Via electronic mail at rule-comments@sec.gov

January 27, 2014

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

Re: Crowdfunding; Proposed Rule [File No. S7-09-13], 78 FEDERAL REGISTER 66,428 (November 5, 2013) (the "Proposed Rules")

Dear Ms. Murphy:

Propellr LLC[1] ("Propellr") welcomes the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on its proposed rules (the "Proposed Rules")[2] to implement the exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") for "crowdfunding" securities offerings, as set forth in the Jumpstart Our Business Startups Act (the "JOBS Act"). Title III of the JOBS Act adds Section 4(a)(6) and Section 4A to the Securities Act to establish this exemption.

Propellr strongly supports Title III of the JOBS Act as an effective means to increase access to capital for small businesses, start-ups and entrepreneurs of all types, as well as making available greater investment opportunities to a wider variety of investors. Just as small business is an important engine of growth for the US economy, small investors should be able to provide fuel for that engine. Title III, among other methods, will expand participation in the economy for all investors. No longer will the rewards (and risks) of early-stage investing be available only to affluent accredited investors.

In this context, however, Propellr would like the Commission to ensure that the Proposed Rules do not deny Title III investors some of the protections and advantages afforded to more affluent investors and institutions in other types of private offerings. In a prior comment letter, we noted that the proposed prohibition on intermediaries co-investing in a crowdfunding offering inhibits an important alignment of interests that would significantly benefit Title III investors. In this letter, we suggest that the Commission should utilize its exemptive authority to loosen modestly the proposed rule prohibiting exempt funds from conducting Title III offerings.[3] We advocate for permitting single-purpose exempt funds to utilize

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1 Propellr is an alternative asset management marketplace providing accredited investors direct access to institutional quality investments. Propellr strives for the alignment of interests between individual investors and issuers through structure, professional due diligence and asset management resulting in superior risk adjustment returns.

2 *See* Crowdfunding; Proposed Rule, 78 Fed. Reg. 66,428, 66,460, *available at* http://www.gpo.gov/fdsys/pkg/FR-2013-11-05/pdf/2013-25355.pdf.

3 Jumpstart Our Business Startups Act, H.R. 3606, 112th Cong., § 401 (2011-2012).

the crowdfunding offering exemption from registration. The idea is simple: an exempt fund organized to invest in, or lend money,[4] to a single issuer should be allowed to engage in a Title III offering. So long as it remains single purpose, such a fund is effectively equivalent to making a direct investment in a Title III issuer, and averts any of the concerns discussed by the Commission in the proposing release.

I. The Final Rules Should Permit Single Purpose Funds To Utilize Title III

Section 4A(f) of the Securities Act excludes certain classes of issuers from relying on the crowdfunding exemption, including, among others, "investment companies as defined in the Investment Company Act ("ICA") of 1940 *or companies that are excluded from the definition of investment company under Section 3(b) or 3(c) of the ICA*" (emphasis added). The Commission has proposed to implement this provision in Proposed Rule 100(b)(3).

Propellr supports a change to Proposed Rule 100(b)(3) to permit a single purpose exempt investment fund to act as an issuer in crowdfunding offerings. In particular, we believe that the final rules should permit an investment fund to be a crowdfunding issuer if the fund is a single purpose entity that will invest *only* in a single operating company that would otherwise qualify as an eligible Title III issuer. The fund also would be required to meet the other requirements of a crowdfunding issuer. Under this structure, crowdfunding investors would invest in the single purpose fund rather than directly in the operating company. The single purpose entity would be solely and directly invested in an operating company, and both entities would meet all the requirements of a crowdfunding issuer. Consequently, this single purpose investment fund structure would not present the concerns, noted by the Commission in the proposing release, associated with hedge funds and private equity funds. Rather, it would essentially permit a holding company structure common in so many other areas of the economy.

There are many examples of the usefulness and appropriateness of the single purpose entity structure. Joint ventures often use this type of holding company structure, as do private equity funds, for a variety of purposes including governance, tax treatment, the allocation of assets and liabilities, and, perhaps most importantly, to limit liability. Major corporations also regularly utilize it for their mergers and acquisitions, again usually as a holding company. These structures are common for real estate financing and investment, where Propellr or its affiliates regularly employ them for the above reasons as well as to enhance investor protection, because having investors make a direct investment in a loan (mortgage) would result in personal liability for each of them and open them up for suit. It also ensures that one investor's actions do not harm the other investors, or create a joint liability situation where none should exist. In other words, it avoids a situation fraught with peril for the individual investor.

In each of these examples, affluent investors make use of vehicle structures to obtain certain protections and advantages. Title III investors should be able to do the same. A single purpose exempt fund, especially one with an investment adviser, would afford these protections and advantages to crowdfunding investors. The staff of the Division of Trading and Market appears to have recognized the veracity of this sentiment in its March 2013 no-action letters to AngelList and FundersClub.[5] In both letters, the staff granted no action relief to single purpose entity investment fund structures, managed by investment advisers (one registered and one relying on the venture capital exemption).[6] The sole

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[4] For ease of reference, in this letter we will simply refer to investing in a company, but that term should be understood to include investments in and loans to the company.

[5] *See*, *e.g.*, AngelList LLC, SEC No-Action Letter (Mar. 28, 2013), *available at* http://www.sec.gov/divisions/marketreg/mr-noaction/2013/angellist-15a1.pdf; FundersClub Inc. and FundersClub Management LLC, SEC No-Action Letter (Mar. 26, 2013), *available at* http://www.sec.gov/divisions/marketreg/mr-noaction/2013/funders-club-032613-15a1.pdf ("FundersClub").

