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January 20, 2014

Elizabeth M. Murphy
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-09-13

We appreciate this opportunity to provide our views on the Securities and Exchange Commission's (the "Commission") proposed Regulation Crowdfunding (the "Proposed Rules") released October 23, 2013 to implement the rules requirements of Title III of the Jumpstart Our Business Startups Act (the "JOBS Act") *(Release Nos. 33-9470/ 34-70741*).

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We have responded to certain questions posed in the Proposed Rules that primarily apply to areas concerning accounting, attestation, oversight, ongoing reporting, disclosure and fraud. We are hopeful that the Commission considers our responses below when finalizing the rules on Crowdfunding. This is an exciting development in expanding businesses' access to capital, and we are grateful to provide our input in formulating these groundbreaking rules.

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Section II.A.4: Exclusion of Certain Issuers from Eligibility under Section 4(a)(6)

Question 17: *Section 4A(b)(4) requires that, "not less than annually, [the issuer] file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer . . . ." Should an issuer be excluded from engaging in a crowdfunding transaction in reliance on Section 4(a)(6), as proposed, if it has not filed with the Commission and provided to investors, to the extent required, the ongoing annual reports required by proposed Regulation Crowdfunding during the two years immediately preceding the filing of the required offering statement? Why or why not? Should an issuer be eligible to engage in a crowdfunding transaction in reliance on Section 4(a)(6) if it is delinquent in other reporting requirements (e.g., updates regarding the progress of the issuer in meeting the target offering amount)? Why or why not? Should the exclusion be limited to a different timeframe (e.g., filings required during the five years or one year immediately preceding the filing of the required offering statement)?*

Response: An issuer should be required to file the annual reports required by Regulation Crowdfunding in reliance on Section 4(a)(6) prior to initiating an offering, as the financial statements provide the public with basic information needed to make an informed investment decision. We believe that only the prior year's annual report should be filed as part of the initial offering, however, as the latest year's results would provide the most relevant information to investors. Please also see our response to Q55.

For those seeking to raise additional capital utilizing successive exemptions under Section 4(a)(6), we believe that all annual filings should be made between the first and any successive offerings. Issuers should not be allowed to raise additional capital under this exemption if they have not demonstrated compliance in the past. There may need to be some allowance for extenuating circumstances which should be prescribed by rule, however.

If a crowdfunding offering has been initiated and the issuer subsequently becomes delinquent in its ongoing filings, we recommend that the issuer be required to file a form with the Commission and publish it on its website and intermediary platform to notify potential investors that it has not met its reporting obligations. Investors then would have the opportunity to terminate their investment, as allowed by proposed Rule 304(c)(1) of Regulation Crowdfunding when a material change occurs. The issuer should not be allowed to complete the offering and receive funds if filings are not current.

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Question 18: *Is the proposed exclusion of issuers who fail to comply with certain ongoing annual reporting requirements too broad? If so, how should it be narrowed and why? Should the exclusion cover issuers whose affiliates have sold securities in reliance on Section 4(a)(6) if the affiliates have not complied with the ongoing annual reporting requirements? If so, should this encompass all affiliates? If not, which affiliates should it cover? Should we exclude any issuer with an officer, director or controlling shareholder who served in a similar capacity with another issuer that failed to file its annual reports? Why or why not?*

Response: We do not object to the exclusion of issuers as proposed. However, the Commission should not exclude an issuer with an affiliate that has not complied with ongoing annual reporting requirements, or with an officer, director, or controlling shareholder who served in a similar capacity with another issuer that did not file its annual reports for two primary reasons: First, such an exclusion would impose a more onerous burden on crowdfunding issuers than is placed on current registrants filing under Exchange Act Sections 13(a) or 15(d) or for Emerging Growth Companies as defined by the JOBS Act. Second, these individuals may not have the ultimate responsibility for filing at the other entities.

Section II.B. 1: Disclosure Requirements

Question 38. *Are these proposed disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements? If so, how and why?*

Response: The cost to issuers of providing certain of the proposed disclosure requirements, while well-intended in design, may outweigh the benefit to the investors.

Specifically, we propose the following changes to certain proposed Additional Disclosure Requirements in Section II.B.1.(g):

- The intermediaries should be required to disclose their compensation parameters as a range or maximum in the required educational component of their platforms, to save time and cost for each individual issuer in making such disclosures. Those investors desiring further detail could request it from the issuer.

- The educational component of each intermediary's platform should include disclosure legends and a discussion of the material factors that make an investment in any issuer speculative or risky so it does not have to be repeated by each individual issuer. Perhaps this could be designed in a manner that organizes common risk factors by industry. This will avoid having so many risk factors in an individual offering that it lessens the impact of the risk factors particular to that offering.

- The requirement of the issuer to disclose the material terms of indebtedness should be clarified to indicate that this requirement can be met by the inclusion of financial statements that include such disclosures to eliminate redundancy and additional costs.

- The required disclosure of other exempt offerings should be allowed to be met by providing the date, amount raised, type of securities sold, and a link to the website where more information on the prior offerings can be found.

While we have cited only a handful of proposed changes, the Commission should consider other ways in which the required disclosures could be made in a more aggregated, standardized manner to reduce or eliminate redundancies. The general crux of our response position is to attempt to eliminate disclosure items that add time, cost, and/or create redundancies in the model without providing a commensurate benefit to investors. If the Commission does leave these particular requirements as stated in the Proposed Rules, perhaps some relief could be provided to issuers by allowing them to meet disclosure requirements by incorporating disclosures by reference to the appropriate segments of the intermediaries' platforms.

Question 40. *Should we require disclosure of the amount of compensation paid to the intermediary, as proposed? Why or why not? Should we require issuers to separately disclose the amounts paid for conducting the offering and the amounts paid for other services? Why or why not?*

Response: We believe that the intermediaries should be required to disclose the dollar ranges, percentages or maximums charged in an easily visible area of their platform, but that individual issuers should not be required to disclose their specific fees, as this greater level of precision would be unlikely to sway investor judgment.

We do not think issuers should be required to disclose separately the amounts paid for conducting the offering and for other services unless the fees are to be paid out of the offering proceeds. Disclosure of such expenses already paid and included in the historical financial results is of little value to investors. However, issuers should not be precluded from disclosing such if they desire to highlight it as a non-recurring item.

Question 41. *Should we require the issuer to include certain specified legends about the risks of investing in a crowdfunding transaction and disclosure of the material factors that make an investment in the issuer speculative or risky, as proposed? Why or why not? Should we provide examples in our rules of the types of material risk factors an issuer should consider disclosing? Why or why not? If so, what should those examples be?*

Response: We believe investors would be better served if the general risks of investing in a crowdfunding transaction were included in the educational material on the intermediaries' platforms rather than requiring each investor to make such disclosures, as such risks are common to all issuers' offerings. Each intermediary also may include legends describing general industry risks for those industries handled by the intermediary. Each issuer's offering documents could incorporate such material by reference to the intermediary's platform, and then include details of the risks specific to that issuer in its offering documents.

Question 42. *Should we require disclosure of certain related-party transactions, as proposed? Why or why not? The proposed rules would require disclosures of certain transactions between the issuer and directors or officers of the issuer, 20 Percent Beneficial Owners, any promoter of the issuer, or relatives of the foregoing persons. Is this the appropriate group of persons? Should we limit or expand the list of persons? If so, how and why?*

Response: We believe that related party disclosure should be expanded to include transactions between the issuer and employees or affiliated entities with common ownership or control. Due to the risk of abuse, these transactions must be carefully scrutinized and fully disclosed. While we have attempted throughout this comment letter not to suggest additional disclosures or requirements, we believe transparency is essential for related-party disclosures and we do not believe it requires significant time, effort or cost to issuers to comply with providing the disclosures. Related-party transactions contain a higher inherent risk of abuse than third-party transactions. As such, investors need disclosure sufficient to provide an accurate description of the issuer's operations independent of the distortion that can be created through related-party transactions.

