

## I. COMMENT RE PROPOSED RULE 17 CFR 227.100(a)(3)

Proposed Rule 17 CFR 227.100(a)(3) provides:

"(a) Exemption. An issuer may offer and sell securities in reliance on Section 4(a)(6) of the Securities Act of 1933 (the Securities Act) (15 U.S.C. 77d(a)(6)), provided that:

(3) The transaction is conducted through an intermediary that complies with the requirements in Section 4A(a) of the Securities Act (15 U.S.C. 77d-1(a)) and the related requirements in Regulation Crowdfunding ( 227.100 et seq.)..."

Absent actual knowledge of the failure of the intermediary to comply with said requirements, an issuer cannot know whether the intermediary has complied with said requirements. For example, proposed Rule 227.300(b) prohibits the intermediary and certain persons associated with the intermediary from possessing any financial interest in any issuer offering or selling securities through the intermediary. Issuers cannot know whether an intermediary is complying with this prohibition. Similarly, proposed Rule 227.100(a)(3) places an undue, if not impossible, burden on issuers to determine whether the intermediary is complying with all of the requirements of Subpart C and Subpart D.

If proposed Rule 227.100(a)(3) is not amended to remove this burden placed on issuers to determine whether the intermediary has complied with Section 4A(a) of the Securities Act (15 U.S.C. 77d-1(a)) and the related requirements in Regulation Crowdfunding ( 227.100 et seq.), then this proposed Rule could render Title III of the JOBS Act, and related rules, as unviable to well advised issuers, as no well-informed issuer will accept the risk of its offering being disqualified from exemption because the intermediary through which the issuer made its offering failed, unbeknownst to the issuer – even after reasonable due diligence, to comply with said requirements.

Perhaps the proposed Rule can be amended to provide that "(3) The issuer possesses no actual knowledge that the intermediary has not complied with the requirements in Section 4A(a) of the Securities Act (15 U.S.C. 77d-1(a)) and the related requirements in Regulation Crowdfunding (227.100 et seq.), and the issuer reasonably relied upon the representations, if any, of the intermediary that it had complied with said requirements..."

In addition to the forgoing, the Commission might specifically identify the provisions of Subparts B and C for which issuers can readily ascertain the scope of compliance by the intermediary and amend the rule to permit the exemptions only if the intermediary has complied with those provisions.

## II. COMMENT RE PROPOSED RULE 17 CFR 227.204(b)(3)

Proposed Rule 17 CFR 227.204(b)(3) provides:

“b) A notice regarding the terms of an issuer’s offering in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) that directs investors to the intermediary’s platform may include no more than the following:

(3) Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number and website of the issuer, the e-mail address of a representative of the issuer and a brief description of the business of the issuer.”

Please define the term “representative” as used in this proposed rule. Does the term include persons not employed by the issuer, such as social media/public relations consultants? Explain the purpose of permitting the issuer to publish the e-mail address of the representative if all communications regarding the offering must be conducted on the website of the intermediary.

## III. COMMENT RE PROPOSED RULE 17 CFR 227.204

As to proposed Rule 17 CFR 227.204, the Commission asks in paragraph 99 of its discussion regarding the proposed crowdfunding rules:

“Should we restrict the media that may be used for the advertising of notices (*e.g.*, prohibit advertising via television, radio or phone calls)? If so, why and what media should we restrict? What media should we permit? Please explain.”

As discussed by the Commission, the Commission is “not proposing to impose limitations on how the issuer distributes the notices.” This is the correct position, as crowdfunding will not be a viable means for raising capital unless issuers have the ability to create awareness of their offerings by distributing to prospective investors, through any communications channel, the information permitted under proposed Rule 227.204.