[6] Indeed, in FundersClub, the staff granted the relief to both single investment funds as well as multiple investment funds. FundersClub at 1; incoming letter at 1 & fn. 1. Even the Employee Retirement Income Security Act recognizes that funds can function as operating companies under the so-called "operating company" exceptions to the plan assets definition.

distinction between the circumstances in those no-action letters and the proposal advocated by Propellr herein is the presence of accredited investors: AngelList and FundersClub both catered only to accredited investors. But why should Title III investors be deprived simply because they *may* not be accredited investors? Indeed, we expect that issuers and their intermediaries will structure side-by-side offerings so that accredited investors can continue to enjoy the advantages of fund structures, while non-accredited investors will be relegated to crowdfunding offerings.

By making such an investment fund a permissible issuer, the Commission would also be embracing the entrepreneurial and constantly-evolving spirit of crowdfunding generally. We believe that Congress intended that Title III would act to increase the bargaining power of retail investors and reduce the sometimes substantial barriers of entry they face. The Commission has an opportunity to be a strong advocate for such investors by offering them the advantages and protections enjoyed by more affluent investors.[7]

The fund structure outlined above in fact provides *additional* investor protection because the professional management of the fund alleviates certain aspects of the collective action problem inherent in crowdfunding. In 2012, traditional private placements by non-financial issuers had an average of only 8 investors per deal.[8] The new crowdfunding registration exemption will foster a substantially larger investment base. These potentially less-sophisticated investors will not possess the same incentives or ability to manage and monitor issuers as would more concentrated groups of sophisticated investors. This eroding communication feedback loop between investors and management is particularly troublesome in the crowdfunding context, where management is typically less experienced. Over the long-term, this could result in higher failure rates in crowdfunding deals, which would in turn damage investor confidence in the system and minimize its intended impact.

The fund structure detailed above, however, helps to overcome this collective action problem by employing a private fund managed by an experienced adviser and comprised of both sophisticated and unsophisticated investors, thereby increasing the bargaining power and overall level of knowledge. Under this scenario, individual retail investors, each holding small slivers of the financial interest, would be able to enjoy the diligence and efforts carried out by the fund, especially because the structure will encourage more sophisticated investors to co-invest in the offering. As a consequence of this alignment of interests, the risk of investor abuse is minimized.

A single purpose exempt fund would also protect crowdfunding investors from potentially significant legal liability. As the Commission itself has noted, crowdfunding ventures often feature “boom-or-bust” startup issuers. This volatile financial landscape of crowdfunding makes it a particularly attractive target for litigation, exposing the very same investors the Commission strives to protect to potentially crippling liability. Propellr urges the Commission to be prudent in taking into account the vast array of markets and industries that will participate in crowdfunding offerings. For example, real estate investments often are structured with a holding company that relies on an exemption from the Investment Company Act in order to insulate investors from a variety of claims from, among others, mortgagees, tenants and contractors. Similarly, real estate loans utilize Investment Company Act exemptions to, among other things, protect lenders from being sued individually. Propellr strongly advocates that a single purpose exempt fund be a permissible issuer because it would, among other things, safeguard its investors against such risks.

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[7] 29 C.F.R. § 2510.3-101. In that context, the fund will invest in multiple operating companies and still qualify as an operating company itself. Operating company status seems even more appropriate in the single purpose fund context. Investors would receive disclosure information in keeping with the proposed rules from both the fund issuer and the underlying company.

[8] *See* Vladimir Ivanov and Scott Bauguess, Division of Economic and Risk Analysis (DERA) U.S. Securities and Exchange Commission, *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption*, 2009 - 2012, at 15 (July 2013), *available at* http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf.

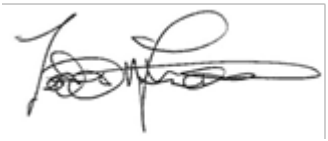
At the same time, Propellr recognizes the Commission's concerns regarding the potential issues that arise in investment funds using – or in the Commission's view – misusing, an exempt offering. For instance, the Commission raised and affirmed one commenter's concern that the crowdfunding exemption under Section 4(a)(6) should not be available for blank check companies or hedge funds because, according to the cited commenter, "permitting these kinds of high-risk and often complex entities to use the exemption is not consistent with the statutory goal of deterring fraud and unethical non-disclosure in crowdfunding offerings."[9] While Propellr acknowledges these concerns, the single purpose entity structure we propose sufficiently ameliorates them and in fact protects investors in the ways discussed above.

II. Conclusion

Propellr recognizes and supports the efforts by the Commission and other regulators in establishing and promoting a crowdfunding regime that is sure to make capital more accessible to the small businesses, start-ups and entrepreneurs that need it to thrive and create more jobs for the American people. As it continues to develop this regime, we urge the Commission allow certain single purpose entity investment fund structures to act as a crowdfunding issuer.

Propellr appreciates the opportunity to submit comments on the Commission's proposed rules relating to crowdfunding offerings. If it would be helpful to discuss Propellr's specific comments or general views on this issue, please contact me at (212) 255-2277 or todd@propellr.com.

Respectfully submitted,



Todd Lippiatt, CEO
Propellr LLC

cc: The Hon. Mary Jo White, Chair
The Hon. Luis A. Aguilar, Commissioner
The Hon. Daniel M. Gallagher, Commissioner
The Hon. Michael S. Piwowar, Commissioner
The Hon. Kara Stein, Commissioner

[9] *Id.* at 66,436.