



The Crowdfund Intermediary Regulatory Advocates
20-22 West 12th Street
Cincinnati, OH 45202

By Email (rule-comments@sec.gov) and U.S. Mail

August 22, 2012

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

**Re: SEC Regulatory Initiatives
JOBS Act Title III: 21 Day Cooling Off Period, Rescission Period and
Oversubscription**

Ladies and Gentlemen:

We are the Crowdfunding Intermediary Regulatory Advocates (“CFIRA”). We wish to thank you for participating in the Symposium between CFIRA, FINRA and members of congressional staff, as well as your participation on Thursday, July 12, 2012, to discuss a variety of issues related 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 clarify CFIRA’s understanding of the 21 Day Cooling Off Period and to request clarification on two additional rules: Investor Rescission Period and Issuer Oversubscription, respectively, and to provide recommendations for each.

We respectfully submit the following comments and recommendations to summarize the views expressed amongst the CFIRA members on each of the aforementioned rules:

I. 21 Day Cooling Off Period

In regards to Sec. 4A(a)(6): the 21 Day Cooling Off Period, which is stated as “not later than 21 days prior to the first day on which securities are sold to any investor.” Under this provision, CFIRA’s understanding is that the issuer must pass background and securities checks, provide the data required to be posted by the broker or funding portal and the Commission notified. Then at least 21 days must pass after posting information about the issuer and the offering on the website or portal and notice is provided to the Commission before any securities

are “sold” to any investor. We understand that the intent for this is to allow sufficient time for investors to interact with the issuers prior to purchasing any securities and for the Commission to have notice of the offering.

If our understanding is correct, then CFIRA agrees with this approach.

However, it appears that there may be a distinction between an investor’s “commitment to invest” in Sec. 4A(7) and when “securities are sold” in Sec. 4A(6). Therefore, we seek additional clarification on the definition of “sold” in regard to an investor’s ability to cancel a commitment to invest as discussed below.

II. **Investor Rescission Period**

CFIRA seeks further clarification on provision Sec. 4A(a)(7), which indicates that offering proceeds are only available to the issuer once the aggregate capital raised has reached the target offering amount.

It appears that there may be two interpretations of when a security is sold and we request clarification for purposes of the rescission period.

In the first instance, until the target amount is reached, any investor may cancel their commitments to invest. Ostensibly then, the closing of the offering and distributing proceeds to the issuer is when the securities are actually “sold” and not when the investor transmits money to an escrow or trust account pursuant to an offer to invest.

Secondly, the provision could be interpreted to mean that once commitments for the target offering amount has been reached; 21 days must pass before closing the transactions and disbursing funds to the issuer. The rationale in such an interpretation would be to allow a cooling off period so that investors have the opportunity to change their minds. If this interpretation is correct, then investors can transmit funds for investment immediately, but 21 days must pass before the offering can be closed even if the target amount is reached in 5 days.

However, if investors have unlimited time to rescind or cancel their commitments to invest in an issuer during an extensive post-offering cooling-off period, it may result in an offering failing to reach its minimum target amount because of the uncertainty of investor rescissions thereby resulting in a premature termination of the offering.

We seek further clarification on this provision.

Recommendation: We acknowledge that an unrestricted right to rescind could lead to fraud and manipulation whereby initial investors disingenuously commit to invest in an offering with the sole purpose of attracting new investors and then undertaking an orderly rescission of such commitments as new investors are

attracted to the opportunity having been misled by investor interest. It will further be difficult for a portal or issuer to determine when an offering has met its target offering amount if investors are permitted to rescind without any limitations.

CFIRA recommends that the SEC considers that at the time an investor expresses intent to invest, during the minimum 21 day rescission period, the investment should be placed in “pending” status. Offerings would be allowed to close at minimum 21 days after the offering is posted to a portal and the investor would remain in a “pending” status with the rescission right available until the day of issuance close.

We believe empowering investors with ample rights of rescission will allow them to fully engage with the issuer, thereby fostering transparency between the issuer and investor.

Over Subscription of an Issuance

CFIRA acknowledges that SEC.302(b)/SEC4A.(b)(1)(F), campaign requirements is defined as the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount.

It is CFIRA’s understanding that without a cap on the offering amount, investors and issuers are exposed to potential liabilities and complications, as the issuer could inadvertently sell more equity than intended, or is available, which means that the issuance has been oversubscribed.

Recommendation: CFIRA recommends that the issuer set a cap on the offering amount of up to 20% at the campaign inception, which is greater than or equal to the offering target amount, not exceeding the \$1 million threshold for any 12 month period. This will allow for oversubscription within a defined range and will protect both the investor and issuer.

The members of CFIRA remain available to further to discuss interpretations and recommendations based on this letter. We look forward to continued dialog between all parties as the rulemaking process progresses.

Respectfully submitted,



Kim Wales, Founding Member, CFIRA



DJ Paul, Founding Member CFIRA, Co – founder & CSO, Crowdfunder

Cc :

Candace Klein, Chair CFIRA, CEO of SoMoLend

Vince Molinari, Co-Chair CFIRA, CEO of Gate Technologies

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