



ASSOCIATION  
OF ONLINE  
INVESTMENT  
PLATFORMS

July 5, 2019

Ms. Vanessa A. Countryman  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number S7-08-19  
Public Comment on Ways to Harmonize Private Securities Offering  
Exemptions

Dear Ms. Vanessa A. Countryman,

In response to the request for public comment on ways to harmonize private securities offering exemptions released on June 18, 2019, the Association of Online Investment Platforms (“AOIP”) is submitting our official policy position, which sets forth specific suggestions to update and modify various elements of existing private securities offering exemptions.

Please note these suggestions have been prepared based on actual, extensive experiences of some of the leading online investment platforms in the US that have successfully utilized existing private securities offering exemptions and deeply understand the difficulties and challenges associated with the current exemptions. We sincerely believe that implementing any of these suggestions would greatly facilitate broader adoption of private securities offering exemptions for the benefit of small businesses and everyday investors.

Thank you for your consideration of the AOIP policy positions.

Sincerely,

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cc:  
Bill Clark, CEO/Founder, MicroVentures  
Ryan Feit, CEO/co-Founder, SeedInvest  
Ken Nguyen, Founder, Republic

Enclosure

**Association of Online Investment Platforms ([www.aoiplatforms.org](http://www.aoiplatforms.org))**  
**Policy Position Paper**

**June 18, 2019**

The United States of America is a nation built by small businesses, which remain the bedrock of our economy today. New securities laws established pursuant to the JOBS Act of 2012 (JOBS Act) have tremendous potential to bring access to capital to innovative small businesses across the U.S., while providing diverse investment opportunities to everyday Americans who have historically been prevented from investing in private companies. However, there are currently serious limitations that prevent these laws from realizing their full potential of transforming our economy by enabling the growth of sustainable capital formation activities for small businesses and startups.

The Association of Online Investment Platforms (AOIP) was established in 2018 by a group of online investment platforms with extensive experience utilizing exemptions under the JOBS Act in order to support and augment the innovation economy. Our goal is to support this new online investment industry by advocating to improve access to capital for small businesses and early stage companies, facilitate access to quality alternative investments for all investors, and to ensure sustainability for the platforms that seek to perform the vital market services of connecting businesses and investors in the right way.

Our mission is to build a sustainable online investment industry that democratizes finance for everyone. We believe that this mission can be fulfilled only if each of the three constituent parties find value in this industry; otherwise, this new finance industry will fail even before it had a chance to be utilized widely:

1. Promising small businesses and startups should be able to efficiently access the capital they need from interested investors, whether debt, equity or other securities instruments, to execute on their strategic goals.
2. All investors should be able to gain access to quality investments that they would otherwise be unable to legally participate in.
3. Registered platforms that seek to operate the right way should be able to generate sufficient revenue to sustain their business and receive proper support from regulators.

An innovation-driven economy that creates job and boosts wealth for entrepreneurs and investors is only achievable with a robust startup and small business ecosystem. The AOIP hopes that policymakers could strive to make the very best deals accessible to smaller investors and not just the wealthy who have easier routes to investing in private companies. This goal is a bi-partisan mission that seeks to create wealth and success for all while addressing the needs of underserved constituencies. Specifically, AOIP seeks updates to the following limitations in order to further support small businesses and all investors:

**1. *Maximum Offering Size under Regulation Crowdfunding in a 12-month period should be increased (e.g., up to \$10 million)***

- The current \$1.07 million cap is arbitrary and creates a negative selection bias for companies – as quality companies requiring larger amounts of capital are discouraged from utilizing Reg CF.
- The average early-stage funding round is currently \$7 million. Further, 68% of Series A Rounds in the U.S. have been between \$5.58 million and \$15.89 million (Pitchbook)
- The ability to conduct a \$10 million Reg CF offering can act as a ladder for growing companies to utilize Reg A+ or Reg D exemptions for even larger offerings.

