The CrowdFund Intermediary Regulatory Advocates
20-22 W. 12th Street
Cincinnati, OH 45202

October 29, 2012

U.S. Securites and Exchange Commission
100 F. Street NE
Washington, DE 20549-1090
Atten: Ms. Elizabeth M. Murphy, Secretary

Re: SEC Regulatory Initiatives
JOBS Act – Title III: Integration with other securities offerings

Ladies and Gentlemen:

We are the Crowdfund Intermediary Regulatory Advocates ("CFIRA"). CFIRA was established following the signing of the Jumpstart Our Business Startups (JOBS) Act by President Obama on April 5, 2012. CFIRA is an organization formed by the crowdfunding industry's leading crowdfunding intermediaries and experts.

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 issues around the application of the "integration doctrine" to Title III crowdfunded securities offerings.

We respectfully submit the following comments and recommendations to summarize the views expressed amongst the CFIRA members on the integration doctrine and its application to crowdfunding:

I. Requests for SEC Interpretation of the application of its historical Integration Criteria to crowdfunding

It is unclear how the SEC's historical integration criteria are implicated by the crowdfunding and Regulation D reforms of the JOBS Act. Because of this uncertainty, we urge you to clarify, among other things, whether an issuer can conduct crowdfunded offerings concurrently with offerings under other exemptions, such as Regulation D.

It is also unclear how the six-month safe harbor in Regulation D Section 502 will affect Regulation D offerings that are made more than six months after a crowdfunded offering. We seek clarification as to whether such situations will receive the benefit of the safe harbor, and we

respectfully request that, if integration is applied to crowdfunded offerings, a similar safe harbor be extended to other exempt offerings made more than six months after a crowdfunded offering.

Finally, it is unclear whether integration will be applied to crowdfunded offerings at all. New Section 4A(f) of the Securities Act states that nothing in Section 4A or Section 4(a)(6) of the Securities Act will be construed as preventing an issuer from raising capital through methods not described under Section 4(a)(6). Given that applying integration doctrine to crowdfunded offerings will effectively "prevent an issuer from raising capital through [other] methods", this provision may be read to prohibit the integration of a Section 4(a)(6) crowd funding exempt offering with a separate exempt offering simultaneously conducted under Rule 506. Therefore, we respectfully request that the SEC clarify how it will interpret its traditional integration criteria in the face of the new statutory provisions.

II. Integration doctrine – application

In Release No. 33-8828 (August 3, 2007) the SEC explained the purpose of the integration doctrine as follows:

> "The integration doctrine seeks to prevent an issuer from properly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to the multiple offerings that would not be available for the combined offering."

We believe that one reason to analyze similar or related offerings on an integrated basis is to ensure that any applicable size requirements are satisfied. For example, Rule 506 of Reg. D provides a safe harbor from registration for a private offering made to no more than 35 purchasers who are not "accredited investors", subject to other conditions being met. Thus, permitting an issuer to conduct a single offering in separate tranches and to treat each tranche separately for compliance purposes would enable the issuer to circumvent the 35-non-accredited investor participation limit and still claim the benefit of the Rule 506 safe harbor.[1] Requiring issuers to integrate tranches that are part of the same offering and to analyze them in the aggregate is necessary when they seek to rely on Reg. D because Reg. D requires that an offering meet specified size limitations.

In crowdfunded issues, independent of size requirements, there is a particular reason to analyze similar or related offerings on an integrated basis: the expected relaxation of the rules on general solicitation for Reg. D offerings. This change was clearly made with the understanding that only accredited investors could use the information provided in the advertisement or solicitation that was publically distributed. If a parallel Reg. D offering is made with a

[1] *See* the Reg. D proposing release, text following note 133, where the SEC concluded that 30 days between Reg. D offerings was not sufficient to preclude integration: "We remain concerned, however, that an inappropriately short time frame could allow issuers to undertake serial Rule 506-exempt offerings each month to up to 35 non-accredited investors in reliance on the safe harbor, resulting in unregistered sales to hundreds of non-accredited investors each year."

crowdfunded offering, the general solicitation could attract non-accredited investors to the crowdfunded offering. However, it is unclear how the statutory intent of the JOBS Act affects this prospective concern – namely, the effect of the addition of 4A(b)(2) to the Securities Act of 1933, which can be interpreted to allow crowdfunding offering information to be generally distributed by the issuer, provided that the issuer only refers interested parties to its offering on a registered portal or broker/dealer. We respectfully request that the Commission provide clarification regarding the solicitation activities that are appropriate in concurrent or almost-so crowdfunding and 506 offerings.

III. Integration Positions of the Crowdfunding Industry

CFIRA's members have opposing views on whether the integration doctrine should be applied to crowdfunded offerings. The views encapsulate two different positions: members who oppose the application of the integration doctrine, and secondly, the members who support application of the integration doctrine to crowdfunded offerings.

Position 1: Integration doctrine should not apply to offerings made under other exemptions from registration when they are made concurrent with or less than six months subsequent to a crowdfunded offering, with an exception for parallel Reg D offerings made using general solicitation.

Integrating crowd funding offerings and offerings made under other exemptions is not in line with the stated purpose of the integration doctrine.