Question 44. *Is it appropriate to limit the disclosure about related-party transactions to transactions since the beginning of the issuer's last full fiscal year? Why or why not? Is it appropriate to limit disclosure to those related-party transactions that exceed five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6)? Should we instead require disclosure of all related-party transactions or all transactions in excess of an absolute threshold amount?*

Response: We believe that related-party transactions should be disclosed if they occur or exist during the period for which financial statements are required, which we propose should be one year for initial filings, then comparative two-year periods for the ongoing reporting requirements. All related-party transactions other than those deemed de minimis to the issuer should be disclosed, as the nature of related-party transactions is such that they may distort the operating results.

Question 45. *Is it appropriate to require a description of any prior exempt offerings conducted within the past three years, as proposed? Why or why not? Would another time period (e.g., one year, five years, etc.) or no time limit be more appropriate?*

Response: We believe that it would provide valuable information to investors to have knowledge of other exempt offerings conducted by the issuer as it provides information on management's ability to manage cash flow effectively and could indicate whether the issuer will require additional funding in the future. Further, we suggest that there should be an exempt registration filing number system for all exempt offerings so that issuers could refer users to the other exempt registration number rather than repeat information that is currently publicly available in each offering, just as is done for current registrants.

Question 46. *Should we require any additional disclosures (e.g., should we require disclosure about executive compensation and, if so, what level of detail should be required in such disclosure)? If so, what disclosures and why?*

Response: Just as current registrants are required by Item 11 of Regulation S-K to disclose executive compensation, we believe this should be a required disclosure for issuers relying on the Section 4(a)(6) exemption, as it provides valuable information to investors and helps prevent issuers from using the funds raised to pay excessive compensation to the top personnel. The disclosure should include separate amounts for base salary, bonus, and an "other" category to capture the value of any perquisites for each of the three highest paid individuals. In addition, the disclosure should include the number and type of any equity instruments granted. We do not recommend requiring the value of such instruments as the number of shares or options is more germane for these companies than the value, which would force the issuer to incur the cost of having a valuation performed. Potential investors would be able to gauge potential or actual dilution if they know the number of instruments granted. As the size of these issuers likely will be smaller than current registrants, disclosure of the three highest paid individuals should be

sufficient to allow investors to determine whether the compensation being paid is reasonable given the stage of the company's operations and the amount of funds raised.

Question 47. *Are these proposed requirements for the discussion of the financial condition of the issuer appropriate? Why or why not? Should we modify or eliminate any of the requirements in the proposed rule or instruction? If so, which ones and why? Should we require any additional disclosures? If so, what disclosures and why? Should we prescribe a specific format or presentation for the disclosure? Please explain.*

Response: We believe the proposed requirements are appropriate. Such disclosures allow an investor to evaluate in more depth a potential investment than by reviewing tax returns or financial statements alone. We do not believe a tiered system of relaxing these disclosure requirements for smaller raises would be appropriate, as the investor will use this information equally regardless of the size of the offering.

We also are supportive of the requirement for issuers with no prior operating history to include disclosure that there is no or limited operating history, and then include discussion focused on financial milestones and operational, liquidity and other challenges. We believe it should also include management's plans, expectations and trends; how the proceeds from the offering will affect their liquidity; and whether management anticipates needing additional funding to achieve future milestones. We also believe issuers with robust operating history should include this type of disclosure, as well. Since each company's experience is unique, we believe the proposed general, as opposed to prescriptive format guidelines for this disclosure, are appropriate. Prescribing a specific format will water down such disclosures and make them cookie-cutter compliant rather than providing a useful, valuable discussion of the company's financial condition and plans.

Question 48. *Should we exempt issuers with no operating history from the requirement to provide a discussion of their financial condition? If so, why? Should we require such issuers to specifically state that they do not have an operating history, as proposed? Why or why not?*

Response: No, an exemption would not be appropriate as it would limit investors' ability to evaluate their potential investment. Please also see our response to Q47.

Question 49. *In the discussion of the issuer's financial condition, should we require issuers to provide specific disclosure about prior capital raising transactions? Why or why not? Should we require specific disclosure relating to prior transactions made pursuant to Section 4(a)(6), including crowdfunding transactions in which the target amount was not reached? Why or why not?*

Response: While discussion of the issuer's prior capital raising transactions may be deemed helpful to some investors, we do not believe they should be required disclosures. Investors seeking information in this regard can request it as necessary. Further, there are numerous variables that impact a capital raise, including but not limited to market timing, state of the business and the economy, its competitors, intellectual property filings, the exemption utilized and the intermediary through which the offerings were conducted, disclosure of which could otherwise disadvantage an otherwise viable issuer. Most investors simply need to understand the current capitalization of the company, but not necessarily the means that got it there. Those who feel otherwise are not precluded from requesting additional information or foregoing the investment opportunity.

Question 50. *Under the statute and the proposed rules, issuers are required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements. The proposed rules would require all issuers to provide a complete set of financial statements (a balance sheet, income statement, statement of cash flows and statement of changes in owner's equity) prepared in accordance with U.S. GAAP. Should we define financial statements differently than under U.S. GAAP? If so, what changes would be appropriate and why? What costs or challenges would be associated with the use of a model other than U.S. GAAP (e.g., lack of comparability)? What would be the benefits? Please explain.*

Response: We believe that issuers should be allowed to provide financial statements in accordance with special purpose frameworks, as allowed by AICPA AU-C Section 800, *Special Considerations—Audits of Financial Statements Prepared in Accordance With Special Purpose Frameworks,* as early stage enterprises should be afforded the same cost-effective options of similar, presumably smaller-sized entities not going through a crowdfunding offering. To require otherwise puts those companies seeking to raise capital outside of their smaller circle of friends and family at a cost disadvantage. This runs contrary to the intention of the JOBS Act, which attempts to facilitate the raising of capital for smaller businesses by lowering barriers to public funding while implementing safeguards to protect investors.

One way to keep the barriers lower is to allow companies to use other accounting frameworks. In the current marketplace, presenters and users of financial statements are seeking such alternative bases of presentation to lower cost. This is evidenced by the proliferation of tax basis financial statements in recent years as U.S. GAAP has become increasingly complex. Further, the FASB and the AICPA have responded to this trend by each creating significant changes affecting the middle market. The FASB created the Private Company Council in 2012, which recently released several Accounting Standards Updates (ASUs) that reduce some of the complex requirements for non-registrants by allowing them to make certain simpler accounting policy elections. In addition, the AICPA has put forth the Financial Reporting Framework (FRF) for Small- and Medium-Sized Entities (SMEs), which is an altogether different basis of accounting than U.S. GAAP that small- and medium-sized entities can choose to use.

Based on this trend in the market, we suggest that issuers be allowed to utilize any reporting framework that meets SEC, FASB or AICPA standards of an allowable reporting framework. This response does propose an environment in which there would be the potential for a lack of comparability amongst various offerings and the related financial statements under continued reporting requirements. While a lack of comparability may result, we feel that over time the marketplace will dictate certain frameworks for certain industries and stage of development of the issuing entity, among other things. For example, investors may desire that companies with three or more years of operating results prior to undergoing a crowdfunding campaign utilize U.S. GAAP. Conversely, investors may find development stage enterprises to be sufficiently reported under the income tax basis of accounting. In another situation, investors may find it sufficient for, say, restaurants or other hospitality enterprises to report on a cash basis regardless of the stage the entity is in. Ultimately, issuers will find that they are guided to the common framework that fits their situation by those that advise them down the path. If the preponderance of technology companies all use U.S. GAAP, the chances that advisors are going to propose FRF for SME's are minimal because either the investors are not going invest or the framework will not fit the long-term proposition of the entity. The intermediaries, looking to avoid risk themselves would be likely to provide investors with general guidelines as to the potential future ramifications of using an other than U.S. GAAP basis of accounting method such as having to incur the cost of converting to U.S. GAAP and being audited on that basis when applying for registrant status.

As investors and the marketplace likely will drive issuers in similar industries or at certain stages of development down similar paths, it is not necessary to require one common framework for all entities.

