



INVESTOR CHOICE ADVOCATES NETWORK

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October 19, 2026

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via email: rule-comments@sec.gov

Re: Comment Letter in Support of Petition for Rulemaking to Amend the Regulation
Crowdfunding Offering Limit

File No. 4-914

File No. 4-889 (Rulemaking Petition to Modernize Regulation Crowdfunding)

Dear Commissioners and Staff:

The Investor Choice Advocates Network (“ICAN”) submits this comment in support of the petition filed by Crowdfund Capital Advisors, LLC in File No. 4-914. The petition asks the Commission to amend Rule 100(a)(1) of Regulation Crowdfunding to raise the offering limit from \$5 million to \$20 million in any 12-month period and to index that limit to inflation. File No. 4-889 makes the same request among others.¹ This letter addresses only the offering limit and takes no position on the other requests in File No. 4-889.

Summary of ICAN’s Position

ICAN is a nonprofit public interest litigation organization. We represent small investors and entrepreneurs seeking access to the capital markets, and we often find ourselves opposite the Commission. We support this petition because the \$5 million cap no longer protects ordinary investors. In practice, it limits what they are allowed to buy.

The cap does not keep large financing rounds out of the market. It splits them. The portion above \$5 million moves into Rule 506(c), where only accredited investors may participate and no disclosure is mandated. Non-accredited investors are left with the earliest, riskiest dollars of a round and shut out of the rest. Raising the cap would not raise any non-accredited investor’s maximum exposure by a single dollar, because Regulation Crowdfunding protects investors through per-investor limits that this petition leaves untouched. It would instead

¹ Crowdfund Capital Advisors, LLC, Petition for Rulemaking, File No. 4-914 (July 13, 2026) (“Petition”), available at <https://www.sec.gov/files/rules/petitions/2026/petn4-914.pdf>; Supplemental Submission, File No. 4-914 (July 15, 2026) (“July Supplement”), available at <https://www.sec.gov/files/rules/petitions/2026/petn4-914-supplement.pdf>; Second Supplemental Submission, File No. 4-914 (Aug. 21, 2026), available at <https://www.sec.gov/files/rules/petitions/2026/petn4-914-second-supplement.pdf>; BLPN, Rulemaking Petition to Modernize Regulation Crowdfunding, File No. 4-889 (Mar. 1, 2026; issued Mar. 4, 2026), at 1, available at <https://www.sec.gov/files/rules/petitions/2026/petn4-889.pdf>.



keep more capital, and more investors, inside a framework of standardized disclosure, registered and FINRA-supervised intermediaries, and investment limits.

Regulation Crowdfunding also provides a protection that no other federal offering framework, exempt or registered, requires: a registered intermediary in every offering. That intermediary must educate investors, must have a reasonable basis to believe the issuer complies with the rules, must keep potentially fraudulent offerings off its platform, may be liable to investors as a person who offers or sells the securities, and must maintain written supervisory procedures that FINRA examines. Every dollar the cap pushes into Rule 506(c) leaves that structure behind. Part II explains this protection.

We also address the Commission's authority directly. ICAN regularly argues that the Commission must stay within the limits Congress set, and we take seriously the thoughtful objections raised to the 2020 increase. We explain below why Section 28 of the Securities Act of 1933 (the "Act") supports this exemption and why that conclusion is consistent with our broader views on agency authority.

I. The Cap Limits Investors, Not Offerings

A. The cap splits rounds and leaves retail investors with the riskiest tranche. When an issuer needs more than \$5 million, it does not stop raising. It raises the first \$5 million under Regulation Crowdfunding and the rest under another exemption, usually Rule 506(c). According to the petitioner's July 15, 2026 supplement, 323 Regulation Crowdfunding offerings have run concurrent Rule 506(c) raises totaling \$422.6 million.² The petition also reports that 40.3% of issuers that approached the cap later returned for follow-on Regulation Crowdfunding offerings, raising more than \$214 million after reaching it.³

The investor-protection consequence is easy to miss. In a split round, non-accredited investors can buy only the Regulation Crowdfunding tranche, which often comes first and carries the most risk. Once the company has proven itself enough to attract a larger round, the remainder is reserved for accredited investors in an offering with no mandated disclosure. Ordinary investors fund the experiment and are excluded from the scale-up.

B. Investor protection in Regulation Crowdfunding works per investor, not per offering. The petition would change only Rule 100(a)(1). It would not change Rule 100(a)(2), which caps what any non-accredited investor may invest across all Regulation Crowdfunding offerings in a 12-month period. That limit is the greater of \$2,500 or 5% of the greater of annual income or net worth if either is below \$124,000, and otherwise 10% of the greater of the two, never more than \$124,000.⁴ A non-accredited investor's maximum exposure is identical whether

² July Supplement at 1 (citing CCA's CCLEAR dataset).

³ Petition at 2 (citing CCLEAR).

⁴ 17 C.F.R. § 227.100(a)(2). Accredited investors have not been subject to investment limits since the 2020 amendments. *Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*, Release No. 33-10884 (Nov. 2, 2020), 86 Fed. Reg. 3496, 3538 (Jan. 14, 2021) ("2020 Release"), available at <https://www.sec.gov/files/rules/final/2020/33-10884.pdf>.



an issuer may raise \$5 million or \$20 million. What changes is which companies that investor may choose among.

C. A higher cap improves the opportunities available to retail investors. In 2020, some commenters objected that expanding Regulation Crowdfunding would give retail investors greater access to the least attractive private offerings.⁵ The cap itself contributes to that problem. The Commission’s 2019 staff report found that just over half of offerings studied came from issuers with no revenue, and the median issuer was about two years old with three employees.⁶ The petitioner reports that issuers seeking \$10 million to \$20 million are often post-revenue, with established customers.⁷ A \$5 million ceiling screens those companies out of the one exemption in which ordinary investors can participate on equal terms. Raising it is a direct answer to the adverse-selection concern.