As stated above, In Release No. 33-8828 (August 3, 2007), the SEC explained the purpose of the integration doctrine was to "prevent an issuer from properly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to the multiple offerings that would not be available for the combined offering."

We believe that offering crowdfunded securities concurrent with or subsequent to another exempt offering is not an "artificial dividing [of] a single offering into multiple offerings". The division is not artificial at all, in fact the purpose of the division is to treat unaccredited investors participating in a crowdfunded issue differently (i.e. with greater investor protections) than the accredited investors participating in an offering under another exemption.

A healthy crowdfunding marketplace will be created by not integrating crowd funding offerings with other exempt offerings

Integration will force small businesses that are trying to raise capital to choose between, for example, a potentially larger Reg. D offering and a crowd funded offering. This could have the unintended consequence of excluding unaccredited investors from participation in issues of startups and growth-oriented companies that are viewed as more promising and more likely to succeed. Thus positioned, such issuers will likely select raising capital via a Reg. D offering to avoid the $1 million cap imposed upon crowdfunded companies under Title III.

The artificial exclusion of unaccredited investors from the most promising investments could negatively impact not only the individual investors, but the nascent crowdfunding industry.

To address this, we respectively request the SEC to consider drafting a 'safe harbor from integration' (as in Reg. D Sec. 502(a)) for crowdfunded offerings into the regulations.

Address general solicitation and advertising concerns through the safe harbor regulations.

It may concern the Commission that the use of general solicitation by an issuer, through a Reg. D offering made in parallel with a crowdfunded offering, can avoid the solicitation restrictions for a crowdfunding issue. CfIRA respectfully recommends the SEC address this concern by carving out Reg. D offerings where general solicitation is used from the crowdfunding integration safe harbor. Instead, only Reg. D offerings that are made under the current (pre-JOBS Act) solicitation rules would be permitted in parallel with a crowdfunded offering.

Manipulating the system to avoid integration by providing "a different class of security" to the Reg. D / accredited investors will inherently disadvantage the crowd.

If integration is applied to crowdfunded securities offerings, one way that issuers may use to avoid satisfying the five-factor test laid out in the SEC's 1962 integration doctrine letter is to offer the accredited investors a "different class of security". This will inherently disadvantage smaller investors, who—because of the application of integration—will not be able to demand terms more similar to those received by accredited investors.

Position 2: Integration doctrine should apply to offerings made under other exemptions from registration when they are made concurrent with or less than six months subsequent to a crowdfunded offering.

Reg D offerings made concurrent with, or within six months of, a crowdfunding round may fit all five of the criteria laid out by the SEC in their 1962 integration doctrine letter.

The criteria laid out in 1962 were as follows:

- Are they part of a single financing plan?
- Do they involve issuance of the same class of security?
- Are they made at or about the same time?
- Is the same type of consideration to be received?
- Are they made for the same general purpose?

If a crowdfunding round and Reg. D round for the same company are made at or about the same time and ostensibly for the same purpose, it is likely that they will also be considered a single financing plan. The Reg. D investors are likely to demand a more advantageous consideration or class of security; however, that should not prevent the SEC from finding the five criteria met,

because the intent of integration is satisfied by preventing the Reg. D investors from taking advantage of the "crowd".

Integration will protect the crowd by preventing issuers (and solicitors of issuers) from simultaneously or shortly thereafter conducting a Reg. D fundraising that will have the effect of providing different and more attractive securities for equal amounts invested as compared to the crowdfunding round.

Accredited investors tend when investing to negotiate more favorable terms than non-accredited investors based on experience, resources available, and other factors. This contrast and competition will more than likely lead to significantly different and more attractive securities being obtained by the Accredited Investors than the Crowdfunding Investors for equal consideration; thus causing the non-accredited or Crowdfunding investors ("the crowd") to likely pay more for lower valued securities, if separate capital raises take place concurrently, or nearly so, as in closely-dated offerings.

For crowdfunded transactions that are not of interest to accredited investors, or in instances where accredited investors are willing to participate on equal terms in a Crowdfunded offering, an integration prohibition on simultaneous or closely dated crowdfunded and Reg. D offerings should not cause negative or adverse consequences to anyone involved.

It is consistent with congressional and regulatory intent to protect the non-accredited investor as much as possible. In cases where both a crowdfunded offering and a different Reg. D offering are both active and available to different investor groups, requiring an issuer to essentially decide between the crowdfunded and Reg. D offerings is a reasonable requirement that does little harm to the issuer, while protecting the non-accredited investor from purchasing a less valuable security for equal consideration.

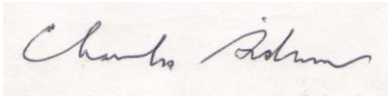
Conclusions

We have written this letter to provide you with respectful guidance and to present a wide spectrum of opinions of CfIRA members regarding the application of the integration doctrine in the context of crowdfunding. We remain available to further discuss interpretations and recommendations based on this letter, and we look forward to continued dialog among all parties as the rulemaking process progresses.

Respectfully,

Chris Tyrrell
Founding Member, CFIRA

Kim Wales
Founding Member, CFIRA



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