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Memorandum

From: J. Robert Brown, Jr.
Professors of Law
University of Denver Sturm College of Law

Date: January 27, 2014

Re: Crowdfunding, Exchange Act Release No. 70741 (Oct. 23, 2013)

The attached letter comments on the Commission's proposal to implement the crowdfunding exemption in the JOBS Act. Among other things, the letter addresses:

- A. concerns over reliance on the "collective wisdom of the crowd" as a substitute for traditional investor protections;
- B. concerns over reliance on investor self-certification as a means of enforcing the investment limits for individual investors;
- C. the inconsistency of the proposed method of calculating the offering limits applicable to issuers with the requirements of the JOBS Act;
- D. concerns over the elimination of the integration doctrine;
- E. the need to address and include persons in civil unions/civil partnerships within the definition of family member; and
- F. the need to require the filing of Form Funding Portal in an interactive format.

cc:

Chair Mary Jo White
Commissioner Luis A. Aguilar
Commissioner Daniel M. Gallagher
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Keith F. Higgins, Director, Division of Corporation Finance
John Ramsay, Acting Director, Division of Trading & Markets



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January 27, 2014

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F St., N.E.
Washington, DC 20549-1090

Re: File No. S7-09-13

Dear Secretary Murphy:

I appreciate the opportunity to comment on the proposals by the Securities and Exchange Commission concerning the regulation of crowdfunding offerings that are contained in Securities Act Release No. 9470 (Oct. 23, 2013) (“Release” or “Proposal”).¹

I. Investor Protection and the “Wisdom” of the Crowd

In drafting the proposed rules, the Commission confronted a difficult task. The statute imposed a significant number of affirmative requirements on issuers and intermediaries. With offerings limited to \$1 million over a 12 month period, capital raising under the exemption was likely to be highly sensitive to compliance costs. The Commission, therefore, had an interest in finding ways to minimize costs in order to facilitate the use of the exemption.

At the same time, issuers relying on the exemption were expected to present substantial risk, including a significant failure rate,² a greater propensity for fraud,³ an illiquid secondary market, and a susceptibility to money laundering.⁴ Moreover, investors in a crowdfunding

¹ I serve as the Secretary to the SEC’s Investor Advisory Committee. The views expressed in this letter are my own and do not necessarily reflect the views of the IAC.

² See Exchange Act Release No. 70741 (Oct. 23, 2013) (“There is broad evidence that many of these potential issuers are likely to fail after receiving funding.”).

³ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“we expect that funding portals would often facilitate offerings of microcap or low-priced securities, which may be more susceptible to fraud and market manipulation.”).

⁴ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“We believe that securities offered and sold in reliance on Section 4(a)(6) could be susceptible to money laundering because they are low priced, are placed in an offering that is exempt from registration and not subject to the filing review process of a registered offering. In addition, we expect that many of the issuers relying on the exemption in Section 4(a)(6) may be shell companies, which have been associated with a high risk of money laundering.”).

offering were often likely to be unsophisticated.⁵ Inadequate protections would, therefore, leave investors extremely vulnerable to unsafe and fraudulent offerings.⁶

In reducing traditional investor protections, the Proposal places significant emphasis on the “collective wisdom” of the crowd.⁷ This approach relies on the “public” to conduct due diligence and provide additional information concerning the risks and benefits of an offering.⁸ The Proposal includes mechanisms designed to enhance the development of this “collective wisdom.” Intermediaries would be required to create “communication channels” open to the public, thereby facilitating the development of a “crowd.” Issuers would be limited to a single intermediary, thereby avoiding “multiple” crowds.⁹ The exemption would only be available to companies that provided sufficient information to permit a discussion by the crowd.¹⁰

There are many reasons to suspect that the “collective wisdom” of the crowd will not adequately protect investors. Fraudulent offerings may be difficult to expose. Bad actors can hide behind others, obscuring their identity and role. Challenging inaccurate or incomplete statements will be difficult given the dearth of public information associated with non-reporting companies. Nor, in many cases, will the “crowd” be the only, or even the loudest, voice in the debate.¹¹

Indeed, the limits of the crowd’s “collective wisdom” can be seen from existing practices. Chat rooms and other online communications are common mechanisms for disseminating false information.¹² The crowd is, therefore, already in a position to conduct due diligence and raise

⁵ According to the Proposal, “many investors” would “likely be individual retail investors” who “do not have the necessary accreditation or sophistication to invest in most private offerings or because they do not have sufficient funds to participate as angel investors.” Exchange Act Release No. 70741 (Oct. 23, 2013).

⁶ Some in Congress likened crowdfunding offerings to “gambling.” See 158 Cong. Rec. S. 1669 (daily ed. March 14, 2012) (statement by Senator Durbin) (“Let’s call this crowdfunding for what it is. It is Internet gambling, and the odds will never favor the investor.”).

⁷ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“A premise of crowdfunding is that investors would rely, at least in part, on the collective wisdom of the crowd to make better informed investment decisions.”).

⁸ See Exchange Act Release No. 70741 (Oct. 23, 2013) (crowdfunding provides the “public – or the crowd --” with “an opportunity to invest in an idea or business and individuals decide whether or not to invest after sharing information about the idea or business with, and learning from, other members of the crowd.”).

⁹ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“Allowing an issuer to conduct a single offering or simultaneous offerings . . . through more than one intermediary would diminish the ability of the members of the crowd to effectively share information, because essentially, there would be multiple ‘crowds.’”).

¹⁰ Ineligible companies under the Proposal include those without a “specific business plan” or those planning to “engage in a merger or acquisition with an unidentified company or companies.” These companies have been barred from using the exemption because the crowd needs “sufficient information about the issuer’s proposal to discuss its merit and flaws . . .” Exchange Act Release No. 70741 (Oct. 23, 2013).

¹¹ It should not be assumed that the “crowd” will speak with a solitary voice or, even if correct, affect the success of the offering. Opinions by some in the “crowd” that an offering is fraudulent or excessively risky may be ignored, particularly when those perpetrating the fraud offer an alternative view.

