CommunityLeader

August 17, 2012

David W. Blass
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-7010

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: CrowdFunding Regulations

Dear Mr. Blass and Ms. Asquith:

On behalf of CommunityLeader, Inc. ("CL"), a funding portal participating in the Crowdfunding space, I respectively submit comments concerning the in issuance of rules and regulations to be issued by both the Securities and Exchange Commission ("SEC") and FINRA. I have been a practicing securities attorney for 33 years and serve as the Chief Compliance Officer and General Counsel for CL.

As contrasted with the aggressive positions taken by many of the Crowdfunding trade associations and other professionals, our positions are conservative in nature. Our positions are supportive of the protection of investors. CL recognizes the paramount task of the funding portal is to assist in the prevention of securities fraud.

The following are our comments relating to certain code sections of the Securities Act of 1933, as amended (the "1933Act") and the Securities Exchange Act of 1934 (the "1934 Act").

1. Section 4(a)(6)(A) of the 1933 Act

For purposes of the computation of the $1 million limitation during the 12-month period preceding the date of a transaction, it is our position that all exempt issuer transactions under Section 4(a) of the 1933 Act, and Rules 505 and 506 of Regulation D, be included in such computation. Some commentators are taking the position that issuer offerings under Section 4 to accredited investors only not be included in the computation of the $1.0 million limitation. We believe that the language of the statute is clear that the $1.0 million limitation is not limited to only Crowdfunding offerings.

By way of example, if an issuer conducts a Rule 506 offering contained in Regulation D for $600,000 that closes on February 1, 2013, such issuer will only be able to conduct Crowdfunding offerings for no more than an aggregate of $400,000 for the period ending January 31, 2014.

However, if an issuer were to conduct a Crowdfunding offering for $600,000 that closes on February 1, 2013, the issuer could conduct a Rule 506 offering for any amount in the 12-month period thereafter. The issuer may have to be mindful of integration rules under Rule 502(a) of Regulation D, and the safe harbor contained therein, to the extent that the Commission deems that integration is a concern. It is the position of our firm that integration under Rule 502(a) is only applicable to Regulation D offerings and offerings under the Crowdfunding exemption not be included in the computation.

2. Section 4(a)(6)(B) of the 1933 Act

The definition of an "investor' should be clarified. An investor should be limited to a natural person or the revocable living trust of a natural person. It should be clarified that an investor cannot invest in an issuer who is offering a derivative security. We believe that an investment may only be made directly into an issuer and not in an issuer who will be acquiring a security in another entity.

Clarification should also be made as to whether an issuer may be selling securities in an investment, including, but not limited to, real estate, oil and gas and other passive investment vehicles. We believe that investment in these types of ventures be available to the Crowdfunding exemption. To the extent that the Crowdfunding exemption is permitted for investment entities, we believe that the Commission should comment on (i) the type of information be included for such investments pursuant to Section 4A(b)(1)(C) of the 1933 Act; and (ii) the application of the Investment Company Act of 1940 (the "1940 Act"). We believe that an exemption for compliance under the 1940 Act for Crowdfunding be carved-out.

We also believe that in the computation of net worth of an investor, that the exclusion of home equity in the definition, consistent with the amendment to Regulation D, Rule 501(a)(5), be adopted as mandated in the Dodd-Frank Wall Street Reform and Protection Act.

3. Section 3(a)(80) of the 1934 Act

Many professionals have advocated that a "funding portal" be permitted to receive some transaction based compensation. CL believes that this is beyond the scope of the Crowdfunding exemption. Subsections (A) and (C) of Section 3(a)(80) of the 1934 Act are explicit that a funding portal not "offer investment advice or recommendations" and " not compensate employees, agents or other persons for such solicitation or based on the sale of securities displayed or referenced on its website of portal." Unless a funding portal is registered as a broker dealer under Section 15(a) of the 1934 Act, it is CL's position that a funding portal should not receive any transaction based compensation. This is consistent with legislative intent.

