board for Startup and Acceleration Firms. However, this paper argues that in the short run, the regulation of the GISA board and private crowdfunding platforms should be based on the philosophy of regulatory humility; EC regulation is supposed to be tilted more

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towards the promotion of small business capital formation without compromising necessary investor protection. In the long run, the two EC Regulations should be written into the Securities and Exchange Act in accordance with the principle of constitutional requirement of a specific enactment while there should be only private platforms competing with each other with the GISA board retired after playing a role model in the early stage.

Keywords: exempt transactions, exempt securities, nudge, capital formation, investor protection, Securities and Exchange Act, libertarian paternalism, behavioral economics, regulatory humility