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February 3, 2014

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

Re: File Number S7-09-13, *Crowdfunding*

Dear Ms. Murphy:

McGladrey LLP appreciates the opportunity to offer our comments on the proposed Regulation Crowdfunding under the Securities Act of 1933 and the Securities Exchange Act of 1934. McGladrey LLP is a national CPA firm that serves hundreds of public companies and thousands of private companies in a variety of industries. We focus primarily on serving middle market companies and public sector entities.

Crowdfunding serves as an alternative source of capital to support startup and small businesses in a wide range of ideas and ventures. Often, such ideas and ventures are in an early stage of development, and many may never come to fruition. Thus, when investing in "idea-only" companies and ventures, we believe it is a "buyer-beware" situation in which investors face significant inherent risks.

One such risk results from the fact that a startup business with a promising innovative idea might have little capital prior to the offering, and there may be little or no financial information available in this incubation stage. Also, if financial information is available, it may not be relevant in addressing the inherent risks of investing in such ventures.

Even if one believes financial information would be useful to crowdfunding investors, a balance must be achieved when weighing the potential benefits of such information with the impact of the associated costs for the issuer. If the financial statement requirements of the crowdfunding rule become too high, we believe innovation will be reduced because a large amount of the offering proceeds would be needed to cover the costs of preparing and auditing or reviewing the financial statements, leaving less money to be invested in realizing the ideas of the issuer.

We support the objective of the proposed regulation "to help alleviate the funding gap and accompanying regulatory concerns faced by small businesses by making relatively low dollar offerings of securities less costly…"[1] The costs of providing information should be reasonable in comparison to the benefit of such information. As discussed below, however, we are concerned that the costs associated with the requirements of the proposed crowdfunding regulation could outweigh the benefits to those who may desire to take advantage of the crowdfunding exemption.

We acknowledge the Jumpstart Our Business Startups Act establishes the foundation for a regulatory structure for startups and small businesses to raise capital in securities offerings through crowdfunding. However, we understand the Commission has some discretionary authority in implementing crowdfunding regulations, such as discretion to increase the aggregate target offering amount that requires audited financial statements.[2] In that regard, we offer comments on the financial statement,

[1] SEC File No. S7-09-13, page 465

[2] Securities Act of 1933 Section 4A(b)(1)(D)(iii) (giving the Commission discretion to increase the aggregate target offering amount that requires audited financial statements).

auditing, and independence requirements of the proposed regulation and related ideas that we believe are congruent with the objective of the proposed regulation.

Costs associated with a crowdfunding offering

Most securities offerings result in the issuer incurring costs for the involvement of advisors, attorneys, intermediaries, auditors, and others. In the proposed crowdfunding regulation, the SEC has estimated such initial costs to range from $35,350 to $65,350 for offerings of between $100,000 and $500,000 and to range from $72,200 to $147,200 for offerings of more than $500,000.[3] We question if these costs are understated given what we believe will be the level of outside assistance provided to a typical issuer. For example, many start-up businesses have never prepared financial statements or have prepared financial statements that have never been audited. The costs of a first-time audit can be significant, especially if the audit client is unsophisticated in the financial area. Also, given the many ways in which start-up businesses sometimes procure capital, the legal costs of determining the substance of prior equity transactions also could be significant.

As proposed, the aggregate amount of securities sold to all investors by an issuer in reliance on the crowdfunding exemption cannot exceed $1,000,000 in a 12-month period. We are concerned that this $1,000,000 limit will leave inadequate proceeds for investment in the company's activities after the issuer covers the costs of the initial offering. Stated differently, we are concerned that a significant amount of the proceeds from a $1,000,000 offering would be needed to fund advisors, attorneys, intermediaries, auditors and others.

We believe that involvement of outside professionals helps protect the investing public, especially given the likely inexperience of management of these types of companies. It would appear, however, that a higher maximum offering limit would be needed to fund these expenditures while ensuring investors are adequately protected. We suggest the Commission re-evaluate (a) raising the maximum annual offering limit to $5,000,000 and (b) the appropriate level of oversight and structure required if the maximum was raised.

