



Arbitration Resolution Services, Inc.  
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THE JUDICIAL ALTERNATIVE™  
Nationwide dispute resolution services

### ***Via Electronic Submission***

July 19, 2013

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

**Re: Request for Public Comments on SEC Regulatory Initiatives under the JOBS Act Relating to Section 12(g) of the Securities Exchange Act of 1934, as amended by JOBS Act Title V- Private Company Flexibility and Growth, Title VI – Capital Expansion, and Title III – Crowdfunding**

Ladies and Gentlemen:

I am Executive Vice President, General Counsel, and Board Member of Arbitration Resolution Services, Inc., of Coral Springs, Florida ([www.arbresolutions.com](http://www.arbresolutions.com)). We submit this comment to the SEC's request for public comments referenced above. For the reasons set forth below, we believe it is essential that the SEC's rulemaking establish a fast, economical, and accurate means by which disputes are resolved between crowdfunding investors and crowdfunding portals.

The crowdfunding provisions of the JOBS act ensure that most investor disputes will involve relatively modest amounts of money. The maximum yearly investment for regular investors is \$2,000; wealthier investors may invest up to \$100,000 a year.<sup>1</sup> The National Crowdfunding Association reports that the typical investment by non-accredited investors today ranges between \$25 and \$2,000.<sup>2</sup> Given the relatively modest investments, how should these investor disputes be resolved? The obvious answer is arbitration, which has been used for decades to resolve investor disputes.

For crowdfunding portals established by broker-dealers, it would seem that investors have the right to require arbitration at FINRA under its rules (see FINRA rule 12200, which gives customers the right to require arbitration with their broker for disputes arising out of the broker's business). However, the definition of "customer" under this rule is ambiguous, as noted by ARS board member and former FINRA director of arbitration George Friedman in his recent article in the May 2013 issue of the Securities Arbitration Commentator, *Defining Who is a Customer in FINRA Arbitration: Time to Clear Things Up!*, (2012 SAC, No. 6).

<sup>1</sup> Securities Act of 1933, sec. 4(A)(6).

<sup>2</sup> See <http://www.nlcfa.org/crowdfund-101.html> <visited July 7, 2013>.

For crowdfunding portals that are established *independent* of broker-dealers, it would seem that absent an SEC rule to the contrary, the crowdfunding portal could establish whatever system it desires to resolve disputes. This might include rather unfair arbitration systems, as Mr. Friedman notes in his recent article, *The Arbitration Fairness Act of 2013: a Well-intended but Potentially Dangerous Overreaction to a Legitimate Concern*, (2013 SAC, No. 1):

“Also, some of the arbitration systems imposed on consumers and employees – again not those of the established ADR providers – have aspects that are not fair. For example, requiring consumers to travel hundreds of miles for a hearing involving relatively small amounts of money is not fair. Allowing the dominant party to select a captive ADR provider isn’t fair. Burying the arbitration agreement in the midst of a dense contract is not fair.... Moreover, class actions, the subject of much angst of late,<sup>3</sup> are not the weaker party’s best friend, with the typical payout being cents on the dollar or a discount coupon.”<sup>4</sup>

In April, North American Association of Securities Administrators (“NASAA”) President Heath Abshire said, at the “NASAA, SEC 19(d) Conference” in Washington:

“Arbitration doesn’t make sense for a \$10,000 investment, much less a \$2,000 investment—which is the size contemplated by the crowdfunding provisions in the JOBS Act.”

We disagree. While traditional, paper-based, show-up-in-person, “brick-and-mortar” arbitration may not make sense for these disputes, there is a way that arbitration *can* be used for crowdfunding disputes.

New companies, such as Arbitration Resolution Services, Inc. (ARS) now provide arbitration using a web based platform and any hearing are conducted either telephonically or via video conference. Therefore, parties don't have to do any traveling to be participate and many of their arbitrators are on the FINRA roster. The arbitrators are selected randomly based on experience and having passed a conflicts check so that there is guaranteed neutrality in the process.

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<sup>3</sup> See, e.g. *Schwab Eliminates Class Action Waiver for Clients*, available at <http://online.wsj.com/article/SB10001424127887323582904578488751635885808.html> <visited July 7, 2013>

<sup>4</sup> See, e.g., *Class Action Suits Benefit Few but Attorneys*, available at <http://news.investors.com/ibd-editorials-perspective/022013-645120-high-court-to-decide-whether-arbitration-hurts-consumers-rights.htm?p=full> <visited July 7, 2013>.

We urge the SEC to consider rulemaking that establishes an efficient, fair, inexpensive cloud-based means for resolving crowdfunding disputes

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark Norych, Esq.", with a stylized flourish at the end.

Mark Norych, Esq.  
Vice President/General Counsel

cc: Tom Weber, Esq., ARS President & CEO  
George Friedman, Esq., ARS Board Member