¹² The Commission has brought a number of actions alleging the use of false statements in chat rooms. See *SEC v. Ruettiger*, Litigation Release No. 22198 (D. Nev. Dec. 16, 2011) (allegations that “false statements” were made “on an Internet radio show and in an Internet chat room”); see also *SEC v. Shaouljian*, Litigation Release No. 18146 (CD CA May 19, 2003 (allegations of the posting of “hundreds of false, favorable messages about the stock on internet bulletin boards and chat rooms, thereby causing the price of the stock to rise”).

concerns about misinformation. Yet Ponzi schemes and other fraudulent transactions involving thousands of investors continue to occur.¹³

The Proposal seeks to overcome these concerns by putting in place mechanisms designed to strengthen the voice of the crowd. These involve the creation of a “centralized” communication channel for each issuer¹⁴ that will facilitate the development of a crowd by funneling potential investors into a single forum.¹⁵ Yet these very enhancements also carry the risk that they will facilitate fraud by providing a ready-made audience for anyone seeking to disseminate inaccurate information about an issuer.¹⁶

The Proposal recognizes this risk.¹⁷ It seeks to address the concern primarily by limiting participation in the communication channels to those who have an account at the intermediary.¹⁸ The account opening process, according to the Proposal, will result in the maintenance of records that will “help to track the origins of any abusive or potentially fraudulent comments made through the communication channels.”

The need to open an account, however, is no barrier to the use of communication channels for the dissemination of inaccurate information. The Proposal does not include any meaningful account opening requirements. Intermediaries would be “expect[ed],” but not required, to request “basic identifying and contact information, such as full name, physical address and e-mail address.”¹⁹ Even this modest amount of information, which may or may not be sought by intermediaries, does not effectively address the use of multiple accounts or false identities.²⁰

Finally, whatever value provided by the “collective wisdom” of the crowd, the Proposal undercuts its own approach. The Proposal goes to great lengths to channel investors into a

¹³ See *SEC v. McKnight*, Litigation Release No. 22776 (ED Mich. August 13, 2013) (allegations of “\$72 million Ponzi scheme involving at least 3,000 investors”).

¹⁴ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“The communication channels we are proposing would provide a centralized and transparent means for members of the public that have opened an account with an intermediary to share their views about investment opportunities and to communicate with representatives of the issuer to better assess the issuer and investment opportunity.”).

¹⁵ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“Also, though communications among investors could occur outside the intermediary’s platform, communications by an investor with a crowdfunding issuer or its representatives about the terms of the offering would be required to occur through these channels, on the single platform through which the offering is conducted.”).

¹⁶ In addition to the operations and business of the issuer, misleading statements can include the degree of diligence conducted by promoters or members of the “crowd.” See *SEC v. Gagnon*, Exchange Act Release No. 66907 (admin proc May 2, 2012) (according to allegations, defendant “misrepresented” that he had conducted a “thorough investigation”).

¹⁷ See Exchange Act Release No. 70741 (Oct. 23, 2013) (noting the risk of “unfounded, potentially abusive, biased statements aimed unjustifiably to promote or discredit the issuer and improperly influence the investment decisions of members of the crowd.”).

¹⁸ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“The proposed rule would, however, require the intermediary to permit only those persons who have opened accounts with it to post comments.”).

¹⁹ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“We are not proposing to specify any particular type or form of information that an intermediary must obtain from an investor in order to open an account. . .”).

²⁰ It is unclear from the Proposal the degree to which this may be prevented by the need to comply with anti-money laundering provisions.

centralized forum operated by a single intermediary. As discussed later in this letter, however, the Proposal also calls for the elimination of the integration doctrine. Issuers will be able to simultaneously offer the same security under other exemptions, including those that permit the use of general solicitations. This can result in multiple offerings through multiple intermediaries and the development of multiple crowds, diluting, or preventing the formation of, the “collective wisdom.”

II. The Role of Investment Limits

As a result of the issues identified above, it is even more important that the Proposal include rigorous enforcement of the investment limits imposed on individual investors. Whatever the risks associated with crowdfunding offerings, the harm can be mitigated by ensuring that investors stay within the limits set out in the statute. The approach taken in the Proposal does not, however, adequately ensure that this will occur.

a. Self-Certification

In adopting the crowdfunding exemption, the JOBS Act left primary enforcement of the investment limits to the intermediaries. Intermediaries were required to “make such efforts as the Commission determines appropriate . . . to ensure” that no investor exceeded the investment limits.²¹ The Proposal would implement this requirement by mandating that the intermediary have a “reasonable basis” to believe that investors are not exceeding their investment limit.

“Reasonable basis,” however, is equated with self-certification.²² The intermediary can simply “rely on an investor’s representations concerning compliance with the investment limitation requirements. . . .” Intermediaries need only ask for three numbers: annual income, net worth, and the amount of total investments made over the past 12 months.²³ With the information, the platform will “generate the amount of investment the investor would be permitted to make at that time pursuant to the investment limitations.” There is no obligation to verify the calculations.

The approach raises substantial concern. First, it is inconsistent with congressional intent. In devising a regulatory framework for crowdfunding offerings in the JOBS Act, Congress considered an explicit provision that would have authorized use of self-certification to verify income.²⁴ The final bill, however, deleted the language. Congress took the concept out; the Commission should not put it back in, at least in such a broad based manner.

²¹ Section 4A(a)(8), 15 USC 77d-1(a)(8).

²² See Proposed Rule 303(b)(1) (requiring intermediaries to “[h]ave a reasonable basis for believing that the investor satisfies the investment limitations”).

²³ See Exchange Act Release No. 70741 (Oct. 23, 2013) (to meet the self-certification requirement, the intermediary need only “include a function on their platform that prompts investors to enter amounts of their annual income, net worth, and the amount of total investments made over the past 12 months on all intermediaries’ platforms.”).

²⁴ See Entrepreneur Access to Capital Act, HR Report 112-262, 112th Cong., 1st Sess., October 31, 2011 (“Verification of Income.--For purposes of section 4(6), an issuer or intermediary may rely on certifications

Second, the approach is inconsistent with the intended function of intermediaries. Congress expected intermediaries in crowdfunding offerings to act as gatekeepers.²⁵ They were required to take steps to prevent fraud, educate investors, and enforce investment limits. Self-certification eliminates any affirmative role for intermediaries with respect to investment limits. Enforcement is instead left to the unsupervised and unchecked statements of investors. As a result, investors will be able to make investments that “wip[e] out their entire savings,”²⁶ a consequence Congress sought to avoid.