D. Keeping capital inside Regulation Crowdfunding keeps it inside a disclosure framework. A Regulation Crowdfunding investor receives a Form C offering statement with financial statements whose level of assurance rises with offering size; issuers raising more than \$618,000 (or \$1,235,000 in a first offering) must provide audited financial statements.⁸ Issuers file annual reports on Form C-AR, and every offering runs through a registered broker-dealer or a FINRA-member funding portal that must have a reasonable basis to believe the issuer complies with the rules.⁹ Rule 506(c) offers investors a different set of trade-offs, and it should remain available to those who prefer it. But a cap that pushes capital out of Regulation Crowdfunding takes away the choice to invest in those companies on Regulation Crowdfunding’s terms. It also moves that capital away from the intermediary requirement, which, as Part II explains, is a structural protection that no other federal offering framework provides. We note that larger offerings will also bring more holders of record per issuer; we encourage the Commission to consider, in the same rulemaking, the petitioner’s recommendation to make Rule 3a-9 crowdfunding vehicles workable so that a higher cap does not create problems under Section 12(g) of the Securities Exchange Act of 1934.¹⁰

E. Disclosure and choice, not wealth, should determine access. This petition reflects a principle ICAN has advanced in litigation and policy work: investor protection should rest on disclosure and on limits that cap any one investor’s exposure while leaving every investor free to participate, not on wealth tests that exclude most Americans from private markets altogether. Regulation Crowdfunding is the Commission’s clearest working model of that approach. A 2019 Mercatus Center comment made a related point: the Securities Act was designed to give investors accurate information so they could make their own choices, not to sort them into

⁵ 2020 Release, 86 Fed. Reg. at 3537 n.427.

⁶ SEC Staff, *Report to the Commission: Regulation Crowdfunding* (June 18, 2019) (“2019 Staff Report”), at 5, available at https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf.

⁷ Petition at 2.

⁸ 17 C.F.R. § 227.201(t)(3).

⁹ 17 C.F.R. §§ 227.100(a)(3), 227.202, 227.301(a).

¹⁰ July Supplement at 1–2.



avored and disfavored classes by income or wealth. Its author proposed opening private offerings to anyone who receives a sound disclosure document, because, as he put it, “[i]nformation is what matters.” Commission data show that non-accredited investors participated in only about 6% of Rule 506(b) offerings in each year from 2015 through 2018, even where the rule permitted them.¹¹ Participants at the Commission’s 2026 Small Business Forum ranked expanding the accredited investor definition as their first early-stage priority and raising this cap to \$20 million among their top five.¹²

The accredited investor definition’s alternatives to wealth do not fill the gap. Apart from holders of a few securities licenses, individuals who qualify without meeting the income or net worth tests do so issuer by issuer: a director or executive officer is an accredited investor in her own company’s offering and in no other.¹³ ICAN represents an investor in that position. She is an executive officer of a startup company; her income and net worth fall below the thresholds; she sought to invest \$25,000 to \$35,000 in a private fund; and two verification services she engaged each concluded that she did not qualify.¹⁴ Regulation Crowdfunding is one of the few federal pathways through which an investor like her may buy a private company’s securities without first qualifying as accredited, and the cap determines how much of the private market that pathway reaches.

F. The cap has not kept pace with the scale of private capital formation. Since Congress set the first crowdfunding limit in 2012, a growing share of the economy’s growth has taken place in private markets. Some companies now raise seed rounds in the hundreds of millions of dollars. Thinking Machines Lab raised \$2 billion at a \$12 billion valuation in 2025, and Humans&, Unconventional AI, and Mirendil each raised between \$200 million and \$480 million at valuations of \$1 billion or more. None of those rounds was open to the general public. These examples illustrate how dramatically private capital formation is shifting. Much of today’s most transformative innovation, particularly in artificial intelligence, is financed in private markets, leaving non-accredited investors largely unable to share in the growth and wealth creation it generates. The contrast with an earlier era is stark. When Amazon went public in 1997, ordinary investors could buy its shares at a valuation of about \$430 million. SpaceX remained private for 24 years and entered the public markets in June 2026 at a valuation of \$1.77 trillion.¹⁵ The companies named here would not raise under Regulation Crowdfunding at any

¹¹ *Concept Release on Harmonization of Securities Offering Exemptions*, Release No. 33-10649, 84 Fed. Reg. 30460, 30484 (June 26, 2019), available at <https://www.sec.gov/files/rules/concept/2019/33-10649.pdf>; see also Andrew Vollmer, *Harmonizing Private Securities Offering Exemptions*, Mercatus Center Public Interest Comment, File No. S7-08-19 (Sept. 24, 2019), at 1–3, 9, available at <https://www.sec.gov/comments/s7-08-19/s70819-6190606-192468.pdf>.

¹² SEC Office of the Advocate for Small Business Capital Formation, *Report on the 45th Annual SEC Small Business Forum* (2026) (“Forum Report”), at 7, 17–18, available at <https://www.sec.gov/files/2026-oasb-annual-forum-report.pdf>.

¹³ 17 C.F.R. § 230.501(a)(4), (a)(10), (a)(11).

¹⁴ Compl. ¶¶ 16–17, 20, *Kapszukiewicz v. SEC*, No. 4:25-cv-00975 (N.D. Tex. filed Sept. 9, 2025), ECF No. 1; see Pls.’ Br. in Supp. of Mot. to Alter or Amend the J. at 3, 7, *id.*, ECF No. 45-1 (Sept. 21, 2026).