Question 51. *Should we exempt issuers with no operating history or issuers that have been in existence for fewer than 12 months from the requirement to provide financial statements, as one commenter suggested? Why or why not? Specifically, what difficulties would issuers with no operating history or issuers that have been in existence for fewer than 12 months have in providing financial statements? Please explain.*

Response: Issuers with no operating history or that were in existence for fewer than 12 months should be exempted from the requirement to provide financial statements, as financial statements of an entity with little to no operating performance would provide minimal information to investors, but could require the issuer to incur the cost of an audit or review. Such a hurdle seems at odds with the general spirit of the JOBS Act.

However, the Commission should exclude from the exemption under Section 4(a)(6) any issuers that were formed for the sole purpose of transferring a pre-existing business into it prior to the offering to disguise poor historical financial results.

Question 52. *If we were to exempt issuers with little or no operating history from the requirement to provide financial statements, should we require additional discussion of the fact that the issuer does not have an operating history? If so, what additional discussion should we require?*

Response: Issuers with little or no operating history that are exempt from providing financial statements should be required to state the entity's date of inception and describe the business activity undertaken through the date of the commencement of the offering.

Question 53. *Section 4A(b)(1)(D) establishes tiered financial statement requirements based on aggregate target offering amounts within the preceding 12-month period. Under the proposed rules, issuers would not be prohibited from voluntarily providing financial statements that meet the requirements for a higher aggregate target offering amount (e.g., an issuer seeking to raise $80,000 provides financial statements reviewed by a public accountant who is independent of the issuer, rather than the required income tax returns and a certification by the principal executive officer). Is this approach appropriate? Why or why not?*

Response: We believe this approach is appropriate and beneficial to all parties involved. A 'not be prohibited' approach to the tiered financial statement requirements might be better served as the requirements overall, as investors likely will call for the level of service they require through their votes or commitments to purchase shares. If investors feel that a particular entity should have audited financial statements but only a tax return is provided, they will not invest. Conversely, investors will be more likely to invest in those issuers that voluntarily provide a level of assurance beyond the required parameters. A more flexible environment will invoke a spirit of competition for investor dollars amongst issuers such that those issuers that demonstrate their willingness to be more transparent may be more likely to attract investors and attract them at a lower premium.

We realize that in making these comments that the Commission has little flexibility to adjust the tiered financial statement requirements as they are prescribed by the JOBS Act. However, we do believe that our thought process here and in our response to Q63 might lead to some discussion and adjustments of the tiered levels.

Question 54. *Should we allow issuers to prepare financial statements using a comprehensive basis of accounting other than U.S. GAAP? For example, should issuers be allowed to provide financial statements prepared on an income tax basis, a cash basis or a modified cash basis of accounting? Why or why not? If so, should we allow all issuers to use a comprehensive basis of accounting other than U.S. GAAP, or only issuers seeking to raise $100,000 or less, or $500,000 or less? Why or why not?*

Response: Please see our response to Q50. In addition, we add that if the Commission chooses not to accept our suggestion to allow other reporting frameworks for all crowdfunding transactions, that they consider allowing such other reporting frameworks for issuers in the $500,000-and-under tiers. This would more closely align crowdfunding offerings with traditional markets, wherein smaller companies often utilize a reporting framework other than U.S. GAAP as a more cost-effective financial reporting measure.

Question 55. *Should we require issuers to provide two years of financial statements, as proposed? Should this time period be one year, as one commenter suggested, or three years? Please explain.*

Response: Given the size of these crowdfunding offerings, we believe one year is sufficient. Historical financial statements are one means an investor uses to evaluate an investment. In a smaller, earlier stage investment, historical financial statements are of less significance than business plans and recent financial condition and operations. Multiple year financial statements would place an unreasonable cost and time burden on the issuer and would run contrary to the JOBS Act, which intended to create a capital-raising environment that would reduce the barriers for issuers while minimizing the risk exposure to investors.

Question 56. *Should we require some or all issuers also to provide financial statements for interim periods, such as quarterly or semi-annually? Why or why not? If so, which issuers and why? Should we require these financial statements to be subject to public accountant or auditor involvement? If so, what level of involvement is appropriate?*

Response: Current financial information is always relevant and useful to the user of this information; however the cost of obtaining this information should not exceed the benefit. We believe that the issuers should not be required to provide quarterly financial information. However, we believe that issuers should be encouraged to provide some form of financial information on a periodic basis and that the intermediaries should stress in their educational materials the importance of timely data. This would allow for an environment for issuers and its investors to determine the issuer-specific periodic reporting required. In some cases, this may be quarterly financial statements prepared in accordance with U.S. GAAP. Others might call for the issuers to provide certain financial highlights on a periodic basis such as total cash, amount of debt and equity. Issuers and investors also could determine in the offering phase whether this information should be provided by the issuer with or without the involvement of the public accountant or auditor. This provides a framework in which the investors and issuers can fit the reporting requirements to the individual situation as opposed to the same requirement for all.

Question 57. *As proposed, subject to certain conditions, issuers would be able to conduct an offering during the first 120 days of the issuer's fiscal year if the financial statements for the most recently completed fiscal year are not yet available. For example, an issuer could raise capital in April 2014 by providing financial statements from December 2012, instead of a more recent period. Is this an appropriate approach? If the issuer is a high growth company subject to significant change, would this approach result in financial statements that are too stale? Should the period be shorter or longer (e.g., 90 days, 150 days, etc.)? What quantitative and qualitative factors should we consider in setting the period? Should issuers be required to describe any material changes in their financial condition for any period subsequent to the period for which financial statements are provided, as proposed? Please explain if you do not believe this description should be required.*

Response: Issuers should be required to provide financial statements within 120 days of their fiscal year-end. As long as the issuer has complied with this requirement, the issuers would be able to conduct an offering. Changes in the financial condition of the issuer after the latest fiscal year should be reported in the manner described in our response to Q56, or as required for material changes. This should be sufficient for the investor to make an informed decision. Finally, we believe that this exempt environment should begin with a consistent 120 days for all issuers, and as the market matures, other reporting timeframes may become more appropriate. At such time, the rules could be adjusted accordingly.

Question 58. *The proposed rules would require issuers offering $100,000 or less to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects. Should we require issuers offering more than $100,000, but not more than $500,000, and/or issuers offering more than $500,000 to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects? Why or why not?*

Response: All issuers, regardless of tier, should provide financial statements that are certified by the principal executive officer to be true and complete in all material respects. This involves minimal incremental cost on the part of the key executive who should be intimately involved in the performance of the enterprise and the reporting of such thereon to the investors.

Question 60. *If an issuer has not yet filed its tax return for the most recently completed fiscal year, should we allow the issuer to use the tax return filed for the prior year and require the issuer to update the information after filing the tax return for the most recently completed fiscal year, as proposed? Should the same apply to an issuer that has not yet filed its tax return for the most recently completed fiscal year and has requested an extension of the time to file? Should issuers be required, as proposed, to describe any material changes that are expected in the tax returns for the most recently completed fiscal year? Please explain.*

Response: We agree with the proposal that if an issuer has not yet filed its tax return for the most recently completed fiscal year, it would be allowed to use the tax return filed for the prior year and update the information after filing the tax return for the most recently completed fiscal year. The tax return should be submitted no later than the appropriate IRS deadlines, including allowable automatic extensions, provided that the estimated income in the filed extension is reported to investors by the first filing deadline. This proposal is appropriate considering the requirements to provide financial statements as indicated in Q57. The issuer should be required to describe material changes that are expected in the tax returns for the most recently completed fiscal year.