The funding portal must comply with Section 4A(a) of the 1933 Act. In that regard, a funding portal should be able to collect certain fees for services rendered. The fees envisioned may be charged and collected in connection with due diligence efforts, document preparation, and education of issuers and investors as to the Crowdfunding exemption and its requirements and application of the portal's matching system. Otherwise, no commissions should be charged by the funding portal.

Furthermore, the securities laws of many states regulate the registration of broker dealers. To the extent that funding portals are able to collect transaction based fees for effectuating transactions in securities pursuant to federal law, the laws will be inconsistent with the laws of several states. The pre-emption provisions of the Crowdfunding exemption do not deal with the registration of broker dealers.

4. Section 4A(a)(3) of the 1933 Act

Investors must receive and review educational materials concerning an investment in an issuer disclosed on the funding portal's platform. We foresee two types of investor education programs. The first is "in-person" educational seminars. We believe that this method will be cumbersome. The second mode of education is over the Internet. CL will include on its website educational video clips that must be viewed by any investor on the funding portal as a prerequisite to investing. CL believes that to assure the full viewing of the video clips, either an online test is given or software be installed to assure CL that an investor has actually reviewed the entirety of the video clip. CL also believes that a representation and warranty be included in the Subscription Agreements stating that the investor has reviewed the educational material and had the ability to ask questions and have those questions addressed by CL.

5. Section 4A(a)(5) of the 1933 Act

To the extent that the background and securities enforcement regulatory history check divulges any adverse information (bankruptcy excluded) about any officer, director or 20% shareholder, a question arises as to whether this is merely a disclosure item or should disqualify the issuer from conducting a Crowdfunding transaction.

It is CL's position that the issuer should not be able to conduct a transaction pursuant to the Crowdfunding exemption. Essentially, a "bad boy" provision should be adopted to prevent fraudulent activities. CL believes that Item 401(d) of Regulation S-B be the basis for applying the "bad boy" provisions with a few modifications. Regulation S-B dealt with smaller issuers. Regulation S-B covered the five (5) year period prior to the offering which we believe to be more applicable than the ten (10) year requirement of Item 401(f) of Regulation S-K. To the extent a bankruptcy of any officer, director or 20% shareholder in the five (5) year period exists, it should be only a disclosure item.

6. Section 4A(a)(6) of the 1933 Act

It is clear that an Offering Memorandum must be supplied to the Commission and the investors only after filing with the Commission. However, in lieu of providing each investor the Offering Memorandum, CL believes that the funding portal is able to post on the platform an investor "tickler." This tickler would provide to a prospective investor a "tombstone" and a brief description of the company. The tickler would contain a legend to the point that it is clear that the tickler is not an offering of securities and that an offering of securities may only be accomplished through a filing with the Commission. In order to properly use the Crowdfunding exemption, it is necessary that the investors be apprised of types of companies that may appeal to their investment requirements. The tickler is the best avenue to inform investors to the existence of an offering. CL proposes that all ticklers and other communication materials must be recorded and archived by the funding portal or broker dealer.

During the 21 day "cooling off" period after the filing of the Offering Memorandum with the Commission, CL believes that the funding portal or broker dealer not be able to solicit subscriptions or escrow investors' funds. Rather, during the cooling off period, the funding portal or broker dealer should be able to receive indications of interest only. After the cooling off period, subscription agreements and investors' funds would be collected.

7. Section 4A(a)(7) of the 1933 Act

This section of the 1933 Act provides two distinct statutory rules. One is the concept of "all or nothing." Section 4A(a)(7) provides that the funding portal "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." This rule contemplates closing only when the stated amount of the raise has been attained. However, it contemplates a raise of more than the stated amount. Obviously, since the investors have the right to cancel their investment at any time prior to the closing, it is prudent for an issuer to raise more than the stated amount. If more than the stated amount is raised, an issuer should have two choices. The first is to reduce each investor's subscription on a pro rata basis so each investor may participate in the securities offering. The second choice, in the sole discretion of the issuer, should be the ability to sell a "green shoe." This would have to be disclosed in the Offering Memorandum that is filed with the Commission. CL urges that the Commission give an issuer the latitude to sell a greater percentage of the issuer, in the issuer's sole discretion.

