



January 22, 2014

Ms. Elizabeth M. Murphy
Secretary
U.S Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Proposed Regulation Crowdfunding (Release Nos. 33-9470; 34-70741; File No. S7-09-13) - Upfront Costs and “Testing the Waters”

Dear SEC Commissioners and Staff:

We appreciate the opportunity to comment on Proposed Regulation Crowdfunding (“Proposed Rules”) promulgated pursuant to Title III of the Jumpstart Our Business Startups Act (the JOBS Act).

We believe one of the biggest hurdles to making crowdfunding a viable option for small businesses is the cost and time burden that must be incurred prior to commencing an offering and prior to being able to gauge potential interest in an offering. Small business owners should not be required to gamble the upfront costs in the hope that their offering will be successful.

In the Proposed Rules, the Commission estimates that it will cost \$6,000 (15 hours) in outside advisor costs and an additional 45 hours of internal team costs time to prepare the initial Offering Statement. Furthermore, the Commission believes it will cost \$14,350 for reviewed financials and \$28,700 for audited financials in outside advisor costs. Furthermore, we believe the time burden in preparing all of these materials to be significantly greater than these costs may indicate.

In our experience, these upfront costs (potentially hundreds of hours and \$20,000 - \$50,000) will have a huge deterrent on those would seek to use crowdfunding. The majority of startups will have a tough time financing this level of upfront costs ahead of conducting a crowdfunding raise. Additionally, the few companies who are able to bootstrap these upfront costs will be severely dissuaded from proceeding given the lack of visibility as to the odds of successfully completing their crowdfunding round. Therefore, we propose that the Commission consider modifications to the proposed rules in order to facilitate issuer visibility ahead of incurring significant costs.

As the Commission notes in the Proposed Regulation A¹ Rules (“Regulation A Rules”) under Title IV of the JOBS Act, “[t]esting the waters was first proposed and approved for use in Regulation A in 1992, to address the risk that small companies faced when expending funds to prepare for an offering of securities without knowing whether there would be any interest in the offering... and would make the use of solicitation materials more beneficial for issuers and investors, reduce the

¹ Proposed Regulation A Rules, pages 128, 132, available at <http://www.sec.gov/rules/proposed/2013/33-9497.pdf>

filing requirements for issuers, and **entirely eliminate the filing requirement for issuers that, after testing the waters, decide not to proceed with an offering.**” (emphasis added)

In this letter, we request implementation of specific “testing the waters” provision, similar to that in the recently proposed in the Regulation A Rules. Specifically:

- No offering document or financial statements should be required by the issuer or the platform, and no filings should be required to be made with the SEC or FINRA, to begin marketing a crowdfunding offering on a platform (i.e. in “Prospect Mode”).
- While in Prospect Mode, prospective investors should be able to make non-binding “indications of interest” in an offering. This way companies will be able at least gauge their potential for success prior to spending \$20,000-\$50,000.
- We would also suggest that in addition to indicating interest, investors be permitted to (i) sign investment documents to be held in escrow by the platform, and (ii) pre-fund their investments into an escrow account maintained by the platform on a non-binding basis.
- At least 21 days prior to closing any investments, the required disclosure documents and financial statements should be filed with the Commission and distributed to the prospective investors.
- As is already the case under the Proposed Rules, prospective investors should be able to withdraw their investments up until 48 hours prior to its closing.

For similar as set forth by the Staff in the Proposed Regulation A Rules, we believe the changes above are necessary to make utilization of crowdfunding a viable option and to prevent a sizeable waste of resources (i.e. deadweight loss) with respect to offerings for which there is little interest.

Respectfully,

Sashi Kiran Lingam

Kiran Lingam, Esq.
General Counsel
SeedInvest, LLC