Question 61. *As proposed, the accountant reviewing or auditing the financial statements would have to be independent, as set forth in Rule 2-01 of Regulation S-X. Should we require compliance with the independence standards of the AICPA instead? Why or why not? If so, similar to the requirement in Rule 2-01 of Regulation S-X, should we also require an accountant to be: (1) duly registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office; or (2) in good standing and entitled to practice as a public accountant under the laws of his or her place of residence or principal office? Is there another independence standard that would be appropriate? If so, please identify the standard and explain why. Alternatively, should we create a new independence standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard? Please explain.*

Response: We believe that the independence requirements of Regulation S-X should not be required as proposed by the Commission. Instead, the AICPA rules should be required, as these smaller issuers may require assistance in the preparation of financial statements that would require issuers to engage two external accountants if they followed Regulation S-X. They would need one accounting firm to assist in preparation of the financial statements and another to audit or review them, which would add unnecessary time and cost to issuers without providing a commensurate benefit to investors. Further, it may require issuers that have historical audits of their financial statements to be audited again to be in compliance.

We do understand that if an issuer wishes to access capital markets in the future through an offering of registered securities, they would be required to obtain another audit if the Regulation S-X independence requirements were not met during the initial audit. However, that additional cost should be borne by an entity if that event occurs, rather than requiring all issuers to use the Regulation S-X independence rules. Many issuers will never file a registration statement, or may do so in future years after they have a more established accounting function and have started having their audit firm follow the Regulation S-X independence rules.

Question 62. *As proposed, the accountant reviewing or auditing the financial statements must be independent based on the independence standard in Rule 2-01 of Regulation S-X. Are there any requirements under Rule 2-01 that should not apply to the accountant reviewing or auditing the financial statements that are filed pursuant to the proposed rules? Why or why not? Are there any that would not apply, but should? For example, should the accountant reviewing or auditing the financial statements of issuers in transactions made in reliance on Section 4(a)(6) be subject to the partner rotation requirements of Rule 2-01(c)(6)? Why or why not?*

Response: Please see our response to Q61. We believe that the AICPA independence rules should be used for these exempt offerings.

Question 63. *As proposed, an issuer with a target offering amount greater than $100,000, but not more than $500,000, would be required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements reviewed by an independent public accountant in accordance with the review standards issued by the AICPA. Is this standard appropriate, or should we use a different standard? Why or why not? If so, what standard and why? Alternatively, should we create a new review standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard and why would it be more appropriate than the one proposed? What costs would be involved for companies and accountants in complying with a new review standard? How should the Commission administer and enforce a different standard?*

Response: We support the use of the Statements on Standards for Accounting and Review Services (SSARS) issued by the AICPA, as SSARS are the standards generally understood and widely used throughout the marketplace for review engagements. The only other U.S.-based standards related to "reviewed" financial statements are the AICPA's AU-C Section 930, *Interim Financial Information,* and the PCAOB's AU Section 722, *Interim Financial Information,* both of which would need to be modified to apply to annual reviews of crowdfunding issuers.

It would be impractical to draft a new review standard specifically for the crowdfunding model, as it could cause delays in implementing Regulation Crowdfunding, and it might create confusion and perhaps lack of confidence in the marketplace. Based on this last thought, we do not comment further on the remaining questions related to a hypothetical new review standard.

We do wish to comment on a matter for which a question was not posed by the Commission. That matter is the offering range for which the review requirement is imposed. We propose the following economically infeasible scenario:

A potential issuer has only reached the working prototype phase of development of the product it wishes to produce and sell. It has reached the limit of its personal capital resources and needs to raise $200,000 to launch the business from prototype to sales. The underlying issuer shareholders had always envisioned building a company that not only brought great things to market but that allowed other small scale investors to share in the growth of that vision. In other words, they desire to provide opportunity to many small investors. At the $200,000 target offering amount, the issuer may incur the following modestly estimated average fees:

Legal Fees:	$ 10,000
Intermediary Fees:	20,000
Accounting Fees:	5,000
Review Fees:	8,000
Other (transfer agent, campaign development, filing and other):	7,000
Total:	$ 50,000

The initial cost of capital in this scenario is fairly high at 25% but not unprecedented. However, of the $50,000 in potential fees, roughly half of them will be incurred in advance of the capital raise which may not be feasible from a cash flow perspective. Although it may be likely that those charging the fees may extend credit to issuers that it strongly believes will be successful, what about the barricade to opportunity for those long shots that have nothing more than an idea? How are they going to gain access to capital under this model?

In short, we feel the range requiring reviewed financial statements is set too low. While it is difficult to pinpoint the optimal starting point, we believe it should be at $300,000. Utilizing the fee scenario in the example above, this would yield a 17% cost to raise the capital and allow room for the use of instruments that provide some level of preferred return to investors.

However, despite our position on an appropriate starting point, it appears that the JOBS Act does not give the Commission discretion to set the low end of the range at which reviews are required, but rather only allows it to be adjusted based on changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. Given that we believe the base level set by the law is too low, the Commission should seize the opportunity to index adjust the requirement level in its final issued rules. Given the significant passage of time between the signing of the JOBS Act into law and the date the rules will ultimately be finalized, this will at least provide some relief to issuers.

Finally, we believe that there is room for interpretation on the high end of the range, given the discretion afforded the Commission for the audit range starting point, that would otherwise leave a gap between levels and as such the high end of the range should be adjusted to $700,000. Please also see our response to Q64.

Question 64. *Section 4A(b)(1)(D)(iii) requires audited financial statements for offerings of more than $500,000 "or such other amount as the Commission may establish, by rule." Should we increase the offering amount for which audited financial statements would be required? If so, to what amount (e.g., $600,000, $750,000, etc.)? Please provide a basis for any amount suggested. Should we identify additional criteria other than the offering amount, as one commenter suggested, that could be used to determine when to require an issuer to provide audited financial statements? If so, what should those criteria be?*

Response: We believe that the Commission should increase the offering amount for which audited financial statements would be required to offerings of more than $700,000 and adjust the high end of the review requirement accordingly. Our position is based on the following:

- This puts the audit requirement starting point in alignment with the suggested increase to the review range in Q63.
- Audits take time, and it is time that those seeking capital may not have.
- The cost of an audit for smaller companies, estimated at $28,700 on page 359 of the Proposed Rules, amounts to a larger percentage of capital or revenues than audit fees are for larger companies.
- The JOBS Act allowed the Commission an express provision within the law to adjust the level in Section 4A(b)(1)(D)(iii) at the Commission's discretion.
- The audit requirement may preclude potential issuers from utilizing this exemption option in lieu of other exempt options, or forego pursuit of capital.
- The model has multiple built-in safeguards that allow for the easing of the attestation requirements.
- The pressure on fees at the lower offering levels may result in poor quality audits.

While we believe the pre-offering audit requirement level should be raised, we do not feel that the ongoing audit requirement be waived. Rather, it should be required for not only those that meet the set offering amount levels, but also for those that meet certain revenue or other prescribed levels down the road. Otherwise, you may wind up with situations in which a company raises $99,000 at initial issuance and grows to a $500 million in revenue company that does not require any financial statement attestation and a similar company raises $1 million, grows into an ongoing $5 million in revenue concern that has a recurring audit requirement. The levels set for the ongoing audit requirement should be modeled on audit requirements banks use in a capital lending environment, adjusted downward for the risk to a less sophisticated investor group.

Question 65. *Should financial statements be required to be dated within 120 days of the start of the offering? If so, what standard should apply? Should those financial statements be reviewed or audited? Why or why not?*

Response: Please see our response to Q57. We do not believe that any modifications need to be made to the parameters suggested in that response. For example, we do not believe that issuers with calendar year-ends should have to update the financial statements for an offering that commences more than 120 days beyond year-end, which would be after April 30th. The material change disclosure requirements should be sufficient to keep investors updated without imposing the burden on issuers to update their full set of financial statements and obtain an audit or review, which some might consider excessive for the likely size of the companies involved in these offerings. Also, if the investors deem the financial statements to be stale, they could request updated financial information from the issuers, which such companies could provide at a lower cost than complying with a filing requirement.