Third, self-certification effectively guarantees that information provided by investors will often be wrong. In some instances, investors will make mathematical errors²⁷ or employ incorrect definitions.²⁸ Investors will frequently be unaware that net worth excludes equity in the principle residence²⁹ or that income excludes unrealized appreciation.³⁰ In other cases, third parties may submit false information on behalf of investors.³¹

Finally, it is important to note that reliance on self-certification reflects a fundamental shift in the approach taken by the Commission with respect to investor status in exempt offerings. Rule 501(a) of Regulation D provides that an issuer must have a reasonable belief that investors are accredited. While the industry standard has largely been self-certification, the Commission has never accepted this position.³² The approach was specifically rejected in the

provided by an investor to verify the investor's income.”). *See also* Id. (“This section also provides that an issuer or intermediary may rely on certifications provided by the investor to verify the investor's income.”).

²⁵ 158 Cong. Rec. S1895 (daily ed. March 21, 2012) (statement by Senator Brown) (“All the experts agree that we would need to require an intermediary, say, like an eBay, where the crowd can help identify the good and bad players, the way that eBay uses identified bad sellers on their site.”).

²⁶ *See* 158 Cong. Rec. S5476 (July 26, 2012) (Statement by Senator Merkley) (“The law puts in place aggregate caps on an individual's crowdfunding investments in a given year. Without aggregate caps, someone could in theory max out a per-company investment in a single company and then repeat that bet ten, a hundred, or a thousand times, perhaps unintentionally wiping out their entire savings.”).

²⁷ Investor confusion about technical terminology under the securities laws is not unusual. *See In re Bresner*, Release No. 517 (admin proc Nov. 8, 2013) (allegations that account holder “represented that he was an accredited investor, but he did not know what that meant.”).

²⁸ This approach is almost invited. Asking for income or net worth without any supporting data effectively encourages investors to simply estimate an amount without undertaking the calculations required under the JOBS Act.

²⁹ *See* Rule 501(a), 17 CFR 230.501(a).

³⁰ Lina Jasinskaite, *The JOBS Act: Does the Income Cap Really Protect Investors*, DU Online Law Review, 2013, available at http://www.denverlawreview.org/online-articles/2013/4/27/the-jobs-act-does-the-income-cap-really-protect-investors.html#_ftn25.

³¹ *See In re Bettiga*, Securities Act Release No. 7553 (admin proc. July 9, 1998) (allegations that subscription documents were “falsified” in order to qualify purchasers “as accredited investors”). *See also In re Dominion Capital Corp.*, Securities Act Release No. 7683 (admin proc May 13, 1999) (allegations that “false, inflated statements of customers' net worth on new account forms and subscription agreements” were submitted on their behalf).

³² On some occasions, the Commission has indicated that a “check-the-box” approach is inadequate to determine accredited investor status. Exchange Act Release No. 42728 (April 28, 2000) (“some non-broker-dealer web site operators are not even requiring prospective investors to complete questionnaires providing information needed to form a reasonable belief regarding their accreditation or sophistication. Instead, these web sites permit interested persons to certify themselves as accredited or sophisticated merely by checking a box.”).

adoption of Regulation D³³ and the Commission has repeatedly refused to approve the practice.³⁴ The use of self-certification in the crowdfunding context will likely be interpreted by at least some market participants as Commission approval of the practice in other circumstances.

b. Alternatives

Reliance on self-certification apparently arose out of the belief that there were only two available options. Other than self-certification, the Proposal discussed the possibility that investment limits could be “addressed by the use of a central data repository.”³⁵ With none in existence, the Proposal summarily concluded that “the benefits of establishing such a repository would not at this time justify the potentially significant costs.”³⁶

There are, however, a significant number of alternatives that do not rely exclusively on self-certification or require data repositories yet would better protect investors than the current Proposal.

First, as Senator Merkley, one of the sponsors of the legislation essentially suggested, self-certification could be used as a “safe-harbor” in instances where the amounts invested were modest.³⁷ Thus, for example, online platforms could rely on self-certification where investments were no more than \$500 in a single offering or more than \$2000 for all offerings over a 12 month period.³⁸ While this does not rule out that investors will use multiple portals and exceed the applicable limits, the modest nature of the amounts is consistent with the idea of crowdfunding, minimizes the possibility that investors will risk a significant amount in a single offering, and reduces the incentives of third parties to provide false information to intermediaries on behalf of these investors.³⁹

³³ See Securities Act Release No. 6339 n. 15 (Aug. 7, 1981) (“Among the suggested changes which are not included in proposed definition of accredited investor were the following: . . . 2) introducing the concept of self-certification by the investor to the Commission as to net worth, sophistication and financial experience”).

³⁴ See Securities Act Release No. 6455 (March 3, 1983) (“For this reason, the staff generally will not be in a position to express views or otherwise endorse any one method for ascertaining whether an investor is accredited.”).

³⁵ See 158 Cong. Rec. S5476 (July 26, 2012) (Statement by Senator Merkley) (“Some have expressed concern about how to implement the aggregate amounts across platforms. A data sharing regime is one way to do that, but the SEC might also consider whether to pair it with a presumption that ordinary investors that remain within an amount below the default aggregate, for example \$500, on any one platform are also presumed compliant across other unaffiliated platforms.”).

³⁶ The Proposal contains no analysis of the costs associated with the establishment of such a repository.

³⁷ See 158 Cong. Rec. S5476 (July 26, 2012) (Statement by Senator Merkley) (“One way to ensure that the investor protection inherent in the scaled approach is meaningfully implemented might be to only require persons seeking to qualify for the higher investment amounts make showing regarding their income, but then make that showing slightly higher than simply ‘checking a box.’ This approach could protect less sophisticated investors from opting into the higher limits accidentally or due to potentially misleading promptings from a less scrupulous intermediary, while retaining ease of use for the majority of participants utilizing the default amount of \$2000.”).

³⁸ Another possibility is to permit self-certification where issuers meet higher standards of disclosure. See 158 Cong. Rec. S1884 (daily ed. March 21, 2012) (Statement by Senator Merkley) (“There is certainly nothing that would prevent a particular Web site from establishing its own standards above and beyond these particular levels.”).

