



The Crowdfund Intermediary Regulatory Advocates  
20-22 West 12<sup>th</sup> Street  
Cincinnati, OH 45202  
[candace@somolend.com](mailto:candace@somolend.com)

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By Email ([rule-comments@sec.gov](mailto:rule-comments@sec.gov)) and U.S. Mail

September 14, 2012

U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-1090

**Re: SEC Regulatory Initiatives  
JOBS Act Title III: Guidelines for Escrow Procedures**

Ladies and Gentlemen,

I am writing on behalf of the Crowdfund Intermediary Regulatory Advocates (“CfIRA”). On behalf of CfIRA, I wish to thank you for the opportunity to submit written comments relating to the implementation of Title III of the Jumpstart our Business Startups Act (the “Act”). In response to the SEC’s request to continue the discussion on a variety of issues related to the implementation of Title III of the Jumpstart Our Business Startups Act (the “Act”), this letter is put forward to propose methods of operations for crowdfunding intermediaries as related to the handling of funds, more specifically escrow and transactions for equity and debt based crowd funding.

We respectfully submit the following comments and recommendations to summarize our understanding and views expressed amongst the CFIRA members with recommendations for the handling of funds and escrow transactions:

I. Handling of Funds and Escrow Transactions

Section 4(7) of the provisions under the JOBS Act, “ensures that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate.”

CFIRA interprets the provisions to mean that a funding portal may not hold, manage, possess, or otherwise handle investor funds or securities as outlined in section 3(a)(80), and must ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or

greater than a target offering amount, as well as allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate in section (4A(a)(7). Thus, a funding portal must effectively ensure that funds are held in escrow but may not do so itself.

We acknowledge that a critical factor in conducting a crowdfunding transaction is determining when the campaign is fully funded. As expressed in the comment letter submitted to the Commission on August 23, 2012, 21 Day Cooling Off, Rescission and Oversubscription, Sec. 4A(a)(7), “indicates that offering proceeds are only available to the issuer once the aggregate capital raised has reached the target offering amount. Until the target amount is reached, any investor may cancel their commitments to invest. Ostensibly then, the point of closing the sale and distributing proceeds to the issuer, is when the securities are actually sold and not when the investor transmits money in an offer to invest. Secondly, the provision could also mean that once the target offering has been reached, 21 days must pass before closing the transactions and disbursing funds to the issuer. “ We continue to seek clarification on this provision's intent.

If a campaign has been fully funded on the campaign end date, the issuance is considered a success and the offering closes. If the campaign is not fully funded on the campaign end date, the campaign is cancelled and all funds in escrow are returned to investors, pursuant to SEC Rule 15c2-4.

We believe that crowdfunding intermediaries or their designated escrow service provider will serve as the facilitator for transactions and will require a mechanism for collecting investor funds. It is recommended that this mechanism will include, but not be limited to, ACH debits, checks, wires, and other forms of cash management services.

## **Recommendations**

1. We respectfully recommend that the handling of funds be conducted by third party escrow service providers that are permitted under current statutes and regulations to provide such a service.
2. Investor funds should be received by any third party escrow service provider as soon as possible once the investor commits to an offering. As such, investor funds will be placed into an appropriate escrow account as prescribed by the Rule. By allowing Portals to place a status on an investors transaction as “pending”, and change the status to “committed” once funds are received guarantees that a correct “progress towards goal” is being shown to both the issuer and the investors, which may be critical information when investors are considering whether or not to invest in a campaign.

Any fees for returning funds to investors should not, as the Rule requires,

be charged to either investors or to funds in the escrow account. Portals should have the option to charge issuers for the escrow fees incurred in unsuccessful offerings.

3. In addition we recommend, since funds cannot be transferred to the issuer until after the offering closes, that many intermediaries will require a third party escrow service provider to retain investor funds until the end of the offering period.

We understand that it is illegal to co-mingle client funds with other funds (or those of another client, or clients), and escrow agents are required by law to have a separate account for client funds. Currently some existing escrow agents utilize a single trust account, which is defined as having one trust account with a specified Bank, with all client funds assigned to a specific escrow within that trust account. This arrangement meets current regulatory requirements, and potential escrow service providers for crowdfunding have expressed the desire to use a similar mechanism. We believe we should use the existing escrow guidelines, laws, and regulations for crowdfunding.

CfIRA respectfully request clarification on the following questions in order to ensure that our understanding and establishing industry standards as related to handling funds are in accordance with the Commission:

1. How does the Commission define “Escrow?”
2. Who does the Commission believe should serve in the role of an Escrow Agent?
3. What will be the responsibilities of funding portals as related to the escrow accounts, fees, and management and reporting?
4. Who should bear the risks associated with providing escrow services?
5. What are the duties of escrow agents and who is protected?

We advocate that any company wishing to provide escrow services for crowdfunding should be allowed so long as they are permitted to provide such a service under current US laws and regulations, that funds are transferred to the escrow agent at the point of the investor making the commitment, and that crowdfunding intermediaries be allowed to adhere to the current guidelines set forth for interacting with licensed and accredited third party escrow service providers so that they may perform transactions on behalf of the crowdfunding industry.

We look forward to further discussing the recommendations and concerns expressed in this letter. In the future, CfIRA may also provide additional comments regarding these areas, as we continue to develop “best practices” to serve the needs of both issuers and investors. We hope to continue supporting the work the Commission in creating a crowdfunding industry that benefits investors and entrepreneurs alike.

Respectfully submitted,

*Lon David Varvel*

Lon David Varvel, Founding Member, CFIRA

Cc :

Candace Klein, Chair

Vince Molinari, Chair

CROWDFUNDING INTERMEDIARY REGULATORY ADVOCATES