Question 66. *Under Rule 502(b)(2)(B)(1)-(2) of Regulation D, if an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet must be audited. Should we include a similar provision in the proposed rules? Why or why not? Should we provide any guidance as to what would constitute unreasonable effort or expense in this context? If so, please describe what should be considered to be an unreasonable effort or expense. If we were to require an issuer's balance sheet to be dated within 120 days of the start of the offering, should we allow the balance sheet to be unaudited? Why or why not?*

Response: We believe that the same unreasonable effort or expense rules should apply to this type of exempt offering for three primary reasons. One, it promotes consistency and reduces confusion amongst the various exempt offerings. Two, it reduces the barrier to capital formation where most necessary. Three, it still allows for investors to see some positioning of the company at a lower cost.

Guidance should be provided on unreasonable effort or expense by utilizing multiple criteria: stage of the entities' life cycles, gross revenues, working capital and combined debt/equity position. Unreasonable effort or expense should be defined as anything that falls outside of the normal range of costs proportionate to the size of the issuer conducting the offering.

As indicated in Q65, we do not support requiring financial statements within 120 days of the start of the offering as we feel the most recent year-end financial statements and material change disclosures are sufficient. However, if the Commission were to require an issuer's balance sheet within 120 days of the start of the offering, it should be allowed to be unaudited, but be certified by the principal officer.

Question 67. *As proposed, an issuer with a target offering amount greater than $500,000 could select between the auditing standards issued by the AICPA or the PCAOB. Should we instead mandate one of the two standards? If so, which standard and why? Alternatively, should we create a new audit standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard? What costs would be involved for companies and auditors in complying with a new audit standard?*

Response: Initial audits should not be required to be in accordance with PCAOB standards as requiring such may put an unnecessary, undue cost and burden on issuers. In some instances, issuers may already have audited financial statements, so requiring issuers to have a second audit performed under a different set of standards would be inconsistent with an environment that is designed to be cost-effective for issuers and investors. However, we do feel that no audit should be accepted that has been performed by a firm that is not subject to or that has received a fail report under the AICPA peer review standards.

We do not believe, however, that either set of standards should be mandated or that a new set of standards should be created. A new set of audit standards would create confusion in the marketplace. Not mandating the use of AICPA or PCAOB standards enables enterprises with different long-term objectives to select the more appropriate type of audit for their business. For example, a company that does not intend to become a registrant might not deem it necessary to incur the somewhat higher cost of obtaining an audit based on PCAOB standards. As a final note, we believe that periodic reporting after the initial raise should be done in accordance with the same or a higher standard as the initial audit, with the PCAOB standards deemed to be the higher standard.

We did not analyze the costs involved for companies and auditors in complying with a new audit standard, as we do not believe that is the appropriate course of action at this time.

Question 68. *Should we require that all audits be conducted by PCAOB-registered firms? Why or why not?*

Response: We do not believe all audits should be required to be conducted by PCAOB-registered CPA firms, as registration requires little more than paying a $500 fee but gives the public the false impression that the firm is held to a higher standard. Requiring such registration would add unnecessary costs to smaller CPA firms, as being registered as a PCAOB member does not require firms to conduct audits in accordance with PCAOB guidelines. As we noted in our response to Q67, we recommend allowing issuers to choose whether they wish to obtain an audit based on PCAOB standards, in which case they would have to engage a PCAOB-registered CPA firm.

Question 69. *Should we consider the requirement to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements subject to a review to be satisfied if the review report includes modifications? Why or why not? Would your response differ depending on the nature of the modification? Please explain.*

Response: We object to allowing issuers to submit financial statements wherein the review report includes modifications, as there are certain report modifications we would deem unacceptable. It would not be feasible to develop a model of all allowable and disallowable exceptions, as it would be overly complex and would degrade the value of the review report to users. We believe this further supports our position on allowing bases of accounting other than U.S. GAAP as suggested in our response to Q50.

Question 70. *As proposed, an issuer receiving an adverse audit opinion or disclaimer of opinion would not satisfy its requirement to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors audited financial statements. Should an issuer receiving a qualified audit opinion be deemed to have satisfied this requirement? Should certain qualifications (e.g., non-compliance with U.S. GAAP) result in the financial statements not satisfying the requirement to provide audited financial statements while other types of qualifications would be acceptable? If so, which qualifications would be acceptable and why?*

Response: We believe that qualified audit opinions should not be allowed as similarly expressed in our response to Q69. We again express that such a model would likely be quite complex in the delineation of the allowable and non-allowable exceptions. Further, we believe allowing issuers to use other bases of accounting as described in our responses to Q50 and Q69 would alleviate the need for a qualification model.

Question 71. *Should we require that the certified public accountant reviewing or auditing the financial statements be in good standing for at least five years, as one commenter suggested? Why or why not? Should we require that the public accountant be in good standing for a lesser period of time? If so, for how long? Would such a requirement restrict the pool of available public accountants? If so, by how much? Would such a requirement reduce investor protections? If so, how?*

Response: Certified Public Accountants are required to meet certain professional requirements to maintain their licenses. These professionals are held to a high standard of conduct. Additionally, Certified Public Accountants must obtain the necessary industry knowledge in order to provide services for each specific industry. We believe the CPA's license should be in "good standing" for no less than three years, which is consistent with the AICPA peer review cycle.

Question 76: *Should we specify that an amendment to an offering statement must be filed within a certain time period after a material change occurs? Why or why not? What would be an appropriate time period for filing an amendment to an offering statement to reflect a material change? Why?*

Response: If the amendment being filed includes a material change that would require a reconfirmation of the investors' investment decisions, as prescribed in Section II.B.1.c. of the Proposed Rules, *Amendments to the Offering Statement*, then it should be filed in a relatively short period of time to get this material information to investors as early as possible. We would consider a period of five business days not to be overly burdensome to an issuer to file an amended Form C to reflect the new information, which is one day longer than current registrants have to file a Form 8-K under Section 13 or 15(d) of the Exchange Act after a material event occurs. Further, using five business days is consistent with several of the proposed requirements included in Section II.B.1.b., *Progress Updates*. If the amendment is to be filed for information that is not material and therefore does not require reconfirmation of investment decisions, then the issuer should have a longer period of time to file the amendment.

Question 77: *If an issuer amends its Form C, should the intermediary be required to notify investors? If so, should we specify the method of notification, such as via e-mail or other electronic means?*

Response: If Form C is amended containing what is considered to be material information, investors must "reconfirm their investment commitments, or the investment commitments would be cancelled" according to Section II.B.1.c. *Amendments to the Offering Statement*. Accordingly, to ensure that this material information arrives at the hands of the investors timely, the intermediary should be required to notify the investors. This notification should be made on the portal, in the form of an e-mail and by any other means that will help to ensure timely transmission to the investors with an acknowledgement of receipt from the investor required in writing or through the portal via electronic acknowledgement. If an acknowledgement of receipt is not received, the intermediary should be required to follow up until such is received or else is automatically cancelled for lack of reaffirmation.

Note also our response to Q82, however, which states that once the offering has met its target amount and investors may no longer cancel their investments, intermediaries should not have to e-mail investors regarding ongoing reporting or events.

Question 78: *Should establishment of the final price be considered a material change that would always require an amendment to Form C and reconfirmation, as proposed? Would it be appropriate to require disclosure of the final price but not require reconfirmation? Should we consider any change to the information required by Section 4A(b)(1) to be a material change? Why or why not?*

Response: In those instances in which an issuer has previously disclosed only the method used to determine the price, establishment of the final price should be considered a material change and require a reconfirmation of investment commitments from the investors within five business days. The investors participating in these transactions may be non-accredited investors and have less financial sophistication than accredited investors. Thus, the determination of the final price should be considered a material change, as disclosure of only the method of determination may be insufficient information for all investors to calculate the final price. Conversely, if the initial price is established in the offering documents and does not vary more than within a reasonable range established in the offering itself, the final price should be required to be disclosed, but investor reconfirmation should not be required.

Question 79: *Should we require issuers to amend Form C to reflect all changes, additions or updates regardless of materiality so that the Form C filed with us would reflect all information provided to investors through the intermediary's platform? Why or why not?*

Response: Form C amendments should not be required for non-material items. Requiring an amended Form C for both material and non-material information could dilute investors' perception of the importance of a Form C, and possibly result in investors missing a material change. This is in line with the filing requirements of current registrants, wherein updates are not required for insignificant changes.