³⁹ Exchange Act Release No. 70741 (Oct. 23, 2013) (“An entity or individual raising funds through crowdfunding typically seeks small individual contributions from a large number of people.”).

Second, the intermediary should be given a greater role in ensuring the accuracy of the information provided by investors. The platform could require disclosure of the material sources of income and the amount attributed to each. With respect to net worth, investors could be required to submit a list of assets and the value assigned to each.⁴⁰ Software would be able to ensure that the sums were correctly added and provide prompts could inform investors of the need to deduct outstanding liabilities or exclude the value of the principle residence.

Third, the intermediary could be required to take steps to reduce the risk that information on income or net worth has been improperly influenced, fabricated, or submitted by third parties. Investors should be asked if they received assistance from third parties in computing these amounts (with a field to identify the third-party) and should be notified of any changes in their net worth or income.

Fourth, investors could be asked about the source of the funds that would be used in the offering. Investors qualifying under the test for net worth will sometimes be cash poor. They may need to withdraw funds from retirement accounts or sell illiquid assets.⁴¹ The information may trigger suspicion of fraud or provide useful information during Commission inspection of intermediaries.

Fifth, intermediaries should have at least some obligation to engage in “spot checks” of income and net worth.⁴² This is consistent with the standard for demonstrating a “reasonable basis” in other areas of the federal securities laws.⁴³ Software could randomly request that investors provide support for particular assets or for the primary source of income.

Finally, the Proposal should include more meaningful guidance on the instances when information would be deemed unreliable.⁴⁴ Certain “red flags” ought to raise immediate concerns and trigger additional obligations to investigate or verify the information submitted.

⁴⁰ This could be accomplished, for example, through a drop down box that listed categories of assets, including “miscellaneous.” To the extent that “miscellaneous” represented a significant percentage of net worth, however, this would presumably trigger an obligation to investigate further.

⁴¹ See *In re Giesige*, Exchange Act Release No. 60000 (admin. proc. May 29, 2009) (allegations that “many of the customers invested funds from their retirement savings”). See also *SEC v. Snisky*, Civil Action No. 13-cv-03149 (D. Colo. Nov. 21, 2013) (complaint filed alleging that “[t]he majority of investors . . . used funds from IRAs or other retirement accounts”).

⁴² See Staff Legal Bulletin No. 17 (March 22, 2004) (“it is a prudent practice for a firm’s compliance department to communicate directly with customers about unusual activity in accounts or on a spot-check basis.”).

⁴³ Brokers must have a “reasonable basis” when making a recommendation to customers. To meet the standard, brokers are obligated to undertake an “investigation.” See *In re Anthony*, Securities Act Release No. 9454 (admin. proc. Sept. 23, 2013) (“The Respondents, as associated persons of a broker-dealer, had an obligation to conduct a reasonable investigation of the issuers in order to form a reasonable basis for any recommendation to customers regarding” the offering). The obligation may be “heightened” for brokers involved in an offering. See *In re Piper Jaffray & Co.*, Securities Act Release No. 9472 (admin. proc. Nov. 5, 2013) (“While broker-dealers must have a reasonable basis for recommending securities to customers, underwriters have a ‘heightened obligation’ to take steps to ensure adequate disclosure.”).

⁴⁴ The only example given by the Proposal was the obligation to take into account information already in the possession of the intermediary. See Exchange Act Release No. 70741 (Oct. 23, 2013) (“In this regard, it would not be reasonable for an intermediary to ignore other investments made by an investor in securities sold in reliance on Section 4(a)(6) through an account with that intermediary or other information or facts about an investor within its possession.”).

These include material inconsistencies in the data provided,⁴⁵ unexplained changes in income or net worth,⁴⁶ income or net worth disproportionate to relation to other information provided by the investor, such as occupation, use of unusual assets or assets with atypical valuations, and suggestive patterns by multiple investors in the same offering.⁴⁷

In addition, the Commission should make clear that an intermediary has a duty to investigate suspicious or unusual trading activity. This can occur, for example, where account holders place early orders that are routinely canceled. The behavior may suggest a scheme to excite the crowd and attract interest in the offering, not unlike wash sales. In other cases, cancellations may occur after the issuer has attained the targeted amount, suggesting that the putative purchases were merely trying to ensure that the amount was reached, irrespective of the actual interest of investors.⁴⁸

III. Offering Limits

The JOBS Act limited the size of a crowdfunding offering. The statute specified that “the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the [crowdfunding] exemption . . . during the 12-month period preceding the date of such transaction, is not more than \$1,000,000. . . .”⁴⁹ The language is not ambiguous. It includes all sales during the 12 month period, not just those sold through a crowdfunding offering.

The Proposal, however, concluded otherwise. The \$1 million offering limit would be determined by adding only those securities sold in other crowdfunding offerings during the prior 12 months. As a result, sales of the same security through other exemptions would be excluded from the calculation. To overcome the clear mandate of the statute, the Proposal points to language in Section 4A(g). The Section, titled a “rule of construction,” provides that nothing in

⁴⁵ See Exchange Act Release No. 29093 (April 17, 1991) (noting that under Rule 15c2-11, brokers have an obligation to investigate financial information where “materially inconsistent or inaccurate information appears on the face of the financial statements”). Concerns about reliability should arise upon awareness of inaccuracies anywhere in the account application, not just those related to investment limits.

⁴⁶ See *In re Dominion Capital Corp.*, Exchange Act Release No. 41399 (admin proc May 13, 1999) (allegations that “financial statements purportedly provided by the firm's customers. . . reported net worth of several retired or unemployed customers [that] increased markedly and quickly, and without explanation”).

⁴⁷ See *In re Henry*, Exchange Act Release No. 40183 (admin proc July 9, 1998) (allegations that “on at least 13 customers' statement of net worth, one representative added a fictitious asset called ‘secured trust’ or ‘secured funds.’”).