¹⁵ TechCrunch, *Mira Murati’s Thinking Machines Lab Is Worth \$12B in Seed Round* (July 15, 2025), available at <https://techcrunch.com/2025/07/15/mira-muratis-thinking-machines-lab-is-worth-12b-in-seed-round/>; Reuters, *AI*



limit, and we do not suggest they should. But the same shift reaches innovative companies with far smaller capital needs. Regulation Crowdfunding is a principal federal exemption designed to let ordinary investors participate in early-stage innovation. Holding it at \$5 million discourages innovative companies that need more than that from using it and restricts ordinary investors' access to that innovation. A \$20 million limit is a modest step that would make the exemption useful to more innovative companies and let everyday investors share in more of their private growth.

G. The limit should be indexed to inflation. Fixed dollar thresholds erode. Congress recognized this when it directed the Commission, in Section 4A(h) of the Act, to adjust the dollar amounts in Section 4(a)(6) for inflation at least every five years.¹⁶ The Commission-set \$5 million figure has no such adjustment and has not changed since March 2021. We support indexing the new limit on the Section 4A(h) schedule.

II. Only Regulation Crowdfunding Requires an Accountable Intermediary

Disclosure and investment limits are not Regulation Crowdfunding's only investor protections. It also contains a structural protection that no other federal offering framework provides: every sale must be made through a registered intermediary. Congress made the intermediary a condition of the exemption itself. Section 4(a)(6)(C) of the Act exempts a crowdfunding transaction only if it is "conducted through a broker or funding portal that complies with the requirements of section 4A(a)," and Rule 100(a)(3) requires that the offering be conducted exclusively through one intermediary's online platform. Section 4A(a) of the Act and Subpart C of Regulation Crowdfunding then give that intermediary specific duties to educate investors, screen issuers, control the flow of investor funds, and reduce the risk of fraud.¹⁷ The intermediary is accountable for performing those duties. It may be liable to investors as a person who offers or sells the securities, and it is subject to FINRA membership, supervision, and examination. When the cap pushes the rest of a round into Rule 506(c), that structure falls away.

A. No other federal offering framework requires an intermediary. Each alternative an issuer can turn to when it outgrows the cap allows the issuer to sell its own securities directly to investors. Rules 506(b) and 506(c) impose no intermediary requirement. Neither does

Startup Humans & Raises \$480 Million at \$4.5 Billion Valuation in Seed Round (Jan. 20, 2026), available at <https://www.reuters.com/business/ai-startup-humans-raises-480-million-45-billion-valuation-seed-round-2026-01-20/>; TechCrunch, *Unconventional AI Confirms Its Massive \$475M Seed Round* (Dec. 9, 2025), available at <https://techcrunch.com/2025/12/09/unconventional-ai-confirms-its-massive-475m-seed-round/>; Tina Li, *Anthropic Veterans' Startup Seeks to Help Scientists Develop Their Own AI*, Wall St. J. (June 24, 2026), available at <https://www.wsj.com/tech/ai/anthropic-veterans-startup-seeks-to-help-scientists-develop-their-own-ai-09e2f3e5>; Amazon.com, Inc., Prospectus (Form 424B1) (May 15, 1997) (offering 3,000,000 shares at \$18.00 per share, with 23,858,702 shares outstanding after the offering, or 24,308,702 if the underwriters' over-allotment option was exercised in full), available at <https://www.sec.gov/Archives/edgar/data/1018724/0000891020-97-000868.txt>; Reuters, *Musk's SpaceX Prices Record \$75 Billion IPO at \$135 a Share* (June 11, 2026), available at <https://www.reuters.com/world/musks-spacex-prices-record-75-billion-ipo-135-share-2026-06-11/>.

¹⁶ 15 U.S.C. § 77d-1(h); see 2020 Release, 86 Fed. Reg. at 3536.

¹⁷ 15 U.S.C. § 77d(a)(6)(C); 17 C.F.R. § 227.100(a)(3) & instruction to para. (a)(3); see 15 U.S.C. § 77d-1(a)(1)–(12); 17 C.F.R. §§ 227.300–.305.



Regulation A, at either tier. Neither does registration under Section 5; the Securities Act does not require that a registered offering be underwritten. In each case, the issuer's own officers and employees may sell without registering as brokers if they meet the conditions of Exchange Act Rule 3a4-1.¹⁸ Intermediaries often participate in these offerings, and when a FINRA member does, FINRA's filing and diligence obligations follow.¹⁹ But that participation is a commercial choice. It is not a condition of the exemption or of registration. Only in Regulation Crowdfunding is a regulated intermediary participating in every offering.

We do not suggest that Regulation A and registered offerings lack meaningful protections. Offering documents in both are subject to review by the Commission's staff, Section 12(a)(2) of the Act applies to both, and registered offerings carry Section 11 liability, including for any underwriter that participates.²⁰ But Regulation A is costly enough that many issuers in this range do not use it, as discussed in Part III, and a registered offering costs even more. For those issuers, the realistic alternative is a Rule 506(c) round. That round, limited to accredited investors, involves no staff review, no mandated disclosure, no investment limits, and no required intermediary. That difference does not make Rule 506(c) a lesser choice; it means Regulation Crowdfunding offers a different combination of protections, one that allows it to remain open to every investor regardless of wealth.

B. Intermediaries educate issuers, founders, and investors. Founders of issuers that use Regulation Crowdfunding often have little experience with securities offerings, and the intermediary may be the first securities professional they work with.²¹ The rules anticipate that role. A funding portal may not give investment advice to investors, but the funding portal safe harbor expressly permits it to "[a]dvice an issuer about the structure or content of the issuer's offering, including assisting the issuer in preparing offering documentation."²² And because the intermediary must have a reasonable basis to believe the issuer complies with the statute and the rules before it may host the offering, it has both the authority and the incentive to teach founders those rules before any investor commits.

Meeting that standard requires the intermediary to take each issuer through obligations its founders may never have encountered: the contents of the Form C, including the financial statements required at each offering tier; the background and regulatory-history checks the intermediary must run on the issuer and on each officer, director, and 20% owner; the limits on advertising outside the platform and the disclosure required of paid promoters; the duty to file progress updates, and to amend the offering statement when a material change occurs, which

¹⁸ 17 C.F.R. § 230.506(b)–(c); 17 C.F.R. §§ 230.251–263; 15 U.S.C. § 77e; 17 C.F.R. § 240.3a4-1.