Section II.B. 2: Ongoing Reporting Requirements

Question 80: *Should we require ongoing annual reports, as proposed? Why or why not? Should we require ongoing reporting more frequently than annually? Why or why not? If so, how often (e.g., semi-annually or quarterly)?*

Response: Ongoing annual reports should be required, as they provide potential investors with financial and operational information to make an informed decision. The annual requirement is sufficient, as a more frequent filing requirement would require a significant allocation of resources to the financial reporting function that likely would outweigh the potential benefits of having more frequent information. This is especially true as the Proposed Rules require the issuer to disclose material changes in the business during the year. These disclosures together with the required annual information regarding the business and its directors and officers, its financial condition including financial statements, material indebtedness, and certain other information should enable investors to analyze the issuer's position sufficiently.

Question 81: *Two commenters noted that compliance with the exemption would not be known at the time of the transaction if the annual reports are a condition to the exemption under Section 4(a)(6). Should the requirement to provide ongoing annual reports be a condition to the exemption under Section 4(a)(6)? If so, for how long (e.g., until the first annual report is filed, until the termination of an issuer's reporting obligations or some other period)? Please explain.*

Response: Section 4A(b)(1)(D) requires issuers to file with the Commission and provide to investors financial statements that are audited or reviewed by an independent public accountant if the offering is over $500,000 or $100,000, respectively, or certified by the issuer's principal executive officer and accompanied by the most recent year's income tax return if the offering is $100,000 or below. Thus, the initiation of the offering under the Section 4(a)(6) exemption would be predicated upon the issuer's having provided such financial statements and returns, as applicable. As Section 4(a)(6)(A) limits the maximum term of a crowdfunding offering to 12 months, an offering might be completed prior to there being a new set of financial statements to file in an ongoing annual report. The ramifications of not filing an ongoing report are unclear in such a case.

Requiring that issuers provide ongoing annual reports is important for several reasons. Annual reports provide the participants who purchased shares in the offering with information about their investment; they provide a measure of assurance that the funds raised were used for the business as indicated in the offering information; and they provide investors in the secondary marketplace with information needed to make informed investment decisions.

There are three points the Commission must consider when drafting the rules requiring issuers to provide ongoing annual reports. The first is that the Commission must establish the ramifications for not providing the annual reports. As the crowdfunding offering is less than one year, the impetus to comply with the requirement may be reduced. The Commission might consider precluding the issuer from using the Section 4(a)(6) exemption in future offerings, though that might not be critical to some issuers.

The second point to consider when drafting rules regarding ongoing annual reporting is the date of the financial statements to be provided pursuant to Section 4A(b)(1)(D) at the commencement of the offering. For example, if a calendar year issuer begins an offering in, say, January 2015, the audited, reviewed, or certified financial statements for the year ended December 31, 2014 may not be available. As noted in Q57, the Commission must establish whether the issuer in such a case could provide the December 31, 2013 statements, or else must provide statements as of an interim date in 2014. If the Commission determines that the year-end 2013 statements are sufficient, then the timeliness of the information provided to potential investors will depend on the point at which the offering begins during the issuer's fiscal year.

Finally, regardless of whether the Commission allows an issuer to provide the financial statements for the most recent annual period available, or requires statements as of an interim date if the available annual statements are not recent, the Commission must establish how long after a period-end the issuer may use the financial statements before they are required to provide statements as of a more recent date. Given the additional time it may take for companies participating in crowdfunding offerings to obtain audited or reviewed financial statements, we propose that the date at which financial statements "go stale" be at least 30 days longer than the date required presently under Regulation S-X for non-accelerated filers. The draft rules proposed by the Commission call for financial statements to be filed within 120 days of year-end, which seems acceptable and reasonable.

Question 82: *Should we require that the annual reports be provided to investors by posting the reports on the issuer's website and filing them on EDGAR, as proposed? Should we require issuers also to directly notify investors of the availability of the annual report, such as by e-mail or other electronic means? Should we instead require issuers to deliver the annual reports directly to investors? If so, should we specify the method of delivery (e.g., e-mail or other electronic means, U.S. mail or some other method)? Would investors have an electronic relationship with the issuer after the offering terminates? If not, how would an issuer notify or deliver a copy of the annual report to the investor? Would issuers continue to have an ongoing relationship with intermediaries once the offering is completed? If so, should we also require that the issuer post its annual report on the intermediary's platform? Why or why not?*

Response: We agree that the annual report be posted on the issuer's website and filed on EDGAR so that investors have a centralized site to obtain the report in case the issuer's website is changed, taken down, or the investor cannot find it. However, issuers should not be required to deliver annual reports directly to issuers, as maintaining a current e-mail listing or mailing address list would require significant resources. Requiring the reports be sent via U.S. mail not only would be costly, but also would be antithetical to the notion of an electronic crowdfunding platform. Further, investors could set up e-mail alerts using freeedgar.com or a similar service that would notify them of a filing on EDGAR.

To ensure investors are provided with current information without putting an undue financial burden on issuers, we recommend that the intermediaries' required educational materials state that each year, the annual report will be posted on the issuer's website no later than 120 days after the issuer's fiscal year-end. It would then be incumbent on the investor to locate and read the annual report each year.

Question 84: *Are the proposed ongoing disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements?*

Response: The ongoing disclosure requirements appear adequate, as discussed in our response to Q80.

Question 85: *Should the discussion of the issuer's financial condition address changes from prior periods? Why or why not? Should the number of years covered by the financial statements be the same as in the offering statement? Why or why not? If not, what should they be?*

Response: Issuers participating in an initial crowdfunding offering are required by Section 4A(b)(1)(D) to provide only financial statements, without an analysis of the year-over-year results. Thus, it would not appear consistent to require issuers to provide commentary on changes from the prior year in the ongoing disclosures. If issuers provide comparative financial statements for the current and prior year, investors could see significant changes in the financial condition or results of operations. Thus, we would suggest the requirement be that issuers be required to provide two years of financial statements in their ongoing filings.

Question 86: *Should we require that reviewed or audited financial statements be provided only if the total assets of the issuer at the last day of its fiscal year exceeded a specified amount, as one commenter suggested? Why or why not? If so, what level of total assets would be appropriate (e.g., $1 million, $10 million, or some other amount)? Are there other criteria (other than total assets) that we should consider? Please explain.*

Response: While there is nothing existing in Regulation S-X to change the level of service from an audit to a review based on the size of the company, proposed Regulation Crowdfunding has set a precedent in Section 4A(b)(1)(D) by allowing different levels of service from independent accountants based on the size of the offering. To minimize the burden on issuers while still providing relevant information to investors, we would support a rule pursuant to the annual reporting requirement in Section 4A(b)(4) that adjusts the level of service based on total assets, as was suggested by a commenter.

We suggest basing the requirement on a simple average of total assets measured at the beginning and end of the year rather than only at the end of the year, to reduce the chance that an issuer would incur and pay for a large expense at the end of the year simply to avoid an audit.

We believe the threshold to obtain an audit should be above the level that requires an audit for the initial offering, as the investors have the audited financials from that offering, so a review would provide a reasonable level of assurance for the subsequent year. With that in mind, we view $2 million in average total assets as being an appropriate level at which an audit of the ongoing financial statements would be required, as such a level could reflect growth of the company that might attract investors in the secondary market. Below $2 million, the issuer could provide reviewed financial statements, and if the issuer remains or becomes so small that total assets fall below $100,000, then the issuer's tax return and a certification from the principal executive officer should be acceptable.

Question 87: *The proposed rules would require any issuer terminating its annual reporting obligations to file on EDGAR, within five business days from the date of the terminating event, a notice to investors and the Commission that it will no longer file and provide annual reports. Is this approach appropriate? Why or why not? Should we require issuers to file the notice earlier (e.g., within two business days of the event) or later (e.g., within 10 business days of the event)? If so, what would be an appropriate amount of time after the event and why?*

Response: We do not object to the five business day period proposed, as it allows slightly more time than companies reporting under Exchange Act Sections 13(a) or 15(d) to allow for the presumably smaller company size of issuers participating in crowdfunding, while still providing their investors with information in a timely manner. As each of the three termination events would be known to an issuer far in advance of the five-day period, a longer filing period is not warranted.

