



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

December 4, 2012

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

**Re: SEC Regulatory Initiatives  
JOBS Act Title III: Crowdfunding Portal and Broker Revenue Models – 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 submitted as Part II of the Crowdfunding Portal and Broker Revenue Models comment letter that was submitted by CfIRA on August 09, 2012, to address certain comments made during the meeting regarding responsibility for upfront costs with relation to the overall fee structure for Intermediaries (Portals and Brokers).

CfIRA acknowledges that under existing securities law, the JOBS Act carves out a crowdfunding exemption from regulation by adding a new transactional exemption to the Securities Act in Section 4(a)(6). With this exemption and preemption of related state securities laws, issuers and the intermediaries are free to engage in crowdfunding activities that might otherwise be characterized as public offerings requiring registration under the Securities Act and we have taken those rules into account when considering the revenue model.

CfIRA encourages and endorses flexibility with respect to restrictive fee structures that may prohibit Intermediaries (Portals and Brokers) from developing sustainable businesses with growth potential, which is necessary to facilitate and promote the industry. We respectfully submit the following information in accordance with rules of fair practice across the industry:

**I. Revenue Model – Absorption of Upfront Fees**

The revenue model as defined in Title III suggests that an Intermediary will be paid a percentage of fees based on the success of a fully funded campaign. Given that there are upfront costs associated with listing of campaigns for the Intermediary, it should be considered fair practice to allow Intermediaries to charge setup fees to offset expenses incurred in the event a campaign is not successful.

**Recommendation I:** Intermediaries should be permitted to charge issuers fees and other compensation so as to cover out-of-pocket expenses and margin to support and maintain ongoing operations. All such fees should be charged in accordance with FINRA caps and guidance.

These might include:

- a. Offering template set-up fees;

- b. Data hosting fees for maintaining drafts and the offering;
- c. Deal success fees, recognized upon a successful funding of a deal;
- d. Escrow set-up fees;
- e. Fees for third-party service provider costs associated with background checks and other due diligence;
- f. Fees related to funds receipt and disbursement (e.g. wire fees, ACH fees, check deposit fees, etc);
- g. Fees for ongoing use of platform tools (e.g. status updates, email);
- h. Fees, charges and/or revenue sharing arrangements from third party service providers advertising on the platform (e.g. accountants, lawyers, payroll services, etc).
- i. Portals may charge issuers these, and other, fees directly, including via a credit card of an executive or representative of an issuer. However, under no circumstances should any fees or charges be deducted from escrow prior to a deal closing, as those are investors funds and NOT (yet) the issuer's funds.

## II. Revenue Model – Fees Based on Fully Funded Campaigns

As stated in the previous revenue model letter, there are existing fee structures in place for the “donation” and “reward” based crowd funding models that currently charge between 5% and 15% in fees in connection with those campaigns which do not have a cap limit on the amount that can be raised and this information is based on the three donation and rewards based Portals: Kickstarter, RocketHub and IndieGoGo who charge a percentage for successful campaigns (fixed and flexible models), in addition to credit card processing fees.

Equally, the existing FINRA revenue model for Broker Dealers under NASD Notice to Members 92-53 “Underwriting Compensation Received by Members in Public Equity Offerings”, used a regression fee model to predict compensation values expressed as percentage offering proceeds for Broker Dealers. The Notice provides that best efforts offerings of \$1 million (the smallest deal size on the chart) should permit a commission of 11.83%.

It is noted that the compensation allowed is inverse to the size of the raise, and the offer that extending this 11.83% to smaller raises would result in higher percentages for the raises referenced in Title III of the JOBS Act, which are capped at \$1 million.

**Recommendation II:** Based upon these existing models, CfIRA recommends that a 12% - 15% fee be permissible for “equity” based Intermediaries (Registered Portals and Broker Dealers). Additionally, we propose that Intermediaries may be free to pass along other costs independent of the revenue model such as third party fees (e.g., Amazon Payment, Escrow) and maintenance fees.

We acknowledge that the JOBS Act, Title II, Section 201. Modification of Exemption, Sec. 3(A) and (B) anticipates the provision of ancillary services, to include due diligence services, in connection with the offer, sale, purchase or negotiation of such securities. However, we believe that charges for these services are allowed for a crowdfunding Portal (versus a Broker Dealer) only so long as such services do not include separate compensation for investment advice or recommendation to issuers or investors. The registered Portal is also allowed to provide standardized documents to the issuers and investors so long as such person or entity does not negotiate the terms of the issuance for and on behalf of third parties and only if issuers are not required to use the standardized documents as a condition of using the services.

The members of CfIRA believe the totality of fees described will be sufficient to support viable crowdfunding platforms and a healthy industry without being excessive compared to other pricing formats in similar industries. We remain available for further discussions relating to defining the framework for revenue models and we continue to be available to work with the Commission in developing industry standards and best practices that will balance the need for a healthy ecosystem and capital formation, ensuring investor protection whenever possible.

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Kim Wales".

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

CROWDFUND INTERMEDIARY REGULATORY ADVOCATES