⁴⁸ Whatever else is done with respect to this issue, the final rule should delete the explicit statement in Proposed Rule 303(b) that an intermediary “may rely on an investor’s representations concerning compliance with the investment limitation requirements concerning the investor’s annual income, net worth, and the amount of the investor’s other investments made pursuant to Section 4(a)(6) of the Securities Act” Thus, while the Proposal asserts that a centralized database could be an acceptable means of determining investment limits, the reference to self-certification in the Rule itself removes any incentive to do so. See Exchange Act Release No. 70741 (Oct. 23, 2013) (noting that rules would “permit reliance on a centralized database providing information about particular investors, if it could help provide an intermediary with a reasonable basis for a conclusion”). At most, the Commission should specify in the adopting release that “self-certification” is a temporary standard that will be revisited in the future. This will encourage the crowdfunding industry to develop the infrastructure necessary to permit more meaningful verification of investment limits.

⁴⁹ Section 4(6)(A)(emphasis added).

the exemption “shall be construed as preventing an issuer from raising capital through methods not described under section 4(6).”

This language, according to the Proposal, creates an ambiguity with respect to the calculation of the offering limit. While “the first provision could be read to provide for the aggregation of amounts raised in all exempt transactions, even those that do not involve crowdfunding, . . . the second provision could be read to provide that nothing in the Section 4(a)(6) exemption should limit an issuer’s capital raising through other methods.” Given this “ambiguity,” the Proposal concluded that the better interpretation was the one that excluded from the \$ 1 million threshold the sales made pursuant to other exemptions.⁵⁰

The analysis is inconsistent with the statutory language and the SEC’s rulemaking authority under the JOBS Act. The investment limit is to be determined, as the statute clearly provides, on the basis of the “aggregate amount sold to all investors. . .” Had Congress intended this to be limited to amounts sold in crowdfunding offerings there would have been no need to state that the threshold “includ[ed] any amount sold in reliance on the exemption. . .” The notion of an “inclusion” indicates that the amount is based on more than one source.

The effort to avoid this substantive standard through reliance on Section 4A(g) reflects a misreading of the statute. First, Section 4A(g) is a “rule of construction.” As the Supreme Court has indicated, “[l]anguage and objectives so plain are not to be thwarted by resort to a rule of construction. . . .”⁵¹ Indeed, the interpretation would allow the Commission to rewrite the entire statute since all substantive limitations on crowdfunding offerings would be “ambiguous” when combined with the language contained in Section 4A(g). This is not and cannot be the correct interpretation.

Leaving aside the limits imposed by a “rule of construction,” the language in Section 4A(g) does not provide any basis for modifying the investment ceiling or any other substantive requirement with respect to crowdfunding offerings. Section 4A(g) is not designed to alter the terms of a crowdfunding offering but to “prevent[]” crowdfunding offerings, once they occur, from interfering with other exemptions.⁵² The impact on other offerings depends upon the application of the integration doctrine, not the calculation of the offering limit, something the Commission recognizes elsewhere in the Proposal.⁵³

⁵⁰ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“The opposite approach – requiring aggregation of amounts raised in any exempt transaction – would be inconsistent with the goal of alleviating the funding gap faced by startups and small businesses because it would place a cap on the amount of capital startups and small business could raise.”).

⁵¹ *Vermont Agency of Natural Resources v. US ex rel. Stevens*, 529 US 765, 791 (2000) (quoting *US v. California*, 297 US 175, 186 (1936)).

⁵² The point was reiterated in the legislative history. See HR Report 112-262, 112th Cong., 1st Sess., October 31, 2011 (“This section also clarifies that an issuer’s engaging in a crowdfunding offering does not restrict the issuer’s ability to raise capital through other means.”).

⁵³ Exchange Act Release No. 70741 (Oct. 23, 2013) (“we believe that an offering made in reliance on Section 4(a)(6) should not be integrated with another exempt offering . . . An issuer could complete an offering made in reliance on Section 4(a)(6) that occurs simultaneously with, or is preceded or followed by, another exempt offering.”).

In this instance, the approach taken by the Proposal violates the plain language of the statute and provides a legal basis for challenging the rule. The final rule should provide, consistent with the statute, that the \$1 million limit includes all exempt sales within the prior 12 month period, not just those sold in a crowdfunding offering.

IV. Integration

With respect to crowdfunding offerings, the Proposal seeks to eliminate application of the integration doctrine in all circumstances. This approach is inconsistent with congressional intent and bad policy. If adopted, the approach will allow issuers to circumvent many of the protections for investors proposed in Regulation Crowdfunding and weaken the anticipated “collective wisdom” of the crowd.

In the absence of integration, issuers will be able to conduct offerings simultaneously under multiple exemptions. Thus, issuers can, at the same time, engage in crowdfunding offerings and offerings under Rule 506(c). Because offerings under Rule 506(c) permit the use of general solicitations, issuers can effectively circumvent the restrictions on advertising in crowdfunding offerings.⁵⁴ Use of multiple exemptions may also involve more than one intermediary and more than one online platform, creating the risk of “multiple” crowds.⁵⁵ Finally, the approach allows an issuer to sell securities simultaneously to accredited and non-accredited investors, something that would otherwise be prohibited by Rule 506(c).

The lack of integration will also change the nature of crowdfunding offerings in a manner that is inconsistent with the intent of the JOBS Act. Rather than create an exemption for companies with limited access to the capital markets,⁵⁶ crowdfunding in many cases will become

⁵⁴ Likewise, the use of the crowdfunding exemption can effectively permit the circumvention of requirements applicable to other exemptions. This could occur, for example, where the offering is made simultaneously under Rule 506(b) and the crowdfunding exemption. 17 CFR 230.506(b). While Rule 506(b) does not permit general solicitations, the crowdfunding exemption does in the form of advertisements. Under the Proposal, the advertisements may include “the name of the issuer of the security, the address, phone number and website of the issuer, the e-mail address of a representative of the issuer and a brief description of the business of the issuer.” With this information, investors are likely to communicate directly with the issuer and may be solicited for participation in the offering under Rule 506(b). The Proposal suggests that this will not be allowed. Exchange Act Release No. 70741 (Oct. 23, 2013) (“if an investor first discovers the issuer through a solicitation in a Section 4(a)(6) offering, that investor would likely not be eligible to participate in a concurrent private placement in which general solicitation is not permitted.”). This will, however, be a difficult if not impossible element to establish.