Question 88: *Should an issuer be able to terminate its annual reporting obligation in circumstances other than those provided in the proposed rules? For example, should an issuer be allowed to terminate its reporting obligation after filing a certain number of annual reports, as one commenter suggested, so long as the issuer does not engage in additional transactions in reliance on Section 4(a)(6) (e.g., after filing one annual report, two annual reports or some other number of annual reports)? Why or why not? If so, what would be an appropriate number of annual reports? Should all issuers be allowed to terminate their reporting obligations or only issuers that have not sold more than a certain amount of securities in reliance on Section 4(a)(6)? If so, what would be an appropriate amount of securities (e.g., $100,000, $500,000, or some other amount)? Should an issuer be allowed to terminate its reporting obligation following the issuer's or another party's purchase or repurchase of a significant percentage of the securities issued in reliance on Section 4(a)(6) (including any payment of a significant percentage of debt securities or redemption of a significant percentage of redeemable securities), or receipt of consent to cease reporting from a specified percentage of the unaffiliated security holders? Why or why not? If so, what would be an appropriate percentage (greater than 50 percent, 75 percent or some other percentage)? Should an issuer be allowed to terminate its reporting obligation if the securities issued in reliance on Section 4(a)(6) are held by less than a specified number of holders of record, as suggested by a commenter? Why or why not? If so, what would be an appropriate number of holders of record (less than 500, 300 or some other number)?*

Response: Issuers should be required to continue its annual reporting obligations until the issuer files a Form C-TR to report a termination event, as shareholders presumably participated in the initial funding or subsequent secondary market to realize appreciation on their investment. As such, they retain an ongoing interest in the issuer's financial condition. There is no period after which a shareholder would not find such information relevant.

Similarly, an issuer should not be allowed to terminate its reporting obligations following a repurchase of a significant percentage of the outstanding shares or a reduction in the number of shareholders to a certain level, excepting a 100% purchase of all outstanding shares issued through the Section 4(a)(6) exemption, as the remaining shareholders still require ongoing information to determine whether to sell their stake, and potential secondary market buyers also would need such information as a basis for their investment decision.

Question 89: *If an issuer files a petition for bankruptcy, what effect should that filing have on the issuer's reporting obligations? Please explain.*

Response: We believe issuers in bankruptcy should continue to meet ongoing reporting requirements to provide current investors with information pertinent to their claim on the company's resources. However, given the expense involved in obtaining an audit or review, we would not object to reducing the requirement to the lowest level of service in Section 4A(b)(1)(D), which is to provide the financial statements that are certified by the issuer's principal executive officer and accompanied by the most recent year's income tax return.

Question 90: *Should issuers be required to file reports to disclose the occurrence of material events on an ongoing basis? What events would be material and therefore require disclosure? Should we identify a list of material events that would trigger a report, similar to the list in Form 8-K (such as changes in control, bankruptcy or receivership, material acquisitions or dispositions of assets, issuances of securities and changes to the rights of security holders)? Or should we require that all material events be reported without specifying any particular events? How many days after the occurrence of the material event should the issuer be required to file the report? Please explain.*

Response: Yes, issuers should be required to file reports to disclose material events, similar to those required for companies filing on Form 8-K under Section 13 or 15(d) of the Exchange Act. Also similar to the Form 8-K requirements, the Commission should provide a list of material events that would require a report. However, the events should be broader than those required in an 8-K filing, as issuers filing under Regulation Crowdfunding will be filing only annually, not quarterly. The material event filing would help keep investors apprised of changes and developments in the issuer's business during the year.

Question 91: *We have the authority to include exceptions to the ongoing reporting requirements in Section 4A(b)(4). Should we consider excepting certain issuers from ongoing reporting obligations (e.g., those raising a certain amount, such as $100,000 or less)? Should any exception always apply or only after a certain number of reports have been filed? Please explain.*

Response: We believe the ongoing reporting requirements should apply to all crowdfunding transactions, including those with initial offerings of $100,000 or less, as investors must be able to track the progress of the investee company. Investors using their $2,000 to fund a small offering should not be treated differently than if they invested their $2,000 in a crowdfunding offering of $500,000 or $1 million. Without the ongoing reporting information, investors essentially become locked into their investment, as few in the secondary market would be likely to purchase the initial investors' shares without current financial information. Please also see our response to Q88.

Section II.B.3: Form C and Filing Requirements

Question 92: *Should we require a specific format that issuers must use to disclose the information required by Section 4A(b)(1) and the related rules?*

Response: We believe that the new Form C, which requires certain information to be presented in a specific format, would assist issuers in preparing the disclosure as well as assisting the investors in reviewing the data. The proposed XML-based fillable form would allow for easier transference to EDGAR and would facilitate data mining by the Commission and researchers.

Issuers then would have the flexibility to add to the required disclosures by providing additional, customized information on the intermediary's platform and their own website, similar to what current registrants provide on their websites.

Question 94: *In what format would the information about an issuer be presented on an intermediary's platform? Will there be written text, graphics, charts or graphs, or video testimonials by the founder or other key stakeholders? Will the information be presented in a way that would allow for the filing of the information as an exhibit to Form C on EDGAR? If not, how should the rules address these types of materials?*

Response: We do not believe that all information must be filed as an exhibit to Form C. As stated in Q92, Form C should prescribe a format using text, graphics, charts, and or graphs as determined by the Commission and as is able to be EDGARized. However, just as current registrants provide additional information on their websites, crowdfunding issuers should be able to add additional information to the intermediary's platform, their own website.

While intermediaries cannot assist with marketing, we believe one of the value-added services that intermediaries could provide would be the creative formats, templates, and bandwidth so that issuers could upload videos or other multimedia presentations that are not able to be filed via EDGAR today. Intermediaries could differentiate themselves through their ability to provide a user-friendly, interactive experience for potential investors.

Question 95: *Should we require different forms for each type of required filing? Would the use of one form with different EDGAR tags for each type of filing create confusion among investors who review the issuer's filings? Would it create confusion for issuers that are filing the forms? Please explain.*

Response: We do not believe that different forms for each type of required filing should be required. The Proposed Rules prescribe one form, the Form C, which would generate a tag following the "C" based on which box the issuer checked on the cover. Thus, there would be no tag if the filing is for the initial offering statement, as it would be simply Form C, but tags would appear when the appropriate box was checked to indicate it was an amendment (C-A), a progress update (C-U), annual report (C-AR), or termination of reporting (C-TR). We believe that as long as the different type of filings are clearly tagged and the purpose of the filing is described on the cover, it would not create confusion among investors or issuers filing the forms.

Question 96: *Should we allow issuers to refer investors and potential investors to the information on the intermediary's platform? Are the proposed methods (website posting or e-mail) to refer investors effective and appropriate? Would issuers have access to the investors' e-mail addresses? Are there other methods we should consider? If so, what methods and why?*

Response: Issuers should be allowed to refer investors and potential investors to the information on the intermediary's platform. We believe that investors in this type of internet-based offering would be familiar with obtaining information electronically, and this also would be a cost effective means to disseminate information. While we recommend that intermediaries obtain investors' e-mail addresses when they open an account, given the expense of keeping an e-mail listing updated when investors change their e-mail addresses or sell their shares, we do not believe intermediaries or issuers should be required to notify investors via e-mail. Instead, investor education information should provide the issuer's website and describe how the investor can keep current with an issuer's materials, as we discussed in Q82.

