



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

November 26, 2012

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

**Re: SEC Regulatory Initiatives  
JOBS Act Title III: Rescission Rights Period and 21 Day Cooling Off Period – Part II**

Ladies and Gentlemen:

We are the Crowdfund Intermediary Regulatory Advocates (“CfIRA”). We wish to thank you for meeting with CfIRA on Friday, October 12, 2012 to discuss previous comment letters that had been submitted and 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 as Part II of the 21 Day Cooling Off Period comment letter submitted by CfIRA on 22 August, 2012, to clarify CfIRA’s interpretations of the provisions as defined in the JOBS Act and requested by the Commission.

In the first instance, CfIRA would like to address the term ‘securities sold date.’ CfIRA interprets the meaning of the definition as ‘the date the offering closes.’ If this interpretation is inaccurate, we seek clarification by the Commission.

We respectfully submit the following comments and recommendations to summarize additional views expressed amongst CfIRA members as related to what we formerly referred to as the 21 Day Cooling Off Period and Rescission Rights Period.

#### **21-Day Minimum Period between Offer Posting and First Sale**

Section 302.Sec 4A(a)(6): the 21-Day Period, which is described as starting not later than 21 days prior to the first day on which securities are sold to any investor. Under this provision, the law states that there must be at least 21 days between information being made available to potential investors and regulators and when actual transaction can be completed. Prior to posting a campaign on the Intermediary (Portal or Broker) site, issuer must submit the required issuer disclosures to the Intermediary based on Section 302.Sec 4A(b) for an issuer who offers or sells securities pursuant to the crowdfunding exemption:

1. The name, legal status, physical address, and website address of the issuer.
2. The names of the directors and officers and each person holding more than 20% of the shares of the issuer.
3. A description of the business and the anticipated business plan of the issuer.
4. A description of the financial condition of the issuer including, for offerings that, together with all other crowdfunding offerings within the preceding 12-month period have, in the aggregate target offering amounts of \$100,000 or less, the income tax

returns filed by the issuer for the most recently completed year and the issuer's financial statements certified by the CEO to be true and complete in all material respects.

5. Target offering amounts of more than \$100,000 but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for such review or standards and procedures established by the SEC; and target offering amounts of more than \$500,000, audited financial statements.
6. A description of the stated purpose and intended use of the proceeds of the offering.
7. The target offering amount, the deadline to reach that amount, and regular updates regarding the progress of the issuer in reaching that amount.
8. The price to the public of the securities or the method for determining the price, provided that, prior to sale, each investor is provided in writing the final price and all other required disclosures and given a reasonable opportunity to rescind the purchase commitment.
9. A description of the ownership and capital structure of the issuer, including how the securities being offered are being valued and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions.

We propose that posting of information on an Intermediary (Portal or Broker) site starts the mandated 21-day minimum period. The objective is to provide all information to investors and regulators for the full mandated 21-day minimum period between offer posting and sales, without trying to define a materially important subset of posted information that would be subject to this requirement.

In addition, CfIRA seeks confirmation that, while sales cannot be completed until after the 21-day period has expired investors may conduct due diligence and place orders (i.e. deposit funds into an escrow account) at any time after the deal posting, specifically including during the 21-day minimum period during which actual sales are prohibited.

**Recommendation I:** In the event there are any material revisions made to the offering for the posted campaign on the Intermediary site (registered Portal or Broker), the clock will restart for the 21-day minimum period.

#### I. Investor Rescission

Provision Sec. 4A(a)(7) requires intermediaries to ‘allow all investors to cancel their commitments to invest, as the Commission shall, by rule, determine appropriate.’ CfIRA understands that investors can rescind commitments to invest at any time before actual sales closing (i.e., for at least the minimum required 21-day period after posting of the offering), and thereafter until closing if the issuer or Intermediary elects not to close the campaign, (i.e., make the actual sales) at the expiration of the 21-day minimum period.

**Recommendation II:** CfIRA recommends that whenever an investor expresses the intent to invest, during the minimum 21-day period after an offer posting and thereafter until final closing, the investment should be placed in a “pending” status. The investment would remain in “pending” status with the rescission right available to the investor until the day of issuance closing. We fully support the investor’s right to rescind until the day of issuance close and believe that this may empower investors to more fully engage with the issuer, thereby fostering transparency between the issuer and investor.

## II. Issuer Rescission

**Recommendation III:** In the case of issuer rescission, CfIRA is unanimous that issuers should be allowed to rescind an offering as a whole (cancel or suspend the campaign) at any time before final sale, and should also be able to decline individual investor offers to purchase if and when a specific individual transaction would be unlawful in some way.

In addition, CfIRA believes that crowd funded offerings should be viewed as another type of private placement transaction with traditional issuer discretion regarding who is allowed to invest, so long as it does not violate discrimination laws that are in place under Federal law.

Working alongside the Commission, CfIRA strives to develop a balanced and healthy ecosystem for the crowdfunding industry. We believe that this will be possible, so long as flexibility, transparency, and a comprehensive framework of industry standards and best practices are created as the industry matures. The members of CfIRA remain available for further discussions relating to defining the frameworks for Title III and we continue to be available to work with the Commission, to ensure a healthy ecosystem, capital formation, and investor protection whenever possible.

We look forward to continued dialog between all parties as the rulemaking process progresses.

Respectfully submitted,



Kim Wales  
Wales Capital, Founder  
Founding Member and Board Member, CfIRA

CROWDFUND INTERMEDIARY REGULATORY ADVOCATES