Ladies and Gentlemen:

This comment is submitted on behalf of CrowdCheck, Inc., which provides due diligence and disclosure services for small online securities offerings. In providing our services, we have become familiar with the practices of issuers and intermediaries offering securities under Regulation D, especially those offerings made using the new internet-based securities platforms. Our perspective particularly relates to small online offerings by startup companies or by VC funds investing in such issuers.

We are commenting today on proposed Rule 510T, which would require all issuers relying on new Rule 506(c) to submit to the Commission any written communication that constitutes a general solicitation or general advertising (GSGA) no later than the date of first use.

While we recognize and applaud the Commission's desire to understand the nature of the market for which it is responsible, and to seek information about the manner and content of solicitation in this rapidly-changing market, we respectfully submit that the proposed manner of obtaining this information is unlikely to achieve the Commission's objectives and very likely to impose a significant burden on small issuers. The proposed rule may result in small issuers avoiding use of new Rule 506(c).

The reasoning behind our position is as follows:

1. The Commission is unlikely to receive all solicitation materials

It is likely that proposed Rule 510T will not result in the Commission's receiving a complete picture of materials used for GSGA. There are several reasons for this.

First, many issuers, especially small businesses that are not using experienced securities lawyers, will not understand that the "written communications" that proposed rule 510T requires them to submit are defined by Rule 405 under the Securities Act to include graphic and broadcast material. It will not occur to people not steeped in the technicalities of securities law that a video is "written." Many common forms of GSGA will thus remain innocently unsubmitted.

Second, there is no way for the Commission to determine whether all materials have been submitted, and thus an incentive to undersubmit. Even if a proposed Advance Form D were to be filed, indicating that an issuer intended to use GSGA, and even if the Commission had the resources to cross check Advance Form D against submissions, there is no way to establish compliance. Conversely, there is every incentive for issuers to submit whatever materials they find easiest to submit and deliberately withhold materials they least want the SEC to see or which present challenges with respect to uploading. The withheld materials are most likely to include innovative approaches, and the submitted materials most

likely to include traditional, text-heavy disclosures (such as PPMs), so the overall picture that the Commission receives with respect to what issuers are doing will be slanted accordingly.

Third, this approach does not take account of the iterative nature of disclosure for modern offerings. Traditionally, investors have received one document, the PPM, which sets out information about the issuer and the offering and invites investors to ask further questions, which are addressed offline and not usually recorded. Online offerings permit investors to submit questions to the issuer in a discussion forum, and have those questions answered in full view of other potential investors. Each issuer answer to an investor question on a public website probably would constitute a GSGA that should be submitted. Furthermore, investor questions often will lead issuers to amend, supplement, or delete information they previously have posted and presumably submitted to the Commission.

2. The submission requirement imposes a significant burden on issuers

The submission of GSGA materials will impose a significant burden on issuers. To understand why this is the case, it is necessary to understand the range of materials that issuers use in Regulation D offerings on online securities platforms:

- A PPM is common, although not universal.
- Slide decks with a heavy graphic component are common.
- Videos are exceptionally useful for companies who wish to demonstrate the functionality of innovative products to investors who cannot meet them in person, and are also valued by investors to get a "sense" of the entrepreneur. The common use of videos on donation/reward crowdfunding sites leads investors to expect similar media on investment sites.
- It is common to post the legal documentation used to effect the transaction, such as a preferred share purchase agreement, on the issuer's page on an investment site. Normally, legal documentation would not seem to fall within the definition of GSGA, but in some cases (for example, a disclosure schedule to a share purchase agreement) the legal documents include essential disclosure material without which the description of the investment opportunity presented is incomplete.
- Some platforms are arranging online due diligence calls or information calls between the investors and the issuer. These calls may be audio or video, and they may be live or recorded or transcribed.
- Many platforms provide a comment function allowing potential investors to comment, discuss the opportunity with other investors and ask questions of the issuer.
- Issuers are likely to use social media such as LinkedIn, Facebook, Instagram, YouTube and Twitter to promote their offerings once Rule 506(c) is effective (notwithstanding that such promotions are likely to encounter problems with the anti-fraud provisions of the securities law to the extent that they disclose selective or misleading information).
- Webcast "TV channels" already exist on which issuers appear in "chat show" format and discuss an investment opportunity. Upon effectiveness of Rule 506(c) these will become more numerous and will not be hidden behind a password firewall. Issuers also participate in offline podcasts.

- Pitch competitions sponsored by incubators, accelerators and business schools are common. The format varies, but in general the process involves the founders of small startups "selling" their companies. These are frequently recorded, re-broadcast and podcast.
- Other innovative marketing approaches are being developed constantly.

Nearly all of this extremely wide range of materials falls within the description of GSGA and most of it (except unrecorded live events, which are no longer the norm) falls within the Rule 405 definition of "written." As mentioned above, disclosure and marketing in these types of deals are continuous and iterative.

This means that small companies will be faced with a need to evaluate every piece of information they generate, to ask whether the item is GSGA, whether it is "written," whether it has been submitted before or includes new material and then submit it to the Commission, all on the "date of first use".

This imposes a significant burden on the founders of small issuers, whose focus should be on running their companies and making sure that their communications are complete and accurate, not on uploading large, continually changing, files to the Commission. Most startups are significantly resource- and capital-constrained, and the proposed rule would add a great deal to the cost of their fundraising.