¹⁹ See FINRA Rule 5110 (filing requirements for public offerings in which members participate); FINRA Rule 5123 (filing requirements for private placements sold by members); FINRA Regulatory Notice 10-22 (Apr. 2010) (broker-dealers' obligation to conduct a reasonable investigation in Regulation D offerings).

²⁰ 15 U.S.C. §§ 77c(b)(2)(D) (applying Section 12(a)(2) to Regulation A offerings), 77k(a)(5), 77k(b)(3), 77l(a)(2); 17 C.F.R. § 230.252.

²¹ See 2019 Staff Report at 5 (median issuer was incorporated approximately two years before its offering and employed about three people).

²² 17 C.F.R. § 227.402(b)(5); see 15 U.S.C. § 78c(a)(80)(A); 17 C.F.R. § 227.402(a).



requires investors to reconfirm their commitments; and the duty to file annual reports after the offering, on pain of losing eligibility for future offerings. Intermediaries also have every reason to make sure founders understand that directors and principal officers may be personally liable to investors under Section 4A(c) of the Act for material misstatements in the offering.²³ A founder who completes that process comes away with a working understanding of disclosure obligations that will serve the company's investors long after the offering closes. A founder who raises the rest of a round under Rule 506(c) need not work with anyone in that role.

The intermediary educates investors too, and Congress made that a condition of the exemption. Before accepting any investment commitment, the intermediary must deliver plain-language educational materials explaining, among other things, the investment process and its risks, the types of securities offered, the restrictions on resale, the investment limits, and the possibility that the issuer will stop filing annual reports.²⁴ Each investor must represent that he or she has reviewed those materials, understands that the entire investment may be lost, and can bear that loss. Each must also complete a questionnaire showing an understanding of the limits on cancellation, the difficulty of resale, and the risk of total loss.²⁵ No rule requires anyone to deliver comparable materials or obtain comparable acknowledgments when an issuer sells under Rule 506, under Regulation A, or in a registered offering.

C. The intermediary must have a reasonable basis to believe the issuer complies. Section 4A(a)(5) of the Act requires every crowdfunding intermediary to take the measures the Commission prescribes to reduce the risk of fraud, including background and securities enforcement regulatory history checks on each officer, director, and holder of more than 20% of the issuer's outstanding equity.²⁶ Rule 301 implements that mandate and makes the intermediary a gatekeeper in four ways. First, the intermediary must have a reasonable basis for believing that the issuer complies with Section 4A(b) and the related requirements of Regulation Crowdfunding. Second, it must have a reasonable basis for believing that the issuer has established means to keep accurate records of its securityholders. Third, it must deny an issuer access to its platform if it has a reasonable basis to believe that the issuer or any of its officers, directors, or 20% owners is disqualified as a bad actor, and it must run the background checks needed to make that determination. Fourth, it must deny access if it has a reasonable basis to believe that the issuer or the offering presents the potential for fraud or otherwise raises investor-protection concerns, including when it cannot adequately assess that risk. If it learns of such concerns after an offering goes live, it must promptly remove the offering, cancel it, and see that investors' funds are returned.²⁷

²³ 17 C.F.R. §§ 227.100(b)(5) (ineligibility of delinquent filers), 227.201 (Form C contents), 227.202 (annual reports), 227.203(a)(2)–(3) (amendments and progress updates), 227.204 (advertising), 227.205 (promoter compensation), 227.301(c)(1) (background checks), 227.304(c) (reconfirmation); 15 U.S.C. § 77d-1(c)(3) (liability of directors and principal officers).

²⁴ 15 U.S.C. § 77d-1(a)(3)–(4); 17 C.F.R. § 227.302(b).

²⁵ 17 C.F.R. § 227.303(b)(2).

²⁶ 15 U.S.C. § 77d-1(a)(5).

²⁷ 17 C.F.R. § 227.301(a)–(c); *see id.* § 227.503 (disqualification).



Other duties protect investors throughout the offering. The intermediary must have a reasonable basis to believe that each investor is within the investment limits. Investor funds must be held by a qualified third party, or, for a broker intermediary, handled under Exchange Act Rule 15c2-4, and released to the issuer only after the target amount is reached and the cancellation period has run; if the offering fails or an investment is cancelled, the funds go back to investors. Investors may cancel for any reason until 48 hours before the offering deadline, and if a material change occurs, a commitment is cancelled unless the investor reconfirms it. The intermediary must keep public communication channels in which investors can question the issuer and in which anyone paid to promote the issuer must say so. And the intermediary's directors, officers, and partners may not hold a financial interest in any issuer on its platform.²⁸

The reasonable-basis standard is not underwriter due diligence. An intermediary may generally rely on an issuer's representations unless it has reason to question their reliability.²⁹ But the Commission and FINRA treat it as a standard they can and do enforce. In the Commission's first enforcement action involving Regulation Crowdfunding, it alleged that a funding portal and its chief executive failed to address red flags in two offerings, including the criminal history of a person involved in them. The portal and its chief executive consented to judgments enjoining them from violating Section 4A(a)(5) of the Act and Rule 301(c)(2), and the portal paid a civil penalty and disgorgement.³⁰ FINRA reports that its examinations have found intermediaries that failed to deny access to issuers or offerings after learning of warning signs of potentially fraudulent activity.³¹

The intermediary's compliance also bears on whether the exemption survives. Rule 502 excuses an insignificant failure to comply with Regulation Crowdfunding only if the issuer made a good-faith and reasonable attempt to comply and, where the failure results from the intermediary's own noncompliance in the issuer's offering, the issuer did not know of it. Even then, the Commission may still bring an enforcement action for the failure.³² An issuer relying on the exemption therefore depends on its intermediary doing its job, and has every reason to choose one that will. When an issuer sells directly under Rule 506(c), no one but the issuer is charged with asking these questions.