⁵⁵ The Proposal sought to address this particular concern by suggesting that issuers using a general solicitation cannot advertise the terms of a crowdfunding offering. Exchange Act Release No. 70741 (Oct. 23, 2013) (“any concurrent exempt offering for which general solicitation is permitted could not include an advertisement of the terms of an offering made in reliance on Section 4(a)(6) that would not be permitted under Section 4(a)(6) and the proposed rules.”). Issuers, however, can sidestep this limit by conducting offerings under different exemptions that have identical terms. So long as the general solicitation omits the address of the crowdfunding platform, issuers can argue that they are not advertising the crowdfunding offering. At the same time, investors who contact the issuer or intermediary can be redirected to the crowdfunding platform.

⁵⁶ The Release suggests that these companies will rely on the Rule. See Exchange Act Release No. 70741 (Oct. 23, 2013) (“Startups and small businesses that lack tangible assets or business experience needed to obtain conventional financing might turn to securities-based crowdfunding in reliance on Section 4(a)(6) as an attractive potential source of financing.”).

part of a broader strategy for selling high risk investments simultaneously to multiple categories of investors.⁵⁷ Issuers will be able to market the securities widely through a general solicitation, then channel non-accredited investors to the crowdfunding platform and accredited investors to the private placement. Issuers will be able to raise unlimited amounts of capital from accredited investors and up to a \$1 million from an unlimited number of non-accredited investors.⁵⁸

Senator Merkley, one of the drafters of the legislation, recognized these concerns. He described as a “difficult issue” the interrelationship between general solicitations and crowdfunding offerings.⁵⁹ He noted that “[i]t is critical . . . that the now-looser solicitation rules for a post-JOBS Act Regulation D offering not be permitted to undermine the centralized transparency protections of crowdfunding’s restrictions on advertising.”⁶⁰ Senator Merkley even suggested a solution: “[P]rovide a safe harbor from integration rules only where the Regulation D offering followed the pre-JOBS Act approach on Regulation D.”

To address these concerns, the Proposal should take a more narrow approach toward the integration doctrine. Rather than eliminate the doctrine, the Proposal could provide a safe harbor from integration that is shorter than the six month period in Regulation D.⁶¹ A two month period would facilitate the use of other exemptions yet allow much of the market conditioning that resulted from a general solicitation to dissipate. While it would be safer to apply this period to all exempt offerings, at a minimum it should apply to those that permit the use of general solicitations.

V. Investment Limits and Spousal Income/Assets

The JOBS Act ties individual investment limits to net worth and annual income. These terms are to be determined in a manner consistent with the accredited investor standard.⁶² In calculating these limits, the Proposal would allow for the inclusion of the income and net worth

⁵⁷ As a result, the \$1 million limit in the Rule imposes no real limit. *See* Exchange Act Release No. 70741 (Oct. 23, 2013) (“the ability of issuers to conduct other exempt offerings that would not count toward the maximum offering amount under Section 4(a)(6) might alleviate some of the concerns that certain issuers would not be able to raise sufficient capital.”).

⁵⁸ The economic analysis in the Proposal does not adequately take this possibility into account. The analysis concludes that “many potential issuers” using the exemption will be “startups and small businesses that are close to the ‘idea’ stage of the business venture” with business plans that are “not sufficiently well-developed” to attract VC or angel investors. Yet this overlooks the use of the exemption by more developed companies that intend to rely on crowdfunding as one piece of a broader strategy to raise capital.

⁵⁹ *See* 158 Cong. Re. S5476 (July 26, 2012) (Statement by Senator Merkley) (“This is a difficult issue, especially as Regulation D’s restrictions on general solicitation have been loosened by Title II of the JOBS Act. I believe that careful study and attention needs to be paid to how the two should interact in various contexts, including with respect to integration.”).

⁶⁰ *See* 158 Cong. Re. S5476 (July 26, 2012) (Statement by Senator Merkley) (“Although crowdfunding is a public offering, it is unlike other public offerings, and, absent evidence of problems, most likely should be able to proceed parallel to a Regulation D private offering, provided the appropriate protections are put in place--and the SEC adjusts them as necessary based on their performance in the real world.”).

⁶¹ *See* Rule 502(a), 17 CFR 230.502(a).

⁶² *See* Section 4A(h)(2), 15 USC 77d-1(h)(2).

of the investor's spouse.⁶³ The Proposal reasoned that the approach was "consistent with the rules for determining accredited investor status because the accredited investor definition contemplates both individual and joint income and net worth with a spouse as methods of calculating annual income and net worth."

The test for accredited investor in Rule 501 of Regulation D uses income and net worth as a substitute for sophistication. The Rule effectively provides a "family" test for sophistication that looks to the aggregate income or net worth of both spouses.⁶⁴ With respect to crowdfunding, however, income and net worth are not thresholds for demonstrating sophistication but are amounts designed to determine individual investment limits. By allowing the inclusion of spousal income and assets in determining these limits, the Proposal permits each spouse to count the same income or net worth twice. This effectively doubles the investment limit.

Doubling the investment limit is inconsistent with the statute. Investment limits are calculated by looking to the income or net worth "of such investor . . ."⁶⁵ The Proposal should, therefore, give investors a choice. Either the limits can be based upon the assets of each individual investor, excluding those of the spouse. Alternatively, investment limits can include those of the spouse but only if used to establish an aggregate investment limit applicable to both spouses. Intermediaries should be required to seek appropriate information to ensure that both spouses stay within the aggregate limits.

VI. Definitions of Family Members

a. Differences in Definitions

The JOBS Act in one instance refers to family relationships. Restricted securities may be transferred to "a member of the family of the purchaser or the equivalent . . ."⁶⁶ The phrase is, however, not defined. In addition, the Proposal would require the disclosure of certain "related party" transactions by "[a]ny immediate family member . . ."

With respect to the related party transaction disclosure, the Proposal would borrow the definition of "immediate family member" from Item 404 of Regulation S-K.⁶⁷ With respect to the right to transfer crowdfunding securities, the Proposal would borrow the definition of "member of the family" from Rule 16a-1(e), but with the addition of the phrase "spousal

⁶³ See proposed Instruction 2 to paragraph (a)(2) of proposed Rule 100 ("The person's annual income and net worth may be calculated jointly with the annual income and net worth of the person's spouse.").