8. Section 4A(a)(8) of the 1933 Act

CL acknowledges the need for a centralized platform to compile this information. CL notes that this information will be gleaned from investors in at least three occasions. The first is when an investor registers with a funding portal. The second is upon the actual subscription and the third is at the close of a raise for an issuer. Obviously, an investor can make a representation and warranty at each step as to his involvement in Crowdfunding offerings. CL, to the extent a central platform is not formed, believes that the representation and warranty of the Crowdfunding activity of an investor be respected and that no further independent verification be obtained. However, a centralized platform would be connected to all funding portals and broker dealers who conduct Crowdfunding. This would have to be mandatory. CL is willing to develop, ancillary to its funding portal, the centralized platform. In actuality, much of the centralized platform has already been developed. The centralized platform would automatically compile the information in real time and inform all funding portals and broker dealers of the availability of an investor to participate under Section 4A(a)(8) of the 1933 Act.

9. Section 4A(a)(10) of the 1933 Act

Section 4A(a)(10) of the 1933 Act provides that the funding portal or broker dealer shall "not compensate promoters, finders or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor." This provision is divided into two separate categories of analysis. The first category concerns the identity of a "promoter, finder or lead generator." CL views these groups as firms who provide compiled lists of investors, whether the investor consents or not. They usually have a list of potential investors' names, contact information and possibly information as to whether they are accredited investors.

With the advent of social media, tools now exist to forward Internet traffic to a website. This may be accomplished through Google Ad Words, a search engine optimization ("SEO") tool, sweepstakes sites or other similar sites. Use of SEO tools is for a fee, but is not a "promoter, finder or lead generator" in the traditional sense. CL does not consider these non-traditional social media tools to be considered a "promoter, finder or lead generator."

Private information, the second category for analysis, in a social media context is actually voluntarily provided by the potential investor. It is not compiled by a "promoter, finder or lead generator." Therefore, it is the position of CL that the use of social media tools, as listed above, should not be considered compensation of "promoters, finders or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor."

10. Section 4A(b)(1) of the 1933 Act

CL is aware of the information requirements set forth in Section 4A(b)(1) of the 1933 Act. The information will be included in the filing with the Commission during the 21 day cooling off period and will be provided by the funding portal to prospective investors. CL is also aware of the concept of "prospectus" generally under the securities laws. A prospectus could include oral statements made by the funding portal of the issuer. Any statement made in a prospectus, whether the prospectus required under Section 4A(b)(1) of the 1933 Act, or an oral prospectus, is subject to the anti-fraud and civil liability provisions of Section 4A(c) of the 1933 Act.

While many investors will rely solely on the prospectus filed with the Commission and will subscribe online with no need to further communicate with an issuer, other investors will have questions concerning the content of the prospectus. CL believes that the Commission should provide guidance concerning this potential communication between the interested investor and the issuer.

CL believes that any communication be controlled by the funding portal or broker dealer by sponsoring blogs and webinars between issuers and potential investors. All of the communication should be recorded and archived by the funding portal or broker dealer and be readily accessible by the Commission and FINRA. Direct communication by the issuer and the investors (without recording by the funding portal or broker dealer) should be discouraged through education of both the investors and the issuers and be explained in the regulations under Section 4A(1) of the 1933 Act.

If you would desire to discuss the content of this letter, please do not hesitate to contact me at your convenience at (858) 566-7010 or rick@weintraublawgroup.com.

Respectfully Submitted,

By: _____

Richard A. Weintraub, Esq.,
Chief Compliance Officer
CommunityLeader, Inc.