This burden will be exacerbated by the need for Commission guidance on how to submit innovative GSGA materials. How should social media GSGA be submitted? If the promotion involves billboards, t-shirts or sky-writing, is it enough to submit the text, or will the Commission require additional context? If the Commission proceeds with this proposal, issuers will need guidance on how to submit non-traditional communications, including ongoing guidance as the market continues to evolve.

We are aware of some very innovative approaches to disclosure, such as a tool which permits investors to calculate their return under various assumptions. Such "widgets" would be difficult to upload (as discussed below), and fear of cumbersome requirements would suppress innovation in the delivery of information to investors.

3. Building a system that can handle the potential volume and type of data is difficult and expensive

The systems that will be supporting the proposed "intake page" will need to be robust and well-designed. This takes a great deal of time and money.

At the very least, the intake system will need to include the following functionality:

- A unique identifier for each offering, linked to the proposed Advance Form D.
- A robust file handling system, feeding documents of all sizes and formats into a database comprising multiple files or folders tagged with those unique identifiers.
- The ability for a large number of issuers to upload very large files in any format (and any version of any format) in a short period of time.
- A "receipt" delivered back to the person uploading, specifying date and time, size of file and name of file.

- The ability for the Commission Staff to easily search the database and retrieve files, and read those files, regardless of the format the files were created in.
- A version control and audit system to ensure that Commission Staff can keep track of changes or additions made to an issuer's files.

The ease with which files can be uploaded will be crucial to compliance. The longer an entrepreneur has to sit at his computer watching a "processing" symbol and hitting "refresh," the less likely he is to comply. Many entrepreneurs will not have access to fast upload processing and some still have no computers of their own. The burden is increased for these issuers.

The data that might need to be processed is significant. At the lowest end, if we assume that 10% of the 18,000 Regulation D offerings made every year (according to the Commission's July 2013 study)[1] were to switch from unsolicited to solicited (and many industry groups think the percentage will be much higher), that amounts to 1,800 offerings. If each such offering were to use a short PPM (1 MB), a five-minute video (20 MB) and a 20-page slide deck (9 MB), and nothing else (and as discussed above, that is unlikely), that would be approximately 30 MB per offering and a yearly total of 53 gigabytes of information that needed to be uploaded, sorted and reviewed. These estimated file sizes will expand greatly in practice as issuers use advanced graphics and high-definition video to showcase their offerings.

Additionally, since it would be unconscionable to force issuers to use specified file formats or to force them to undergo any form of "EDGARization" of their files, the Commission's system would have to accept every format in which files can be created, in every version, including proprietary software. (We note in passing that this comment is being uploaded via a system that accepts files in only four formats.)

It is possible that users will "break" the system by uploading many documents at once. This may even be a deliberate denial-of-service attack. The system must protect against this eventuality.

Our company is building a complex database and the systems to interface with it, and we are skeptical that any such document handling system can be purchased "off the shelf" or built to order in a short timeframe.

In sum, a system robust enough would be very expensive, and it is not clear what the Commission would use it for at the end of the two-year temporary submission period.

4. The use to which the Commission will put submitted material is unclear and not constrained

The purpose of the temporary submission of GSGA materials is to let the Commission understand the form and content of materials used in the private markets, and this is a worthwhile objective. However, the rules do not impose any constraints on how the Commission may use such materials. Many industry participants believe that Commission Staff reviewing materials that the Staff considers troubling will forward those materials to the Enforcement Division, as indeed seems likely. An agency charged to

[1] http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf

protect investors cannot be expected to look the other way if its Staff comes across material it believes is misleading.

While this is natural, the unfortunate consequence is that the Commission will create incentives for issuers to feign compliance, but omit any materials they think the Staff might take issue with. In this situation, it is very unlikely the Commission will get the whole picture with respect to the form and content of GSGA materials.

5. There are better ways to obtain the information needed

It is important that the Commission be fully informed about the market it protects, but the proposed submission of GSGA materials is not the best way to achieve this objective. The stated purpose of the Commission's proposal is to understand how the crowdfunding market is evolving, rather than to enforce securities law and regulations — the latter being the purview and daily mission of other parts of the Commission. A more effective route to that goal is to rely on the Commission's existing array of advisory bodies and working groups on small business and investor protection. Ask these bodies to monitor the form and content of Regulation D GSGA materials and report back to the Commission and Staff on a regular basis, with case studies anonymized to illustrate the critical issues without crossing into enforcement action.

6. The Commission can and should take steps to protect investors now

The ultimate purpose of GSGA material submission is investor protection. Knowing what issuers are saying to investors helps the Commission protect the markets. But additional investor protection is necessary now. During the course of the Commission's meeting last week, and in Release 33-9415, the Commissioners and Staff several times stated that the anti-fraud provisions that apply to Regulation D offerings have not changed. The problem is that many small issuers understand fraud as "running away with the money." They do not appreciate that a knowing misstatement of a material fact is fraud, or understand the implications of omission of facts necessary to make statements not misleading. There is no need to create an expensive document handling system and wait two years to learn that issuers are not fully informed on this matter. A clear statement now from the Commission on what can be said in GSGA communications would be a far more cost-effective method of investor protection.

Thank you for your consideration,

Sara Hanks

CEO, CrowdCheck, Inc.