²⁸ 15 U.S.C. § 77d-1(a)(7), (8), (11); 17 C.F.R. §§ 227.300(b), 227.303(b)(1), (c), (e), 227.304(a), (c).

²⁹ 17 C.F.R. § 227.301(a).

³⁰ SEC Press Release No. 2021-182, *SEC Charges Crowdfunding Portal, Issuer, and Related Individuals for Fraudulent Offerings* (Sept. 20, 2021), available at <https://www.sec.gov/newsroom/press-releases/2021-182>; *SEC v. Shumake*, No. 21-cv-12193 (E.D. Mich. filed Sept. 20, 2021); SEC Litigation Release No. 25298 (Jan. 3, 2022) (consent judgments against TruCrowd, Inc. and its chief executive, including a \$97,500 civil penalty and \$129,380 in disgorgement and prejudgment interest against TruCrowd), available at <https://www.sec.gov/enforcement-litigation-releases/lr-25298>.

³¹ FINRA, *2025 FINRA Annual Regulatory Oversight Report: Crowdfunding Offerings: Broker-Dealers and Funding Portals* (Jan. 2025), available at <https://www.finra.org/rules-guidance/guidance/reports/2025-finra-annual-regulatory-oversight-report/crowdfunding-offerings>.

³² 17 C.F.R. § 227.502(a)–(b).



D. Intermediaries may be liable to investors as sellers. Regulation Crowdfunding also makes intermediaries answerable to investors in court. Section 4A(c) of the Act gives a crowdfunding purchaser a private right of action for material misstatements and omissions, modeled on Section 12(a)(2) of the Act. The action lies against the issuer, its directors and principal officers, and “any person who offers or sells the security in such offering.”³³ The purchaser need not prove scienter or reliance. Instead, the defendant bears the burden of proving that it did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The purchaser may recover the price paid with interest, or damages if it no longer owns the security, subject to the loss-causation defense of Section 12(b) and the limitations periods of Section 13 of the Act.³⁴

The Commission has recognized that this liability can reach intermediaries. In proposing Regulation Crowdfunding, it stated that it appeared likely that intermediaries, including funding portals, would be considered issuers for purposes of Section 4A(c). In adopting the rules, it declined to exempt intermediaries from that liability or to read the statute as categorically excluding them, explaining that the question turns on the facts and circumstances. It also described how an intermediary can exercise the reasonable care the statutory defense requires: by adopting policies and procedures reasonably designed to ensure compliance with Regulation Crowdfunding, and by reviewing an issuer’s offering documents before posting them to evaluate whether they contain materially false or misleading information.³⁵ Seller liability and the reasonable-basis requirement thus work together. The intermediary’s best defense against liability is the diligence the rules already require of it.

Compare the alternatives. In a Rule 506(c) round sold directly by the issuer, there is no intermediary to sue. Section 12(a)(2) generally does not reach private placements, so investors are typically left with Rule 10b-5, under which they must plead scienter with particularity and prove reliance.³⁶ Regulation A makes Section 12(a)(2) available against any person offering or selling the securities, but it does not require that an intermediary exist. Registered offerings impose Section 11 liability on underwriters, but only when there is an underwriter. Regulation Crowdfunding is the only framework in which the law guarantees investors a regulated intermediary in every offering that may answer to them under a reasonable-care standard.

E. FINRA supervises intermediaries and requires written supervisory procedures. Every crowdfunding intermediary must register with the Commission as a broker or funding portal and must be a member of a registered national securities association, which today means FINRA.³⁷ Membership brings continuing oversight. FINRA’s Funding Portal Rules require each

³³ 15 U.S.C. § 77d-1(c)(1)(A), (c)(3).

³⁴ 15 U.S.C. § 77d-1(c)(1)–(2); *see id.* §§ 77l(b), 77m.

³⁵ *Crowdfunding*, Release No. 33-9470, 78 Fed. Reg. 66428, 66499 (Nov. 5, 2013), available at <https://www.sec.gov/files/rules/proposed/2013/33-9470.pdf>; *Crowdfunding*, Release No. 33-9974, 80 Fed. Reg. 71388, 71478–79 (Nov. 16, 2015), available at <https://www.sec.gov/files/rules/final/2015/33-9974.pdf>. We are unaware of any reported decision applying Section 4A(c) to an intermediary.

³⁶ *Gustafson v. Alloyd Co.*, 513 U.S. 561, 584 (1995); 15 U.S.C. § 78u-4(b)(2).

³⁷ 15 U.S.C. § 77d-1(a)(1)–(2); 17 C.F.R. § 227.400(a).



portal to observe “high standards of commercial honor and just and equitable principles of trade,” prohibit false, exaggerated, or misleading portal communications, and bar a portal from including on its website any issuer communication that it knows or has reason to know is false or misleading.³⁸ Funding Portal Rule 300(a) requires each portal to establish and maintain a supervisory system reasonably designed to achieve compliance with the securities laws and FINRA’s rules. At a minimum, that system must include written procedures to supervise the portal and its associated persons, a designated person with authority to carry out supervisory responsibilities, and reasonable efforts to ensure that supervisory personnel are qualified. Portals must also permit FINRA and the Commission to examine their business.³⁹ The Commission’s rules separately require each funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws.⁴⁰ Broker-dealers acting as crowdfunding intermediaries are subject to FINRA’s general supervision rule, including its written-procedures requirement, and must notify FINRA before engaging in crowdfunding transactions.⁴¹ FINRA publishes a written supervisory procedures checklist for funding portals and reports its examination findings on crowdfunding intermediaries in its annual oversight reports.⁴²

Written supervisory procedures are not a formality. They are how an intermediary turns the reasonable-basis, investor-education, and funds-handling requirements into consistent practice across many offerings, and they are what FINRA tests when it examines whether a portal is doing its job.⁴³

F. A higher cap extends these protections to more capital. The intermediary requirement is the feature that most clearly distinguishes Regulation Crowdfunding from every alternative, and it does not weaken as offering size grows. The intermediary that must vet a \$1 million offering must vet a \$20 million offering too, with more at stake for the intermediary if it fails. Each of the 323 concurrent Rule 506(c) raises that the petitioner reports moved capital into an exemption in which an intermediary’s participation is optional and Regulation Crowdfunding’s intermediary duties do not apply. Raising the cap would bring that capital inside the structure. Keeping the cap at \$5 million leaves it outside.