⁶⁴ Thus, for example, Rule 501 provides separate thresholds for individual and spousal income. An individual meets the standard with income of \$200,000. For both spouses to qualify, however, the amount of income is elevated to \$300,000. Rule 501(a) of Regulation D, 17 CFR 230.501(a).

⁶⁵ See Section 301(a) of the JOBS Act (codifying Section 4(a)(6)(B) of the Securities Act of 1933).

⁶⁶ Section 4A(e)(1)(D), 15 USC 77d-1(e)(1)(D).

⁶⁷ Exchange Act Release No. 70741 (Oct. 23, 2013) ("For purposes of this related-party transactions disclosure, 'immediate family member' would have the same meaning that it has in Item 404 of Regulation S-K, which relates to the disclosure of related-party transactions for Exchange Act reporting companies.").

equivalent.”⁶⁸ The Proposal does not explain why it chose to use two different definitions for essentially the same term.

Multiple definitions create anomalous and sometimes arbitrary results. For example, “immediate family member” includes “adoptive relationships,” while “member of the family” does not. Thus, the inclusion of adoptive relationships is either unnecessary in the former, because it is assumed in the various terms such as child or sibling, or is arbitrary, because it does not apply to the latter.

Similarly, immediate family member does not explicitly reference grandparents, grandchildren, or spousal equivalent, but does include “any persons (other than a tenant or employee) sharing the household,” which presumably encompasses these relationships on at least some occasions.⁶⁹ The definition of “member of the family” in contrast, includes grandparents, grandchildren, and spousal equivalent, but does not include persons “sharing the household.”⁷⁰

A similar issue exists with respect to “spousal equivalent,” which is included in one definition but not the other.⁷¹ The term is defined as “a cohabitant occupying a relationship generally equivalent to that of a spouse.”⁷² Related party disclosure applies not to a “spousal equivalent” but to persons sharing the same household. Presumably the two phrases frequently overlap. Yet this will not always be the case. The “spousal equivalent” language focuses on qualitative nature of the relationship (“a relationship generally equivalent to that of a spouse”) while the “sharing the same household” language focuses on the physical location of the relationship.

There is no reason to employ different definitions. Moreover, a common definition should combine aspects of both. The definition in Rule 16a-1(e) contains a broader list of family relationships (grandchild, grandparent, adoptive relationships) and represents the better starting point. Consideration should be given to the addition of the language from Item 404 that extends the definition to “any person (other than a tenant or employee) sharing the household. . .” Finally, the common definition should be augmented by the phrase “spousal equivalent.”

⁶⁸ Exchange Act Release No. 70741 (Oct. 23, 2013) (“This definition tracks the definition of ‘immediate family’ in Exchange Act Rule 16a-1(e), but with the addition of ‘spousal equivalent.’”).

⁶⁹ Proposed Rule 201(r). The proposed definition would apply to “[a]ny immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the person, and any persons (other than a tenant or employee) sharing the household of the person;”

⁷⁰ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“For purposes of this section, the term member of the family of the purchaser or the equivalent includes a child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships.”).

⁷¹ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“Should the definition of immediate family member for purposes of related-party transactions disclosure also expressly include spousal equivalents, or would including spousal equivalents create confusion in light of the fact that the definition for purposes of related-party transactions already includes any persons (other than a tenant or employee) sharing the same household?”).

⁷² See Instruction to Proposed Rule 501(c).

b. Civil Unions and Civil Partnerships

In defining family member, the Proposal does not explicitly refer to civil unions or civil partnerships. The Proposal does provide for the inclusion in one instance of the phrase “spousal equivalent” within the definition of “member of the family.” Whether this includes civil unions/civil partnerships is, however, ambiguous.

The term “spousal equivalent” was first employed in 2000 when the Commission amended the standards for auditor independence.⁷³ The term was defined as “a cohabitant occupying a relationship generally equivalent to that of a spouse.” The Commission did not, however, address whether the term included civil unions or civil partnerships. This was not surprising. Such relationships essentially did not exist at the time the rule was adopted.

The SEC revisited the phrase in 2010.⁷⁴ The language engendered commentary, including an inquiry about whether the term included civil unions or civil partnerships.⁷⁵ The final release did not, however, address the issue. The impact of the term on civil unions and civil partnerships, therefore, remained unclear.

The ambiguity arises out of the conventional definition of “cohabitant.” The term includes persons who “live together as if married, usually without legal or religious sanction.”⁷⁶ To the extent limited to relationships “without legal or religious sanction,” spousal equivalent would arguably not include civil unions and civil partnerships.

Civil unions and civil partnerships have become a permanent part of our legal landscape and social order.⁷⁷ The Commission should, therefore, clarify that these relationships are included in any definition of family member.

This could occur by indicating that these relationships fall within the definition of “spouse.” This approach would be consistent with language in state statutes indicating that civil unions are designed to have the same rights and benefits as marriage.⁷⁸ Moreover, this would allow persons in these types of relationships to combine assets for purpose of the income and net worth standards in Regulation D and crowdfunding. Alternatively, the Commission could state that the relationships are included within the term “spousal equivalent.” A sentence in the adopting release making this clarification would be sufficient.

⁷³ See Exchange Act Release No. 43602 (Nov. 21, 2000).

⁷⁴ Investment Advisers Act No. 3220 (June 22, 2011) (adopting release).

⁷⁵ See Comment Letter from Alliance Defense Fund, Nov. 18, 2010 (asking whether there must be “legal recognition of the relationship—such as a domestic partnership or civil union— . . . to be a spousal equivalent?”).

⁷⁶ <http://dictionary.reference.com/browse/cohabitant?s=t>

⁷⁷ See *The Biggest Overlooked Trends of 2013*, *Politico Magazine*, Dec. 23, 2013, available at http://www.politico.com/magazine/story/2013/12/overlooked-trends-of-2013-101491_Page4.html#ixzz2ppBzvXrw (“And now states are continuing to recognize civil unions, domestic partnerships and reciprocal beneficiaries as statutory regimes, even after the nominal reason for their creation (denial of marriage rights for gay couples) has been resolved.”).

⁷⁸ See CRS 14-15-107 (“The rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law that are granted or imposed under the law to spouses apply in like manner to parties to a civil union”).

