

August 22, 2020

Via Email to rule-comments@sec.gov

Commissioner Jay Clayton
Chairman
The Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Extension of the COVID-19 Temporary Relief to Regulation Crowdfunding

Dear Chairman Clayton,

As the Temporary Amendments to Regulation Crowdfunding that was adopted to facilitate capital formation for small businesses impacted by COVID-19 (“Temporary Relief”) are set to expire on August 31, 2020, I am writing to provide some market perspectives on behalf of OpenDeal Portal LLC (“Republic”), one of the most active funding portals operating under Regulation Crowdfunding, and to advocate for its extension or permanent adoption.

Republic and the business community at large deeply appreciate the Commission’s proactive effort in granting the Temporary Relief to various requirements with the objective of enabling small businesses to access urgently needed capital through Regulation Crowdfunding in a more timely and cost-effective manner. However, despite the shared enthusiasm with dozens of small businesses in our network actively evaluating the possibility of availing the Temporary Relief to fundraise, to date Republic has yet to list an offering under the Temporary Relief due to a number of factors.

First, even though the Temporary Relief permits an issuer to launch an offering without filing its financial statements, it nonetheless requires the filing of the offering statement (Form C). From our conversations with brick-and-mortar small businesses, the preparation of the offering statement is itself a very time consuming and complex process. Many of these businesses operate on a cash basis, with unsophisticated accounting and record keeping practices. Most tech startups have information such as ownership, assets and liabilities, revenue and affiliated persons readily available. That is not the case for many cash-based brick-and-mortar businesses. To understand and then generate the information required by the offering statement appears to be vastly more time-consuming for small business owners than we previously expected based on our experience working primarily with sophisticated tech startups. Second, social unrests and the promise of governmental programs offering grants and loans to small businesses impacted by COVID-19 have likely discouraged many of these businesses to go through with the complex and time-consuming

process of fundraising under Regulation Crowdfunding, especially when there is no guarantee that they would be able to raise meaningful capital from the community from such campaign.

As an effort to better support local small businesses, Republic has, among other things, (i) issued a \$75,000 grant to offset campaign preparation costs for eligible applicants; (ii) explored potential collaborations with state and city governments to match crowdfunded capital with a governmental loan or grant allocated to support the most in-need business communities; and (iii) considered simplifying our standard and extensive due diligence process to better accommodate this class of brick-and-mortar businesses. But beyond that, we strongly believe that the purpose and the effectiveness of the Temporary Relief would be substantially advanced if (i) small businesses are allowed to “test the waters” prior to filing the offering statement so that they can determine where it is worthwhile to undertake the effort of preparing an offering statement and (ii) the Temporary Relief is extended for at least 12 months or adopted permanently.

At that time of its adoption in early May, there was – and still is – much uncertainty about the duration and the economic impact of the pandemic on small businesses. As it turns out, four months later and on the eve of the expiration of the Temporary Relief, small businesses in New York City where Republic is headquartered remain devastated with no end in sight. More than 2,800 businesses in the city have permanently closed, and it is projected that by the time the pandemic is over, one-third of the city’s 240,000 small businesses could be gone forever.¹ The economic environment is similarly grim for small businesses in cities large and small across America. Given that business fallout from the pandemic will likely extend through 2021², we encourage the Commission to consider incorporating the Temporary Relief into the Proposed Rules for Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets for permanent adoption. Alternatively, the Temporary Relief should be extended for at least 12 months with the added permission for potential issuers to test the waters.

Thank you very much for your consideration.

Sincerely,



Kendrick Nguyen
Founder

cc: Chuck Pettid, CEO of OpenDeal Portal LLC
Maxwell Rich, Chief Compliance Officer of OpenDeal Portal LLC

¹ <https://www.nytimes.com/2020/08/13/nyregion/nyc-small-businesses-retail-chains.html>

² <https://www.washingtonpost.com/business/2020/06/29/top-ceos-say-business-fallout-coronavirus-will-extend-through-2021/>