³⁸ FINRA Funding Portal Rules 200(a), 200(c)(2)(A), 200(c)(3), available at <https://www.finra.org/rules-guidance/rulebooks/funding-portal-rules/200>.

³⁹ FINRA Funding Portal Rule 300(a)(1)(A)–(C), (a)(2), available at <https://www.finra.org/rules-guidance/rulebooks/funding-portal-rules/300>.

⁴⁰ 17 C.F.R. § 227.403(a).

⁴¹ FINRA Rules 3110(a)–(b), 4518.

⁴² FINRA, *Written Supervisory Procedures Checklist for Funding Portals* (last reviewed and updated May 21, 2026), available at <https://www.finra.org/compliance-tools/written-supervisory-procedures-for-funding-portals>; see *supra* note 31.

⁴³ See FINRA Funding Portal Rule 300(a); *supra* note 42.



III. Responding to Investor-Protection Concerns

The 2020 increase drew opposition from NASAA, the Consumer Federation of America, Better Markets, CFA Institute, the Council of Institutional Investors, and Morningstar, among others, and CrowdCheck urged that any increase be paired with enforcement of existing requirements.⁴⁴ Those concerns deserve a direct answer from an investor advocate.

Investor losses. Early-stage investments fail often, and some Regulation Crowdfunding investors will lose money. Nothing in this letter suggests otherwise. Nor do we claim that misconduct is absent from the market. The Commission's 2019 staff report found relatively few enforcement actions, but it cautioned that this inference is limited by the potential latency of misconduct and a short observation period.⁴⁵ The relevant question is whether a higher issuer cap enlarges any investor's potential loss. It does not. Each non-accredited investor's annual exposure remains capped by Rule 100(a)(2), and the Commission concluded in 2020 that the existing intermediary, eligibility, disclosure, and reporting requirements continue to provide appropriate protections at a higher offering limit.⁴⁶

Compliance and audit quality. We agree that compliance matters more as offerings grow. The current cap generates compliance risk of its own: an issuer that needs more than \$5 million must run a Regulation Crowdfunding tranche alongside a concurrent private placement and keep the two offerings separate under the Commission's integration rules.⁴⁷ A higher cap lets more of those issuers raise a full round in a single offering under a single set of rules. The Commission, FINRA, and state regulators each take the position that they can and should police compliance in this market, and the existing rules give them the means to do so at any offering size. An issuer delinquent in its annual reports is ineligible to use the exemption, and intermediaries must have a reasonable basis to believe issuers comply.⁴⁸ Offerings above \$5 million would require audited financial statements, as offerings above \$618,000 do now. Compliance concerns are a reason to apply the existing requirements at the higher limit, not a reason to keep the cap where it is.

State regulators. State regulators regard investor protection as a core part of their role, and a higher cap does not diminish it. Securities sold under Section 4(a)(6) are already covered securities, and in 2020 the Commission added Rule 227.504 to confirm that status for the expanded exemption.⁴⁹ Section 18(c)(1) of the Act preserves state authority to investigate and bring enforcement actions for fraud in connection with these offerings, and a higher cap leaves

⁴⁴ 2020 Release, 86 Fed. Reg. at 3535 n.398, 3537 nn.425–28, 3538 n.434.

⁴⁵ 2019 Staff Report at 5, 42–44.

⁴⁶ 2020 Release, 86 Fed. Reg. at 3538–39.

⁴⁷ 17 C.F.R. § 230.152.

⁴⁸ 17 C.F.R. §§ 227.100(b)(5), 227.301(a).

⁴⁹ 17 C.F.R. § 227.504; 2020 Release, 86 Fed. Reg. at 3538.



that authority where it is.⁵⁰ The practical alternative to a higher Regulation Crowdfunding cap is not state review; it is a Rule 506(c) offering, which is also preempted.

Objections raised in this docket. One commenter argues that Regulation Crowdfunding was designed for modest community raises, that Regulation A, Regulation D, and venture capital already serve larger needs, that a higher cap mainly benefits portal economics, and that Form C disclosure is not automatically adequate at Series A scale.⁵¹ Each alternative has a real cost for ordinary investors. Regulation D and venture capital are largely closed to non-accredited investors. Regulation A Tier 2 is open to them but costly enough that many issuers in this range do not use it. Portal fees are disclosed and do not change any investor's exposure. Those fees also pay for the only gatekeeper that any of these frameworks requires: an intermediary that must vet the issuer, educate investors, and answer to investors and FINRA for its conduct, as Part II explains. And the disclosure point argues for calibrating Form C at higher tiers, not for keeping those issuers out of the one exemption retail investors can readily reach. Median offerings that remain far below \$5 million show that most issuers will not use the higher limit; the ones that will are precisely the more mature companies retail investors are now denied.