Section II.C.3: Measures to Reduce Risk of Fraud

Question 128: *We are not proposing to require that an issuer relying on Section 4(a)(6) engage a transfer agent due, in part, to the potential costs we believe such a requirement would impose on issuers. What would be the potential benefits and costs associated with having a regulated transfer agent for small issuers? Are there other less costly means by which an issuer could rely on a qualified third party to assist with the recordkeeping related to the securities?*

Response: There are both benefits and costs to requiring issuers relying on Section 4(a)(6) to engage a regulated transfer agent. The potential benefits associated with having a regulated transfer agent include a demonstrated track record of efficient operations, trained personnel, tested and documented information systems, and tested internal controls. The primary costs associated with requiring crowdfunding issuers to engage a regulated transfer agent are the higher fees charged by such firms.

We believe that there may be a lower cost solution that could achieve similar objectives for regulators and stakeholders. The Commission could require unregulated transfer agents that deal with crowdfunding offerings exclusively to engage a qualified independent CPA firm to test the operating effectiveness of a transfer agent's controls over processing and tracking shareholder transactions, and then issue a report under the American Institute of Certified Public Accountants' *Statement of Standards for Attestation Engagement No. 16, Reporting on Controls at a Service Organization*, ("SSAE No. 16"). The Commission could specify the controls that the transfer agent would be required to have tested.

Such a compromise could balance the needs of investors in terms of testing the efficacy of internal controls, while the issuer can reduce its compliance costs and maintain focus on the crowdfunding investment vehicle.

Question 129: *The proposed rules incorporate a "reasonable basis" standard for intermediaries to determine whether issuers comply with the requirements in Securities Act Section 4A(b) and the related requirements of Regulation Crowdfunding, as well as for satisfying the requirement that the issuer has established means to keep accurate records of the holders of the securities it would offer and sell through its platform. Is a "reasonable basis" the appropriate standard for intermediaries making such determination? Why or why not? Is it appropriate for one determination but not the other? If so, please explain which one and why. What other standard would be more appropriate, and why? What circumstances in the crowdfunding context should not be considered to constitute a reasonable basis? Should we permit an intermediary to reasonably rely on the representation of the issuer with respect to both determinations?*

Response: We suggest that the Commission consider requiring intermediaries to follow a "due care" standard, which exceeds the "reasonable" standard, to help reduce the expectation gap created by the limited procedures performed by intermediaries versus investors' and others' expectations that the intermediary's representations are accurate.

While the expectation gap would not be completely eliminated by using the due care standard, it would require that the intermediaries perform some procedures to determine whether issuers have complied with the requirements of Section 4A(b) and will be able to keep accurate records of shareholders. A reasonable basis standard may be interpreted as allowing intermediaries to rely on statements by management of the issuers, without gathering any corroborating evidence.

In following a due care standard, intermediaries would be required to demonstrate that their actions would be the same action that a prudent person with knowledge of all the facts would undertake.

We recommend that intermediaries be required to obtain a report from a qualified CPA pursuant to SSAE No. 16, *Reporting on Controls at a Service Organization,* which would provide the Commission and investors with some level of comfort that the intermediary followed the due care standard to determine whether issuers are in compliance with Section 4A(b) and have established means of keeping accurate shareholder records.

Question 130: *The proposed rules incorporate a "reasonable basis" standard for intermediaries to determine whether an issuer would be subject to a disqualification. In contrast, there is no reasonableness standard for intermediaries' requirement under the proposed rules to deny access to an issuer if it believes the issuer or the offering presents potential for fraud or otherwise raises concerns regarding investor protection. Is it appropriate to have these two different standards under the proposed rules? Why or why not? If one of these standards is not appropriate, please explain what would be a more appropriate standard and why.*

Response: It is appropriate for intermediaries to have a different standard to determine if an issuer would be disqualified from meeting the exemption than to conclude that an issuer or offering presents the potential for fraud. Whether the standard for disqualification is reasonable basis or due care, as suggested in our response to Q129, the intermediary should not be required to vet issuers for potential fraud other than would be done through the normal course of assessing whether they wish to do business with a particular issuer.

Issuers' financial statements will be subject to audit or review above a certain level, which may help uncover anomalies in the financial results at higher offering levels. While audits and reviews are not forensic audits, and the smaller offerings will not be subject to either, it does not appear reasonable to require intermediaries to perform in a forensic capacity.

The fact that the offerings may span up to a year before the target amount is reached provides an opportunity for potential investors to read electronic message boards and other information about the company before funds are released to the company. This provides some measure of comfort against unscrupulous issuers; as such companies may find it difficult to sustain a fraud over the extended period of time.

Question 131: *The proposed rules would implement Section 4A(a)(5) by requiring the intermediary to conduct a background and securities enforcement regulatory history check aimed at determining whether an issuer or any of its officers, directors (or any person occupying a similar status or performing a similar function) or 20 Percent Beneficial Owners is subject to a disqualification, presents potential for fraud or otherwise raises concerns regarding investor protection. Is this approach appropriate? Why or why not? If not, why not? Would another approach be more appropriate? Why or why not?*

Response: We agree that the Commission should require intermediaries to conduct background and securities enforcement regulatory history checks for issuers and their officers, directors and 20 percent beneficial owners as an investor protection measure.

Question 132: *Should we require intermediaries to make the results of the proposed background checks publicly available? Why or why not? Would doing so raise privacy concerns?*

Response: Publishing the results of background checks is not advisable because it could contradict existing Federal and State laws, as well as raise privacy concerns. However, the Commission should set parameters surrounding the types of items that could preclude the issuer or individual from participating in a filing under the Section 4(a)(6) exemption.

Question 133: *Should we specify the steps that an intermediary must take in obtaining background and securities enforcement regulatory history checks on issuer and its officers, directors (or any person occupying a similar status or performing a similar function) and 20 Percent Beneficial Owners? Should we require for example, an intermediary to check publicly available databases, such as FINRA's BrokerCheck and the Commission's Investment Adviser Public Disclosure program? Why or why not? Are there third parties who would be in a position to provide these types of services? Please discuss.*

Response: We recommend the Commission specify two sets of steps. The first set of *required* steps would be mandatory, while a second set of *addressable* steps would be optional unless the intermediary, using a standard of due care, assesses the level of risk to be elevated.

We recommend that the required steps include obtaining background checks on officers, directors, and the principal executive officer and principal accounting officer. The background checks should include searches of both FINRA's *BrokerCheck* and the Commission's *Investment Adviser Public Disclosure* program, as well as certain other databases to be specified by the Commission. In addition, the intermediary should be required to obtain a basic credit report on the company as well as the individuals named above.

If the results of the required steps do not produce any negative factors, then the intermediary could cease its procedures. However, if the required steps uncover items that indicate to the intermediary there is a heightened level of risk to investors, then the intermediary would have to perform addressable steps, such as inquiries of employers or business colleagues. The Commission should add to the list of required and addressable steps.

The independent CPA firm could include testing of the operating effectiveness of the intermediaries' controls over background checks in the SSAE No. 16 report, as described in Q129.

Section II.C. 4.b: Account Opening: Educational Materials

Question 141: *Is the scope of information proposed to be required in an intermediary's educational materials appropriate? Why or why not? Is there other information that we should require an intermediary to provide as part of the educational materials? If so, what information and why?*

Response: We do not object to the scope of information required in the proposed educational materials, except wherein we have suggested that such materials include additional information throughout this letter.

Question 143: *Should we prescribe the text or content of educational materials for intermediaries to use? Why or why not? Should we provide models that intermediaries could use? Why or why not?*

Response: We believe the Commission should prescribe the basic text of educational materials, while allowing intermediaries to add explanatory language and select the format. Such flexibility will allow intermediaries to differentiate themselves from other platforms, as investors might gravitate to those intermediaries that provide more robust, user-friendly, and interactive educational materials.

Section II.C. 5.b.i. Requirements with Respect to Transactions: Investor Qualification: Compliance with Investment Limitations

Question 158. *Is the proposed approach for establishing compliance with investment limits appropriate? Why or why not? Is there another approach that we should consider? Please explain.*

Response: We do not disagree with the Commission's proposed approach to establishing compliance.

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Thank you for your kind consideration of our responses.

Sincerely,

GRASSI & CO., CPAs, P.C.

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