



The Crowdfund Intermediary Regulatory Advocates
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By Email (rule-comments@sec.gov) and U.S. Mail

U.S. Securities and Exchange Commission
100 F Street North East
Washington, DC 20549

**Re: SEC Regulatory Initiatives
JOBS Act Title III: Crowdfunding Portal and Broker Revenue Models**

Ladies and Gentlemen:

We are the Crowdfunding Intermediary Regulatory Advocates (“CFIRA”). We wish to thank you for participating in the CFIRA Symposium on Friday, July 13, 2012 to discuss 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 address certain comments made at the Symposium regarding portal compensation models. Specifically, we wish to address comments made by Robert L. D. Colby, Chief Legal Counsel of FINRA and David Blass, Chief Counsel of the SEC. Mr. Colby stated that crowdfunding portals might not be allowed to charge transaction fees to issuers and investors while Mr. Blass subsequently commented upon the fact that the SEC is in the process of reviewing crowdfunding fee structures related to donation and reward based portals.

We acknowledge that under existing securities law, the JOBS Act carves out a crowdfunding exemption from this regulation by adding a new transaction exemption to the Securities Act in Section 4(a)(6). With this exemption and preemption of related state securities laws, issuers and the intermediaries are free to engage in crowdfunding activities that would otherwise be characterized as public offerings requiring registration under the Securities Act and we have taken these rules into account when considering the revenue model.

We respectfully submit the following comments to summarize the views expressed amongst the CFIRA members on how to structure the Revenue Model for crowdfunding portals and Brokers in accordance to Rules of Fair Practice across the industry:

I. Existing Models for Donor Based Crowdfunding Portals

As you are aware, the “donation” and “rewards” based models currently operating charge between 5% and 15% in fees in connection with these offerings, Based upon this model, we believe that a 12-15% fee should be permissible for “equity” based portals and brokers. The following information is based on the three (3) donation and rewards based Portals, and is provided for further review and consideration:

- Kickstarter charges 5% for successful projects, no fee if the minimum isn't reached (and Issuers are expected to offer refunds); in addition, Amazon charges 3% - 5% of the amount raised by the fundraiser for credit card processing.
- RocketHub charges 4% of the threshold for funds raised if the threshold is met; if not threshold is not met, the fee increases to 8% of the total funds raised (the higher fee is imposed to incentivize the funds threshold to be raise). An additional fee of 4% fee for credit card processing is assessed.
- IndieGoGo has a dual fee program based on whether the raise is for a fixed or flexible amount. Flexible raise has a 4% platform fee if threshold is met and 9% if the target goal isn't met. Issuers keep the funds raised. Fixed raise also has a 4% platform fee assessed if the threshold is met, but if the target goal isn't reached, all funds must be returned and no fees are assessed. Both alternatives are subject to PayPal or credit card fees.

II. Existing Revenue Model by FINRA for Broker Dealers

Notice Member 92-53 “Underwriting Compensation Received by Members in the Public Equity Offerings” document was sent to Member firms in 1992 before NASD became FINRA and before the merger with NYSE compliance group. The NASD used a regression fee model to predict compensation values expressed as percentage offering proceeds for Broker Dealers. NASD Compensation Guidelines, the Corporate Financing Rule, Article III, Section 44 of the Rules of Fair Practice determined that the maximum amount of compensation considered fair and reasonable, includes the size of the offering and the amount of risk assumed by the underwriter, which is determined by whether the offering is being underwritten on a firm commitment or best efforts basis and whether the offering is an initial or secondary offering. The results indicated the gross proceeds of the offerings and the predicted percentage of gross proceeds, exclusive of any over allotment options, that might be allocated to underwriting compensation for firm commitment, IPO's, firm secondary offerings, and the best efforts corporate equity offering. In addition, the regulators allow higher fees for “firm commitment” offerings than “best efforts” offering because the risk an underwriter accepts if the deal is undersubscribed and they have to buy in the unsold securities. The notice provides that best efforts offerings of \$1 million (the smallest deal size on the chart) should have a commission of 11.83%.

It is also noted that the percentage allowed is inversely to the size of the raise, and offer that extending this 11.83% to smaller raises results in much higher percentages for the raises referenced in Title III of the JOBS act.

III. General Solicitation Letters from CFIRA

We believe the success of crowdfunding will be dependent upon a fair and reasonable fee scale being applied across the equity based market. We seek to work with SEC and FINRA to develop a revenue model that protects the issuers and investors while allowing the Portal and Brokers to realize profitability within their individual companies. These models should be further analyzed and supplemented by additional supporting information. We considered that equity crowdfunding portals will not have to make a commitment to sell a certain number of shares and should look to the “best efforts” fee scale. Furthermore, since the potential for most deals will fall below the \$1 million threshold, the portal would be entitled to a greater percentage of a smaller deal. With this type of framework, we recommend that fees should be scaled, with raises of \$500,000 - \$1 million being able to assess a percentage fee up to a certain cap and for raises under \$500,000 being able to assess a percentage fee up to a higher cap. These fees would not be inclusive of any Amazon, PayPal or other financial processing fees from outside vendors.

Additionally, we propose that portals may be free to charge other fees independent of the revenue model such as Third Party Fees (e.g. Amazon Payment, PayPal), Listing Fees and Maintenance Fees. We acknowledge that the JOBS Act stipulates provisions for ancillary services to include due diligence services, in connection with the offer, sale, purchase or negotiation of such security. These fees are allowed for a crowdfunding portal (versus a broker-dealer) only so long as such services do not include the separate compensation, investment advice or recommendation to issuers or investors. The portal is also allowed to provide standardized documents to the issuers and investors so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and only if issuers are not required to use the standardized documents as a condition of using the service.

We feel that the totality of fees described will be sufficient to support healthy crowdfunding platforms and a healthy industry without being excessive based on other pricing formats in similar industries. It is emphasized that the amounts cited herein are not derived through any joint analysis of or agreement upon price between any or all members of CFIRA.org, or associated professional organizations. We are simply proposing a structure similar to available standards and published summary research in similar industries. Individual companies and platforms are free to and encouraged to charge propriety fees per their own proprietary business models

IV. Recommendation Timeline

The Act requires the SEC to adopt the final regulatory structure for crowdfunding within the maximum of 270 days of the enactment. We recommend that SEC takes prompt action in consultation with members of our industry, the American public and experienced international resources that might provide guidance. In an effort to continue to build on the constructive relationship that has been developed between CFIRA and to ensure Congress’ timetable is respected, we continue to propose working

together in accordance with the following timetable to ensure this limited rule making period is both productive and comprehensive.

- September – Comment Period on Draft Revenue Model
- November – Comment Period on Revision Revenue Model and Adoption
- January 1, 2013 – Final rules enacted

The members of the Crowdfunding Advisory Group of CFIRA remain available to further to discuss recommendations and concerns based on this letter. We look forward to supporting the working relationships between all parties over the next few months as well as in the future. We all share the common goal of making crowdfunding a success not just for platforms, but especially for investors, small businesses and entrepreneurs.

Respectfully submitted,



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Founding Member
CFIRA



Christine Landon
Founding Member
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Cc :
Candace Klein, Chair
Vince Molinari, Co-Chair

CROWDFUNDING INTERMEDIARY REGULATORY ADVOCATES