September 26, 2012

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

Re: JOBS Act Implementation

Ladies and Gentlemen:

I am writing today in response to the request for public comment before issuance of final rules to implement Title III – Crowdfunding of the JOBS Act. As one of the founders of risingtidefunding.com, a prospective funding portal, I am very excited about the possibilities of participating as an intermediary between everyday investors and entrepreneurs facilitating the American Dream for both. After a careful reading of the Act there are two overarching implementation concerns I would like to see addressed.

The first concern relates to questions about permissible fee structures for funding portals. It was reported that at a July 13, 2012, meeting, representatives of both the Commission and FINRA made comments indicating that it may be impermissible for funding portals to charge transaction fees on issues. While it is doubtless beneficial for both issuers and investors for costs to be as low as practicable, restricting funding portals to a flat fee-for-service structure will make it very difficult for any funding portal to build a sustainable business model. It will also have the effect of making smaller issues uneconomical. For example, in my estimation charging a flat fee for performing due diligence on an issuer, a flat fee for assembling offer materials for presentation of the offer, a flat fee for presenting the offer on the portal's website, and a flat fee for arranging the transfer of funds from investors to issuers would total in the $20,000 to $25,000 range. This amount would greatly inhibit any potential issue under $200,000. This is before considering the mandated overhead costs to perform investor due diligence and education, a service for which a funding portal is unlikely to be able to assess fees. While establishing fee structures for funding portals may seem a way to assure issuers and investors will have a certain market in which to operate, the result would be fewer funding portals and less innovation. I would advocate funding portals be left to establish their own funding models. Issuers will gravitate to the funding portals offering the best value for money and investors will gravitate to the funding portals with the best variety and presentation of issues, good customer service, and limited or no upfront costs for investors.

The second concern relates to the currently unknown standards to be imposed by FINRA to allow registration of funding portals. Some regulatory organizations have advocated that funding portals should be subject to substantially all requirements to which registered brokers or dealers are subject. While it is desirable that funding portals be operated in the highest professional, ethical, and prudential manner possible, imposing high registration costs, high regulatory compliance costs, and high capital standards will limit the number of competitors

resulting in higher costs and less choice in the market. Funding portals are extremely limited compared to a registered broker and the registration costs and requirements should be consistent with the risk and complexity of the entity.

In addition to these overarching concerns, I identified several areas in which I would like to comment and / or request clarification:

- Sec 302(a) limitations on investments in a 12-month period: There is inconsistency in the language in 4(a)(6)(B)(i) and (ii). It appears the intent is for an investor to be able to invest the greater of $2,000 or 5 percent of the greater of the investor's annual income or net worth for investors with both an annual income and net worth of less than $100,000. For investors with either an annual income or net worth equal to or more than $100,000, it appears the limitations are intended to be 10 percent of the greater of the investor's annual income or net worth up to a limit of $100,000. However, the uses of "either" and "or" in the Act make the actual limitations unclear.
- Sec 302(b) investor education: While assuring that investors understand the risks they are taking in making investments in crowdfunding securities issues, it would be highly beneficial if the universe of potential investor-education information was narrowed by either the Commission or FINRA to assure that that the necessary topics are properly addressed.
- Sec 302(b) due diligence on issuers: Guidance on acceptable levels of background checks on issuer principals and what is to be done with the information gathered during these checks would be appreciated. Would there be any obligation on a funding portal to make public information discovered during the check that does not rise to the level of disqualification of the principal and / or issuer?
- Sec 302(b) cancellation of investor commitments: While it is completely prudent for investors to have a period of time to reconsider between the time they decide to invest in an offer and when their funds are locked into the investment, it is important that there be a balance between an issue achieving its target offering amount and investors' right to rescind their commitment. These timeframes should be clearly spelled out so that all involved parties understand when the committed capital investments are final. Also having extended periods in which investors can cancel opens up the possibility of unscrupulous actors committing investments to make an issue appear popular and attractive and then backing out prior to funding in essentially a "pump and dump" scheme.
- Sec 302 (b) portal ensuring investors comply with investment limitations: Other than the investor self-certifying their compliance with the investment limitations, there will be very little way for a funding portal or a registered broker to determine what an individual investor has invested during the previous 12-month period. The best way to assure actual compliance with the limitations would be some form of central data repository for investors. Data on participating investors could be provided by the intermediary to the clearinghouse after each successful issue. Such a clearinghouse could also be used to maintain data including the investor's net worth and annual income and a certification that they have completed the investor education

requirements. This could enable an investor to complete this only on an annual basis and only once rather than with each funding portal and for each investment they make. These functions could most completely and accurately be performed either by the Commission or FINRA.

- Sec 302(b) prohibition of principals of intermediary having a financial interest in issuer: It would be an obvious conflict of interest for a principal of an intermediary to have a financial interest in an issuer when they are using the intermediary's services. Something that isn't specifically addressed is whether an intermediary's principals could participate in the issue or if the intermediary itself could take an interest in the issuer in lieu of some or all other compensation for facilitating the offer.
- Sec 302(b) description of financial condition of issuer: Would an issuer with a target amount of $100,000 or less have the option to provide either reviewed or audited financial statements, required for larger offers, in lieu of the tax return? Also, the requirement of audited financials for offers with targeted amounts ranging from $500,000 to $1,000,000 could be onerous and expensive. I would encourage the Commission to consider increasing this limit, possibly all the way to $1,000,000 effectively eliminating the requirement of audited financials for offers under the Act.
- Sec 302(b) target offering amount: Is the target offering amount required to be a discrete dollar amount or is a range permissible? If commitments exceed an issue's target offering amount, is there some level of tolerance with all funds going to the issuer or would the issue be apportioned to investors either by pro rata amounts, by priority of the timing of the investors' commitments, or some other method with the excess going back to the investors?
- Sec 302(b) restrictions on sales and Sec 303(a) excluding crowdfunding investors from shareholder cap: While it is clear that transfers of securities issued in crowdfunding can only be transferred to certain parties and / or under certain circumstances for one year after issue, would these transfers or transfers after the one-year holding period also be treated as exempt for shareholder caps? Also, what role, if any, could a funding portal have in transfers of securities after the one-year holding period?
- Sec 304(b) prohibitions on activities by funding portals:
    - Investment advice or recommendations: Does selecting offers for listings on a funding portal's website constitute a recommendation? Would it be permissible for a funding portal to include the name or logo of current offers listed on its site in advertisements as long as any investor would have to go to the site to obtain information on the offer?
    - Solicit purchases, sales, or offers to buy securities offered or displayed on its website or portal: This prohibition seems to run contrary to a funding portal's ability to do any level of advertising or even to list offerings on the portal. Can you please clarify the intent of this prohibition?
    - Compensate employees, agents, or other persons for solicitation or based on the sale of securities displayed on its website or portal: While commission-based compensation for sales of specific securities through a portal is understandable, does this prohibition eliminate all incentive-based compensation for employees

of the funding portal? If so, this is nonsensical and would make a funding portal inoperable.

- Hold, manage, possess, or otherwise handle investor funds or securities: Will it be necessary that only licensed third-party agents receive investor funds and disburse the proceeds to issuers or would it be acceptable for these funds to be in segregated accounts kept separate from all other funds belonging to the intermediary? Also, would it be considered a violation of this prohibition for an intermediary to provide services to the issuers such as maintaining records of the securities in book-entry format?

Once again, I greatly appreciate the opportunity to comment during this process and look forward to the results of the rulemaking process.

Best Regards,

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