VII. Interactive Format

The Proposal would require the filing of Form Crowdfunding in an interactive format.⁷⁹ Moreover, the Proposal would facilitate this approach by providing an online “fillable” form.⁸⁰ As the Proposal notes, use of an interactive format will benefit investors,⁸¹ increase transparency,⁸² and assist the Commission in devising an appropriate regulatory framework.⁸³ The approach is also consistent with a recent recommendation of the SEC’s Investor Advisory Committee.⁸⁴

The Proposal would also create Form Funding Portal. The Form is to be used by portals registering with the Commission.⁸⁵ Recognizing the importance of the information in the Form to issuers and investors,⁸⁶ the Proposal for the most part would mandate the public availability of the contents.⁸⁷

The Proposal does not, however, specify that the Form must be filed in an interactive format. Investors and issuers seeking to undertake a comparative analysis of portals will, therefore, need to examine each Form individually. This will be burdensome, particularly given estimates on the number of Forms that could be filed annually.⁸⁸

⁷⁹ See Proposed Rule 203.

⁸⁰ Exchange Act Release No. 70741 (Oct. 23, 2013) (“XML-based fillable form would support the assembly and transmission of those required disclosures to EDGAR on Form C.”).

⁸¹ Exchange Act Release No. 70741 (Oct. 23, 2013) (“The ability to efficiently collect information on all issuers also could provide an incentive for data aggregators or other market participants to offer services or analysis that investors could use to compare and choose among different offerings.”).

⁸² Exchange Act Release No. 70741 (Oct. 23, 2013) (“reporting key financial information using XML-based filings would allow investors, analysts and data aggregators to more easily compile, analyze and compare information regarding the capital structure and financial position of various issuers.”).

⁸³ Exchange Act Release No. 70741 (Oct. 23, 2013) (“XML-based filings also would provide the Commission with data about the use of the new exemption that would allow the Commission to evaluate whether the rules implementing the exemption include appropriate investor protections and whether the rules unduly restrict capital formation.”).

⁸⁴ Recommendations of the Investor as Owner Subcommittee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors, adopted July 25, 2013, *available at* <http://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf>

⁸⁵ See proposed Rule 400(a) of Regulation Crowdfunding.

⁸⁶ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“We believe that this information is important for our oversight of funding portals, including, among other things, assessing a funding portal’s application and performing examinations of funding portals, and that it is pertinent to investors and issuers.”).

⁸⁷ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“We propose to make all current Forms Funding Portal, including amendments and registration withdrawal requests, immediately accessible and searchable by the public, with the exception of certain personally identifiable information or other information with significant potential for misuse”).

⁸⁸ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“on average, approximately 50 entities may decide to register as funding portals by filing Form Funding Portal.”).

The Commission should require that the Form be filed in an interactive format. The Form lends itself to such a requirement. The proposed Form is highly structured and requires mostly yes and no responses. The requirement of an interactive format should also be accompanied with an online fillable version, much like Form Crowdfunding. This will reduce costs for funding portals, facilitate the filing of the Form, and provide greater investor and issuer access.

VIII. Bad Actor Provisions

The Proposal, as required by the statute, seeks to extend the bad actor provisions to crowdfunding offerings.⁸⁹ Bad actor provisions have also been proposed under Regulation A+.⁹⁰ They are already in place for offerings under Rule 505 and 506 of Regulation D.

In adopting bad actor provisions in Rule 506, the Commission specifically asked for comments on whether the requirements should be extended to offerings under Rule 504.⁹¹ Despite receiving comments favoring this approach, the Commission did not resolve the issue.⁹² Instead, the Commission referenced the need to revisit the matter when bad actor provisions were considered in the context of crowdfunding and Reg A+.⁹³

That day has arrived. The Commission is seeking comment on the extension of bad actor provisions to exemptions for crowdfunding and Regulation A+ offerings. Once these are implemented, Rule 504 will stand alone among small offering exemptions and those contained in Regulation D with respect to the applicability of bad actor provisions. The omission provides an opportunity for bad actor arbitrage.

As discussed in an earlier comment letter, therefore, the bad actor provisions should be extended to offerings under Rule 504.⁹⁴ Moreover, given the integration of these provisions into all other significant exemptions, the costs associated with implementation should not be meaningful. Finally, as previously suggested, covered parties should be expanded to include

⁸⁹ See Section 302(d) of the JOBS Act.

⁹⁰ See Exchange Act Release No. 71120 (Dec. 18, 2013) (“We propose to amend Rule 262 to include bad actor disqualification provisions in substantially the same form as recently adopted under Rule 506(d), but without the categories of covered persons specific to fund issuers, which would not be eligible to use Regulation A under the proposal.”).

⁹¹ See Exchange Act Release No. 70741 (Oct. 23, 2013) (“Part III of the proposing release requested comment on a number of potential further rule amendments that would result in more uniform bad actor disqualification rules, including the application of the new bad actor disqualification standards to offerings under Regulation A, Regulation E and Rules 504 and 505 of Regulation D.”).

⁹² Securities Act Release No. 9415 (July 10, 2013) (“In light of these additional rulemakings, we have decided to limit the disqualification provisions adopted today to Rule 506 offerings.”).

⁹³ Securities Act Release No. 9415 (July 10, 2013) (“We note that the JOBS Act requires us to adopt rules for two new exemptions from the Securities Act – one for “crowdfunding” offerings, contained in Title III of the JOBS Act, and one for offerings of up to \$50 million in a 12-month period under Section 3(b) of the Securities Act, contained in Title IV of the JOBS Act.”).

⁹⁴ <http://www.sec.gov/comments/s7-21-11/s72111.shtml>

transfer agents and lawyers who are subject to certain disqualifications.⁹⁵ Such third-parties can play a crucial role in exempt offerings.

IX. Conclusion

The Commission's approach to the crowdfunding exemption breaks new ground under the securities laws. To effectively achieve the intent of the statute, however, changes need to be made in the final version.

I am happy to discuss this matter with you or your staff in more detail at your convenience.

With regards,

/s/ J. Robert Brown, Jr.

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cc:

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⁹⁵ <http://www.sec.gov/comments/s7-21-11/s72111.shtml>