



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

Re: File No. S7-09-13

February 2, 2014

Dear Ms. Murphy:

CrowdCheck, Inc., which provides disclosure and due diligence services for online offerings by early-stage companies, is pleased to submit comments with respect to the Commission's proposals for crowdfunding. This comment letter relates to certain technical aspects of proposed Rule 501.

Rule 501, tracking the wording of the JOBS Act of 2012, provides that for one year after the purchase of securities issued in a transaction made in reliance on Section 4(a)(6), the securities may not be transferred "by the purchaser" except to the issuer, in a registered public offering, to family members or accredited investors. In this context, the obvious interpretation of "the purchaser" is the purchaser of the securities in the transaction made in reliance on Section 4(a)(6), ie, the initial purchaser. No restrictions are imposed on any persons other than the initial purchaser, either by the JOBS Act or the proposed rule. (Wording that would impose such restrictions would include "by the purchaser or subsequent purchasers," "by any person" or the omission of the words "by the purchaser.")

We note that the Commission did not designate securities sold in reliance on Section 4(a)(6) as "restricted" within the meaning of Rule 144.

It would thus seem that proposed Rule 501, as drafted, would permit the following scenario:

Day 1: Issuer sells to crowd investors in reliance on Section 4(a)(6).

Day 2: Initial purchaser sells to accredited investor as permitted by Rule 501, presumably in reliance on Section 4(a)(1) of the Securities Act. Because the provisions of Rule 501 apply only to the initial purchaser and no conditions are imposed on subsequent transfer, and the securities are not restricted, the initial purchaser is not required to comply with any additional requirements with respect to this sale or to impose any limitations on the accredited investor.

Day 3: The accredited investor sells publicly to several retail investors in reliance on Section 4(a)(1).

It is not likely that there will be developed securities forums for the trading of many CF securities, and in any case the need to comply with state securities law will limit trading to some extent, but if the

scenario above is repeated a number of times, it is possible that in some cases a number of securities of a particular issuer could become widely traded over the counter within the first year after the offering.

It does not seem that this result was intended by Congress or by the proposed rule. If that is the case, there are several alternatives (which could be used together) that might address this issue:

- Designate CF securities as “restricted” within the meaning of Rule 144. Although most restricted securities are restricted by reason of the non-public nature of the offering in which they were acquired, it is arguable that from the point of view of public policy, the quasi-public nature of crowdfunding is not equivalent to a registered public offering. Additionally, there are some public or quasi-public offerings that still result in securities’ being restricted, such as Rule 701 offerings. The result of this designation would be to reverse the presumption of availability of Section 4(a)(1) for the transaction by the accredited investor on Day 3 in the scenario above.
- Mirror some or all of the issuer obligations imposed by Rule 502(d) of Regulation D.
- Impose an obligation on the issuer not to register the transfer of securities by any person, initial purchaser or not, except in the four permitted types of transfer set out in proposed Rule 501, for one year.
- Remove the words “by the purchaser” from the first sentence of proposed Rule 501(a), unless the Commission believes that by so doing the intent of the statutory language is subverted.

The JOBS Act’s reference to “such other limitations as the Commission shall . . . establish” would seem to permit any or all of these approaches.

Thank you for your consideration,

/s/Sara Hanks

Sara Hanks  
CEO, CrowdCheck, Inc.