IV. The Commission Has Authority Under Section 28

A. The basis for the 2020 increase applies equally here. Section 28 of the Act authorizes the Commission, by rule, to “conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions” of the Act, “to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”⁵² In 2020 the Commission relied on Section 28, together with Section 19(a), to raise the Regulation Crowdfunding limit from \$1.07 million to \$5 million. It explained that the amendment extended the Section 4(a)(6) exemption to additional classes of transactions: those above the statutory figure but within the new limit.⁵³ It found that exemption consistent with the plain language of Section 28, and it noted that when Congress enacted Section 28 in 1996 it expected the Commission to use the authority to raise the Rule 701 offering limit above its statutory \$5 million ceiling.⁵⁴ To preserve covered-security status and the Section 12(g) exemption, the Commission added Rule 227.504 and amended Rule 12g-6.⁵⁵ The petition asks the Commission to apply the same reasoning to a larger band of transactions, subject to every other condition of Regulation Crowdfunding. Those conditions include the intermediary requirements discussed in

⁵⁰ 15 U.S.C. § 77r(c)(1).

⁵¹ Letter from Shane Liddell, CEO, Smart Crowdfunding, File No. 4-914 (Sept. 17, 2026), available at <https://www.sec.gov/comments/4-914/4914-1053999-3632432.pdf>; see also SEC Division of Economic and Risk Analysis, *Analysis of Crowdfunding Under the JOBS Act* (May 2025), at 4–5 (median successful offering reported raising approximately \$113,000), available at <https://www.sec.gov/files/dera-reg-cf-2505.pdf>.

⁵² 15 U.S.C. § 77z-3; see also 15 U.S.C. § 77s(a).

⁵³ 2020 Release, 86 Fed. Reg. at 3537–38.

⁵⁴ *Id.* at 3537 n.429 (citing *Rule 701 — Exempt Offerings Pursuant to Compensatory Arrangements*, Release No. 33-7645 (Feb. 25, 1999)).

⁵⁵ *Id.* at 3538 & n.443.



Part II, which bear directly on whether the exemption is consistent with the protection of investors. Every transaction in the expanded band would still be conducted through a registered, FINRA-supervised intermediary with gatekeeping duties and potential liability to investors.

B. The leading objection, read closely, supports this exemption’s design. The most careful argument against this use of Section 28 is the Mercatus Center’s 2020 public interest comment, which the Commission addressed in adopting the 2020 amendments.⁵⁶ That comment did not oppose higher limits. Its authors wrote that they did not oppose “raising (or perhaps even abolishing) the dollar limits” as a matter of policy.⁵⁷ Their concern was the source of authority, and their analysis identifies the features that make an exemption of this kind sound. The petition has each of them.

Congress’s bargain. The comment’s central argument is that the crowdfunding dollar limit was one element of a congressional balance between relief from registration and investor protection, and that the protections Congress paired with it, including investor limits, issuer disclosure, and a required intermediary, were part of that plan. We agree with that description, and it is the reason this exemption is consistent with the protection of investors. The petition leaves in place every protection the comment identified. It changes only the issuer limit, which does not change what any investor may lose. The investor side of Congress’s balance is untouched. The comment also observed that Congress has historically raised statutory dollar figures itself. Congress did negotiate the crowdfunding figure closely, but it enacted Section 4(a)(6) in 2012 with Section 28 already on the books and did not exclude crowdfunding from it. The comment’s principal textual indicator concerned Rule 504: Section 3(b)(1) provides that no issue may be exempted “under this subsection” above its ceiling. Section 4(a)(6) contains no comparable language. When Congress means to fence off exemptive authority it says so, as it did in Exchange Act Section 36(b).⁵⁸ And the history of the National Securities Markets Improvement Act of 1996 that the Commission cited shows that Congress contemplated using Section 28 to exceed a statutory dollar limit.

Sections 4A(h) and 3(b)(5). The comment reads Section 4A(h), which directs inflation adjustments, as the only way Congress meant the crowdfunding figure to change, and contrasts it with the power Congress gave the Commission to raise the Regulation A limit, which appears in Section 3(b)(5) and directs the Commission to review that limit periodically and raise it as appropriate.⁵⁹ We read both as mandatory duties layered on top of the Commission’s separate authority. Section 4A(h) requires the Commission to keep the statutory crowdfunding amount from eroding; Section 3(b)(5) requires periodic review of the Regulation A limit without the

⁵⁶ Andrew N. Vollmer & Brian R. Knight, *Does the SEC Have Legal Authority to Exceed Statutory Dollar Limitations?*, Mercatus Center Public Interest Comment, File No. S7-05-20 (Oct. 30, 2020), available at <https://www.sec.gov/comments/s7-05-20/s70520-7962754-224907.pdf>; see 2020 Release, 86 Fed. Reg. at 3535 n.406, 3537 n.429.

⁵⁷ Vollmer & Knight, *supra* note 56 (Conclusion).

⁵⁸ 15 U.S.C. § 78mm(b) (withholding Section 36 exemptive authority with respect to Section 15C, except as provided in Section 15C(a)(5)).

⁵⁹ 15 U.S.C. § 77c(b)(5); see Vollmer & Knight, *supra* note 56.



findings that Section 28 demands. Neither purports to withdraw the discretionary authority Congress granted in Section 28, and the amendment the petition seeks does not change the statutory figure at all.

Tethering to Section 4(a)(6). The comment warned that a freestanding exemption, untethered from Section 4(a)(6), would put covered-security status under Section 18 and the Section 12(g) exclusion in doubt.⁶⁰ The Commission took that warning seriously in 2020. Rather than create a separate exemption, it extended Section 4(a)(6) itself to an additional class of transactions, added Rule 227.504, and amended Rule 12g-6.⁶¹ The petition asks for the same structure. On this point the comment is a guide to how the exemption should be built, and the petition follows it.

Blanket exemptions. The comment argued that an exemption must relieve a subset of the persons or transactions a provision covers, relying on the D.C. Circuit's statement in *Alabama Power Co. v. Costle* that categorical exemptions from clear statutory commands are not favored. *Alabama Power* addressed an agency claiming implied exemptive authority, and the court explained that, absent a statutory grant, there is no general administrative power to create exemptions based on an agency's view of costs and benefits.⁶² Section 28, enacted in 1996, is that statutory grant. It authorizes exemptions for "any class or classes" of transactions, "conditionally or unconditionally." This exemption is conditional: it is available only to transactions that satisfy every other requirement of Section 4(a)(6) and Regulation Crowdfunding, and transactions above the band remain outside it. A defined class of transactions, subject to every condition Congress attached to crowdfunding and to findings the Commission must make and explain, is what Section 28 describes.