Absent increasing the maximum crowdfunding offering limit, we recommend the Commission explore whether the level of involvement needed by advisors or other professionals can be reduced or eliminated without unduly increasing the risk to investors. We believe a balance must be achieved when weighing the potential benefits to investors of the involvement of such advisors with the impact of the associated costs and consequences to the issuer, especially given the current offering limit of $1,000,000.

Financial statement requirements

The proposed crowdfunding regulation would require an issuer offering or selling securities to provide to investors and the relevant intermediary and make available to potential investors financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP). We suggest the Commission consider eliminating the requirement for an issuer offering securities to provide financial statements until revenue and operational thresholds are met by the issuer.

Because many companies desiring to use the crowdfunding exemption will be startup companies with no revenue and virtually no assets, it may be more helpful to investors to instead require disclosure about the risks involved with the activities to be funded. In other words, forward-looking disclosures about the issuer's intended activities and capital structure may be more meaningful than historical financial information. As to ongoing financial reporting after the offering, management should annually provide investors with a general description of the activities of the company and an unaudited disclosure of the

[3] SEC File No. S7-09-13, pages 358 and 359.

use of proceeds for the last 12 months and for the period from the crowdfunding event to the current date. If GAAP-basis financial statements are available, they also should be provided to investors.

Audit and review requirements

For offerings of more than $100,000 but not more than $500,000, the financial statements required to be provided to investors in a crowdfunding offering must be reviewed by a public accountant who is independent of the issuer. For offerings of more than $500,000, the financial statements must be audited by a public accountant who is independent of the issuer. Given the costs of financial statement reviews and audits, these requirements seem onerous for the size of the offerings involved, especially considering the objective of the proposed regulation to help alleviate the funding gap and accompanying regulatory concerns faced by small businesses by making relatively low dollar offerings of securities less costly. **Under the current offering limit of $1,000,000, we recommend the Commission consider eliminating the audit and review requirements until certain revenue and operational thresholds are met by the issuer.**

Independence requirements

The SEC has proposed that to qualify as an independent public accountant for purposes of the crowdfunding regulation, the accountant would need to comply with the Commission's independence rules, which are set forth in Rule 2-01 of Regulation S-X. Among other provisions, such rules prohibit the accountant from preparing the issuer's financial statements. Although such rules are important for registered offerings, we believe they are overly restrictive for crowdfunding offerings.

For example, we believe companies that will take advantage of the crowdfunding exemption may not possess the technical ability to draft financial statements or to prepare income tax provisions. Accordingly, a company would be required to outsource these and other functions. The involvement of yet another professional would increase costs, resulting in fewer funds available for investment in the company's operating activities.

If the Commission retains the audit and review requirements, it may be more practical to require independence in accordance with the rules of the American Institute of Certified Public Accountants (AICPA). However, if an issuer elects to have its audit conducted in accordance with the auditing standards of the Public Company Accounting Oversight Board (PCAOB), the independence rules of the PCAOB and the SEC would apply.

The AICPA *Code of Professional Conduct* contains a robust set of independence standards that provide stringent requirements, including standards addressing financial, employment and business relationships with clients. With regard to the provision of nonaudit services to a company, the AICPA Code recognizes that many nonaudit services may place the accountant in a position of auditing or reviewing his or her own work (that is, self-review threat) or assuming the role of management (that is, management participation threat) and, therefore prohibits many nonaudit services where the self-review threat or management participation threat is deemed to be significant. For those nonaudit services that are permitted, stringent safeguards must be applied by the accountant and client management to reduce the threats to independence to an acceptable level, thereby allowing the accountant to act with integrity and exercise objectivity and professional skepticism during the performance of the attest engagement.

Specifically, the AICPA independence rules strictly prohibit an auditor from assuming any management responsibilities while performing nonaudit services for an attest client and for those services that are permitted, such as the preparation of the income tax provision, the client must designate a member of management who has the requisite skill, knowledge and experience or both, to make all significant decisions and judgments, and oversee the nonaudit services, including evaluating the adequacy and

results of the services performed and accepting responsibility for the nonaudit services. We believe that the AICPA Code provides sufficient prohibitions and restrictions to safeguard independence for those companies who could benefit from having their accountant provide any necessary nonaudit services.

We would be pleased to respond to any questions the Commission or its staff may have about these comments. Please direct any questions to Leroy Dennis, National Director of Regulatory Relations, at 612.455.9417.

Sincerely,

McGladrey LLP

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