



Crowdfund Intermediary Regulatory Advocates
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Via Electronic Mail

July 14, 2016

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: OTC Petition - to File No. 4-699

Dear Mr. Fields,

This letter is sent on behalf of Crowdfund Intermediary Regulatory Advocates (CFIRA), a non-profit 501(c) 6 trade organization that lobbies and advocates for regulations that will support the securities crowdfunding industry.

CFIRA was established after the signing of the Jumpstart our Business Act (“JOBS Act”) in April of 2012 to help establish the final rules for Title II, Title III and Title IV of the JOBS Act, in addition to drafting the first Standards and Best Practices Guidelines for equity and debt crowdfunding for the industry. CFIRA’s role is to protect the interest of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members comprise of intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in or who intend to engage in business under Titles II, III and IV.

We write this letter in support of the OTC Market Group Inc. Petition - File No. 4-699 for rulemaking to the U.S. Securities and Exchange Commission (the “Commission” or “SEC”) pursuant to Rule 192 (a) of the Commission’s Rules of Practice. This petition submitted for rulemaking is to expand Regulation A+ eligibility to the thousands of fully SEC reporting companies. Changes to the rules are important for small companies because they can use online platforms to directly sell securities to their investors at lower cost by utilizing Internet enabled technology. The expected result is market transparency. Allowing smaller companies and investment banks the ability to harness transparency and enhance technology to offer shares, we will unleash new innovation and in turn, lower the costs of capital raising.

This is also important to the crowdfunding industry in helping it to mature into a healthy capital markets for small and medium sized companies since they have already invested in public SEC reporting and are able to launch offerings in a more timely fashion.

The OTC stated that, “to fix capital formation for smaller companies, we must modernize the securities regulations to embrace the efficiencies of the Internet age.”

Regulation A+ and other online securities offerings will allow smaller companies to efficiently access capital.

Allowing smaller, fully SEC reporting companies to raise capital publicly via Regulation A+ offerings would engage a wider circle of investors and ultimately enhance liquidity in the secondary market. The Commission’s current stance with respect to Exchange Act reporting companies is a missed opportunity to create more efficient gateways for capital formation for small issuing companies.

Under Securities Act Rule 251(b), fully reporting issuers seeking to take advantage of the streamlined Regulation A+ offering process face an unfortunate choice:

- (i) Deregister as a fully reporting company and then file Form 1-A, in the process ceasing their more frequent and detailed periodic reporting; or
- (ii) Elect other available options, e.g., a costly full Form S-1 or S-3 registration or a private placement under Regulation D, the latter of which would shut out many of the important individual investors Regulation A+ was designed to include. For those issuers that do not meet the minimum thresholds for Exchange Act deregistration, the Regulation A+ window is completely shut.

CFIRA recognize that some fully reporting issuers will be eligible to utilize Form S-3, with its streamlined disclosure format. However, there are significant limitations associated with this option for companies that are not listed on a national exchange.

For example, the use of Form S-3 requires that the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant be at least \$75 million. This goes against the Commission’s determination not to exclude smaller issuers from Regulation A+. The \$75 million requirement alone would exclude a broad group of otherwise eligible SEC reporting companies. Form S-3 issuers are required to meet the high standards necessary to be fully SEC reporting, and accordingly should have access to the same offering tools as Regulation A+ issuers, specifically “testing the waters” and state law preemption allowing for national dissemination of offering materials. Modern securities offerings through Commission-regulated broker-dealers or conducted online are necessarily part of interstate commerce, and should be definitively regulated at the federal level.

Unless listed on a national securities exchange, an SEC reporting company’s Form S-3 securities are not “covered securities” within the meaning of Section 18 of the Securities Act, thus requiring Blue Sky compliance in each state where these securities are offered and sold. Securities issued in Regulation A+ transactions, however, are eligible to be classified by the Commission as covered securities. The inability of a Form S-3 issuer to engage in “testing the waters” activities, coupled with state restrictions on advertising, further limit public information regarding an issuer’s Form S-3 registered offering.

Assessing public capital efficiently to build a strong shareholder base is important for small companies to grow and sustain. While it may be beneficial to consider new legislation and regulations to lift existing restrictions that hinder the efficiency of trading smaller company securities, what is missing from this dialogue is an understanding of the primary investors in these markets today. According to testimony by the Director of the SEC’s Division of Trading and Markets, “for companies with less than \$100 million in market capitalization, individuals dominate ownership with 80.1% of ownership or higher.”

CFIRA is aware that amending the rules would provide a necessary fix to reviving small businesses.

CFIRA is here to further assist efforts of the regulators in helping to build a community that supports the JOBS Act. While expanding access to capital for businesses that seek funding through securities Crowdfunding as an alternative means. Please contact us with any further questions, at your earliest convenience.

For the avoidance of doubt, this letter is intended solely to support the OTC Market Group Inc. Petition - File No. 4-699 and not intended to be read to advocate for the use of any of the OTC Market Group platforms as a means for trading in Regulation A+ securities. While FINRA supports the expanding the use of the OTC Market Group platforms to include Regulation A+ securities, we also support the expansion of other means of trading.

Respectfully submitted,



Ron Miller
CEO, StartEngine Crowdfunding/Capital
CFIRA Board Member



Kim Wales
Founder & CEO, Wales Capital
Executive Board Member, CFIRA