Utility Air and Financial Planning. The comment invoked two decisions, and both support the line we draw. In *Utility Air Regulatory Group v. EPA*, the Supreme Court held that an agency may not rewrite unambiguous numerical thresholds to suit its policy goals; EPA had claimed interpretive latitude to "tailor" statutory numbers without any grant of exemptive authority.⁶³ In *Financial Planning Ass'n v. SEC*, the D.C. Circuit held that the Commission could not use a narrow power to exempt "other persons" to broaden an exclusion whose conditions Congress had specified.⁶⁴ The court contrasted that narrow power with general exemptive authority framed in terms of the public interest and the protection of investors, the language Section 28 uses. Because the Commission had disavowed reliance on the Advisers Act's general exemptive provision, the court did not address it, and it treated the broader provision as confirmation that the narrow one was limited.⁶⁵ An agency that relies on express general

⁶⁰ Vollmer & Knight, *supra* note 56 (Question about Preemption of State Securities Regulation).

⁶¹ See *supra* notes 53–55 and accompanying text.

⁶² *Alabama Power Co. v. Costle*, 636 F.2d 323, 357–58 (D.C. Cir. 1979); see Vollmer & Knight, *supra* note 56.

⁶³ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 325–26 (2014).

⁶⁴ *Fin. Planning Ass'n v. SEC*, 482 F.3d 481, 488 (D.C. Cir. 2007).

⁶⁵ *Id.* at 491–92 (discussing Investment Company Act Section 6(c) and Advisers Act Section 206A).



exemptive authority, makes the findings it requires, and explains them is exercising delegated authority, not reinterpreting the statute.

Scale and institutional caution. The comment cautioned that exceeding a statutory figure would be at the outer edge of Section 28, and that an agency's use of contested authority is itself a public-interest consideration. A \$20 million limit is a larger step than the 2020 increase. Section 28 contains no ratio test, but the size of the band raises the importance of the required findings, and the record supports them: every transaction in the band would remain subject to the per-investor limits, disclosure, and intermediary requirements Congress designed, so the expansion changes which issuers may use the exemption, not the protections any investor receives. The 2020 increase has also operated for more than five years without challenge. For close cases, the comment called for a full explanation from the Commission, and we ask the Commission to provide one.⁶⁶

C. Supporting this exemption is consistent with ICAN's views on agency authority. ICAN regularly argues, in court and in comment letters, that the Commission must stay within its statutory authority and must justify the lines it draws. After *Loper Bright*, courts no longer defer to an agency's reading of an ambiguous statute. When Congress expressly delegates discretion, courts fix the boundaries of the delegation and ensure that the agency has engaged in reasoned decisionmaking within them.⁶⁷ We do not ask for deference here. First, Section 28 is an express delegation, and the exemption the petition seeks stays within its terms. Second, this exemption expands the choices available to issuers and investors; it does not extend the Commission's power over anyone. Third, the 2020 increase has stood for more than five years without challenge. We recognize that reasonable lawyers read Section 28 more narrowly, and we urge the Commission, in any proposing release, to explain its authority fully and to address *Loper Bright* directly.

The same principle applies elsewhere in the exempt offering framework. In litigation in the Northern District of Texas, ICAN represents an investor and an issuer who contend that the income and net worth tests in the accredited investor definition use wealth as a proxy for sophistication without adequate justification.⁶⁸ Regulation Crowdfunding shows why that question matters. It is the Commission's own working demonstration that investors who do not meet those tests can be protected through disclosure, a regulated intermediary, and limits on exposure rather than by exclusion, and the Commission found in 2020 that those protections remain appropriate at a higher offering limit.⁶⁹ Raising the cap applies that finding. We urge the Commission to apply it as well when it considers the accredited investor definition in its forthcoming exempt offering proposal.

⁶⁶ See *supra* note 46 and accompanying text; Vollmer & Knight, *supra* note 56 (Conclusion).

⁶⁷ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394–95 (2024).

⁶⁸ See Compl. ¶¶ 1–8, *Kapszukiewicz*, *supra* note 14.

⁶⁹ See *supra* note 46 and accompanying text.



Conclusion

The \$5 million cap does not reduce the risk any ordinary investor bears. It determines which part of a company's growth ordinary investors may share in, and today that is the earliest and riskiest part. Raising the limit to \$20 million and indexing it to inflation would let more mature companies raise a full round under standardized disclosure, through registered intermediaries that must vet issuers, educate investors, and answer for their conduct, from investors whose individual exposure stays capped. The Commission has said that its 2026 Regulatory Agenda includes updates to its exempt offering rules, including Regulation Crowdfunding, and the agenda targets a proposal to update the exempt offering pathways for October 2026.⁷⁰ We respectfully urge the Commission to include this amendment in that proposal.

We appreciate the Commission's consideration and would welcome the opportunity to discuss these views with the Commission or its staff.

Respectfully submitted,

Nicolas Morgan, President
Investor Choice Advocates Network

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Mark T. Uyeda, Commissioner
Office of the Advocate for Small Business Capital Formation

⁷⁰ Forum Report at 18; see Synne D. Chapman, Helena K. Grannis & Bobby Bee, *SEC Publishes Its 2026 Rulemaking Agenda*, Cleary Securities, Disclosure, and Governance Watch (July 9, 2026) (listing "Updating the Exempt Offering Pathways" for a rule proposal in October 2026), available at <https://www.clearysecuritieswatch.com/2026/07/sec-publishes-its-2026-rulemaking-agenda/>.