## **2. Individual Investors' Investment Limits Should be Increased Based on Reasonable Standards**

- **Accredited Investors' limits in Reg CF offerings should not be limited**
  - This arbitrary constraint exists solely under Reg CF, as accredited investors are not limited from investing any amounts under other exempt offering types; i.e., Reg D and Reg A+. It makes little sense to think accredited investors need additional protections in an offering with robust disclosures hosted by a Platform.
- **Definition of Accredited Investor should be updated: a sophistication qualification to become Accredited Investors would benefit everyone.**
  - The current definition of an accredited investor is based on wealth levels as opposed to a measure of ability and financial acumen which is a far better gauge of suitability.
- **Non-accredited investors' limits should not be subject to cumulative Reg CF investment levels, but rather applied on an investment-by-investment basis.**
  - Currently there is an assumption that all businesses raising capital via Reg CF are equally as risky as each other, regardless of the underlying business type and offered securities, which is clearly not the case in practice given the incredible diversity of small businesses.
  - At minimum, Reg CF could adopt Reg A's investment limit scheme for non-accredited investors which promote diversification and the spread of capital.
- **Investment limits under Reg CF should be calculated as a function of income *or* net worth.**
  - Currently, an investor is penalized if he/she does not have both high income *and* net worth due to the limit being calculated on the lower of income *and* net worth.
  - Investment limits for entities should be rationalized – most investment entities in early stage companies are not designed to generate/receive income.

## **3. Provide more operational flexibility to online platforms facilitating transactions**

- **Special Purpose Vehicles (SPV) or nominee structures should be allowed**
  - An SPV can streamline the management of the underlying smaller shareholders; an SPV creates a single point of communication and is a single entry on the cap table.
  - A single entity can better manage investor rights to assure no excessive dilution takes place or for a latter investor to trump smaller investors, thus minimizing or eliminating any gains; if a platform acts as a nominee, interests are correctly aligned
- **"Testing the Waters" should be allowed**
  - The ability to test investor interest prior to the initiation of an offering can save both time and money for the issuer.
  - Reg A+ already splits the offer and sale of securities into two distinct operations, and the same could be enforced via the use of a registered platform that ensures that sales will only occur when completed pursuant to the requirements of Reg CF.
- **Flexible Compensation to FINRA registered platforms should be allowed**
  - Given the extensive amount of assistance required and costs incurred by small businesses to launch a compliant online offering, it is extremely difficult for platforms to make any profit on small offerings.
  - Current laws severely restrict platforms' ability to receive compensation in any form other than a small cash transactional fee (which reduces the net proceeds of the offering to the issuer) or in the same securities being sold, which inhibits platforms from engaging with companies on a long-term basis without the platform suffering financial losses
- **FINRA- regulated platforms should not be forced to bear overly broad issuer liability**
  - Regulated platforms should only be held liable if they knowingly engaged in acts of fraud or assisted in fraud committed by issuers. Extensive FINRA regulations impose even more burdens on platforms that are trying to do the right thing by registering with FINRA, vs

unregistered intermediaries who seek to avoid FINRA registration under the assumption that meaningful SEC enforcement is unlikely to ever occur.

**4. Ease Burdensome Reporting and Disclosure Obligations for Smaller Issuers**

- **Audit or reviewed financials should not be necessary for issuers raising less than \$1 million**
  - A seed/early stage company typically has little to no financial history, and local small businesses often have relatively simple financial histories that can be reviewed simply using good reporting tools. However, Reg CF frequently requires reviewed and/or audited financials for any offerings over \$107,000 (in contrast, even banks do not typically require audit or reviewed financials for 7-figure business loans).
  - The cost of the audit or review for smaller companies is relatively high and comes at the expense of the investors or shareholders, not for their benefit (e.g., 3<sup>rd</sup> party accountants cost at minimum thousands of dollars even for the technical review/audit of a brand-new entity with zero business activity).
  - Review/audits could be required only for significant size offerings, or if/when there is long history of a complex business that can only be properly verified via review or audit.
- **12g Requirements should be eased**
  - Smaller businesses should be exempt from 12g thresholds and should not be compelled to become a reporting company until there is practical need to do so (e.g., under a much larger annual revenue and/or asset test than current thresholds).
- **Financial disclosures and reporting requirements should reflect the type of underlying company and/or securities**
  - Reporting obligations should be relevant to the context of the company or offering, rather than a difficult one-size-fits-all requirement for all offerings (e.g., growth companies raising substantial amount of equity could provide quarterly updates and annual reports to securities holders, but local small businesses raising a small amount of debt shouldn't be held to same standard as a common sense matter).
  - Additional reporting requirements can be required specifically for companies that wish to have their securities traded on the secondary market – many companies do not intend or wish to ever have their securities traded on a secondary exchange.

**5. Develop an Innovation Tax Exemption for Reg CF that benefits smaller investors**

- Most opponents of private investment base their argument on investor protection concerns. AOIP recommends an Innovation Tax Exemption to mitigate risk, mainly for smaller investors.
- An Innovation Tax Exemption would fuel business growth, creating jobs and empowering a new era of innovation (for example, reasonable tax credits or deductions to encourage private investments in small businesses).

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Co-founder/CEO, NextSeed; President, AOIP	Founder/CEO, MicroVentures	Co-founder/CEO, SeedInvest	Founder, Republic