

Comments on Concept Release on Harmonization of Securities Offering Exemptions
From Regulation Crowdfunding Issuers

September 24, 2019

Via Email to rule-comments@sec.gov

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

Re: File Number S7-08-19
Concept Release on Harmonization of Securities Offering Exemptions

Dear Ms. Countryman,

We would like to thank the Commission for providing the opportunity to comment on an area of the law that has touched and positively affected our businesses, employees and customers. In particular, we wish to reflect on the successes of Regulation Crowdfunding (“**Reg. CF**”) and address four areas we believe are worthy of the Commission’s time and attention, namely (i) increasing offering limits, (ii) increasing investment limits, (iii) permitting “testing the waters” and (iv) easing post-offering triggers for registration with the Commission.

We represent a broad range of small businesses and startups that collectively have raised over see Appendix A relying on Reg. CF and hail from see Appendix A. We come from diverse backgrounds and include among us Founders and CEOs of different races and genders, veterans, immigrants, parents, first-time entrepreneurs and seasoned ones; some of us are *venture-backed*, others *bootstrappers*. Not only are we innovating in e-commerce, artificial intelligence, social media, medicine, blockchain technology and beyond, but also building and operating local brick-and-mortar businesses. Many of us are alumni of traditional donation and pre-order-based crowdfunding, having previously raised money for a product or idea but finding ourselves unable under the law at the time to provide a stake in our company to our earliest supporters.

By utilizing Reg. CF, we have been able to (i) access capital from our communities, (ii) fundraise from sources previously not available to us, (iii) gain exposure for and market our businesses and (iv) provide our customers and advocates with the opportunity to share in our future. Our successes under Reg. CF have enabled us to hire team members, expand our customer bases, raise further institutional capital and maintain good corporate governance practices. We have worked with crowdfunding intermediaries to compliantly prepare for our Reg. CF offerings, run transparent and productive offerings and leverage their experience and support to ensure our compliance with the securities laws. Reg. CF has not only provided a critical route to early capitalization and innovation, it has represented, for many of us, our first experience dealing with the highly-regulated area of semi-public offerings of securities. This experience, while challenging, has made us better Founders and CEOs and strengthened our companies.

While Reg. CF has provided numerous benefits, we have also experienced its limitations. As companies looking to expand our businesses as quickly and efficiently as we can, we often need to raise a significant amount of capital early on. Some of us have had to reject investment commitments from investors who wanted to fund our businesses but were prevented from doing so because of the total offering cap of \$1.07 million per 12-month period under Reg. CF. This offering cap has increased the time and expense associated with raising capital, while upsetting potential advocates and brand ambassadors for our growing companies. The Commission recently found that the average issuer incurred \$22,479 in costs associated with conducting a Reg. CF offering (before paying commissions to intermediaries and escrow agents) and expended 241 hours of human capital.¹ Given this high cost of capital, in terms of both dollars and hours, many startup issuers cannot satisfy their capital needs through Reg. CF alone. A number of us have had to spend additional time and expense pursuing other exempt offering types (either after or in conjunction with our Reg. CF offering) to meet our funding needs, as Reg. CF proved an incomplete solution. Therefore, we respectfully urge the Commission to raise the offering cap so that early-stage companies can fulfill their capital needs relying on Reg. CF alone.

In a similar manner, the current rules regarding investment limits have reduced Reg. CF's utility, and many of us have experienced potential investors bemoaning that they could not invest in an offering because they had reached their rolling 12-month limit. We believe that this limit is arbitrary, often confusing for both investors and issuers and provides limited or no investor protection benefits, especially in the case of more sophisticated investors. We therefore request that investment limits for verified accredited investors be removed, which would incentivize issuers and accredited investors to utilize Reg. CF rather than other exempt offering types. We also request that investment limits for non-accredited investors be implemented on a *per offering* rather than a *cumulative 12-month* basis, which would clarify and simplify the tracking of these limits for investors, issuers and intermediaries. These changes would also align the investment limits under Reg. CF more closely with those of Regulation A+.

