



January 15, 2020

Submission via Web Site

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: Concept Release on Harmonization of Securities Offering Exemptions;
File No. S7-08-19**

Dear Ms. Countryman,

We appreciate the opportunity to supplement our September 13, 2019 comment letter on the Concept Release on Harmonization of Securities Offering Exemptions with this further comment.

Wefunder is the largest funding portal by investment volume, facilitating 44% of all Regulation Crowdfunding investments in 2019. We are also an exempt reporting investment advisor that forms venture capital funds for accredited investors. Founded in 2011, we helped Senator Brown, Senator Merkley, and Rep. McHenry during the drafting of the JOBS Act. Since then, we've helped issuers raise about \$110 million from a pool of 300,000 investors via Regulation D, Regulation A+, and Regulation Crowdfunding.

We strongly advocate improving Regulation Crowdfunding. As we stated in our September 13, 2019 comment letter, based on our experience, with a few improvements – most importantly SPVs – many more issuers would elect to use Regulation Crowdfunding. We write today to propose a specific type of SPV solution for Regulation Crowdfunding offerings – voting trusts. Specifically, we are writing to propose that the Commission adopt a new rule pursuant to its authority under Section 28 of the Securities Act of 1933 to allow an issuer to engage in an offering pursuant to Section 4(a)(6) of the Securities Act using a voting trust, as that term is used in Section 3(c)(12) of the Investment Company Act of 1940.

An exemptive rule is necessary, because Section 4A(f)(3) of the Securities Act prohibits an issuer from relying on the exemption in Section 4(a)(6) of the Securities Act if the issuer: "is an investment company, as defined in section 3 of the Investment Company Act of 1940, or is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act." The prohibition in Section 4A(f)(3) prohibits the offering of interests in hedge funds and other private funds to retail investors (i.e., funds that rely on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act), but the prohibition is so broadly drafted that it also excludes, among



others, the offering of interests by certain operating companies (such as those that rely on Section 3(b)(1) or Section 3(b)(2) of the Investment Company Act). Section 4A(f)(3) also has the effect of prohibiting an issuer from making use of a voting trust as part of its offering under Section 4(a)(6), because a voting trust is excluded from the definition of investment company under Section 3(c)(12) of the Investment Company Act. Specifically, Section 3(c)(12) excludes: "Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company."

Voting trusts can be used to allow investors to maintain their economic interests in a single issuer while pooling their voting power. Usually the voting power of investors who join a voting trust is imbued in the voting trustee of the voting trust. The voting trustee generally is selected by the investors who join the voting trust, pursuant to whatever method is set forth in the relevant trust agreement.

We believe that allowing issuers to utilize voting trusts in their Section 4(a)(6) offerings, either as part of the initial offering or subsequent to the initial offer, would revolutionize the Regulation Crowdfunding marketplace through substantial increased participation by issuers. In this regard, we believe that one of the principal reasons issuers currently do not want to use Regulation Crowdfunding to raise capital is their concern about having hundreds of small investors on their capitalization tables. Use of a voting trust would solve this issue, allowing the voting trust to be reflected as a single investor on an issuer's "cap" table. (We note that, although the voting trust would be counted as one investor on an issuer's cap table, each investor in the voting trust would be counted as a record owner for purposes of Section 12(g) of the Securities Exchange Act of 1934, and therefore the use of a voting trust would not alter the manner in which an issuer's complies with Section 12(g). See Rule 12g5-1(b)(1)).

We believe that use of a voting trust also would result in benefits to investors, who would have the same economic interest in the issuer through the voting trust structure, but also would have access to the decision-making expertise of the voting trustee, which we believe would likely be an experienced lead investor selected by the investors. Furthermore, participation in a voting trust by an investor would be voluntary, and an investor who opted in to a voting trust could later decide to withdraw its interests from that voting trust.

Because we think the ability to use voting trusts as part of a Section 4(a)(6) offering would be beneficial to issuers, investors, and the Regulation Crowdfunding marketplace as a whole, we are proposing that the Commission adopt a new Securities Act rule pursuant to its general exemptive authority under Section 28 of the Securities Act to permit the use of voting trusts in connection with an offering pursuant to Section 4(a)(6). If promulgated under Section 28, the new rule would not be subject to the statutory limitations of Section 4A(f)(3) and therefore could permit the use of a voting trust by an issuer seeking to rely on Section 4(a)(6).



Thank you again for this opportunity. We are happy to respond to any questions or provide further information.

Sincerely,

Nicholas Tommarello
Chief Executive Officer, Wefunder