While we represent issuers that have conducted successful Reg. CF offerings, not all offerings succeed. Reg. CF's prohibition on discussing a potential offering before a Form C is filed means that issuers cannot gain any real insight into the likelihood of success before making a decision as to whether or not to incur the significant monetary and human capital costs associated with conducting a Reg. CF offering and potentially face the negative inferences that customers, employees and future financing sources may draw from the public failure of an offering. Not surprisingly, preparing for a Reg. CF offering in such circumstances caused us some trepidation. While we respect and agree with the Commission's view that the crowd should help determine whether an offering is successful, we believe the crowd should *also* contribute to helping companies decide whether or not to conduct a Reg. CF offering in the first place. Since issuers are required to conduct Reg. CF offerings through funding portal and broker-dealer intermediaries, and the Commission could impose a similar requirement on any "testing the waters" process, we believe that the Commission can be assured that any materials used to "test the waters" could always be documented in, or superseded by, Form C filings that would precede the formal launch of the offering and that investors would not be harmed through such a process. Therefore, we respectfully urge the Commission to permit potential issuers to "test the waters" before formally launching a Reg. CF offering. Not only would this will help to increase the success rate of Reg. CF offerings, it would further align Reg. CF with Regulation A+.

The final issue we would like to address is the application of Section 12(g) of the Exchange Act to Reg. CF offerings. While we appreciate that the JOBS Act excluded Reg. CF investors from counting as holders of record in certain circumstances, we believe that the total asset test of \$25 million is arbitrary and too low, especially given that Reg. CF encourages broad investor bases and, accordingly, many Reg. CF offerings have more than 500 participants – it is important to note that we do not believe that Reg. CF

¹ Report to the Commission, Regulation Crowdfunding, June 18, 2019, at 25.

issuers can generally avail themselves of the higher 2,000 holder of record threshold with respect to accredited investors as Reg. CF issuers and intermediaries typically do not take steps to accredit investors under the current rules. Taken together, these provisions mean that successful and fast-growing Reg. CF issuers may face compelled registration under Section 12(g) much earlier in their lifecycles than they would if they pursued other exempt offering types. We therefore advocate either (i) permanently excluding investors who purchased securities through Reg. CF from counting as holders of record under Section 12(g) of the Exchange Act or (ii) raising the total asset test significantly.

We thank you for your time and consideration and the efforts that the Commission has undertaken to date to ease the capital-raising burdens that small businesses and startups face.

Sincerely,

See **Appendix A** which will be continuously updated.

Appendix A:

As of September 24, 2019, for additions see:

<https://docs.google.com/document/d/1nEvAx96WDEua9GcJ0BFg-aMduKxPbDNsUnxxxRTGRWM/edit?usp=sharing>

Dollars Raised: over \$8,450,000

Amber McDonald, CEO

Indemnis

Anchorage, AK

Ketan Anjaria, Founder

HireClub

San Francisco, CA

Paul Gambill, CEO

Nori

Seattle, WA

Bernardo de la Vega, Founder

Mealthy

Austin, TX

Seema Lindskog, CEO

FreshMynd

Cupertino, CA

Herpreet (Pree) Singh Walia, CEO

Preemadonna

Sunnyvale, CA

Dan Downs, Co-Founder

R3 Printing

Queens, NY

Taylor Jacobson, CEO

Focusmate

New York, NY

John Mullin, CEO

CHRGR

New York, NY

Jonathan Casper, CEO

Wolfpack

Rockville, MD

Michael Lui, CEO

G&G Labs (frm. RMR Labs)

Marina del Ray, CA

Sam Parks & Martin Koch, Founders

Sapient

Philadelphia, PA

Rick Bentley, CEO

Cloudastructure

Redwood City, CA

Ridhima Parvathaneni, Founder

Boon VR

San Francisco, CA

Connor Young, CEO

Ample

San Francisco, CA

Vincent Kimura, CEO

Smart Yields

Honolulu, HI

Truth Oladapo, CEO

Vacayo

New York, NY

Brandi DeCarli, Founding Partner

Farm From a Box

Providence, RI

Cody Barbo, CEO

Trust & Will

San Diego, CA

Janet Wu, CEO

SilkRoll

San Francisco, CA

Frederick Hutson, CEO

Pigeonly

Las Vegas, Nevada

Obi Omile, CEO

theCut

Dirk Sampselle, GC

Everytable

Dale City, VA

Los Angeles, CA