



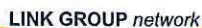
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February 3, 2014

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

Re: *File No. S7-09-13*  
*Proposed Crowdfunding Rules*

Dear Ms. Murphy:

On behalf of American Stock Transfer & Trust Company, LLC (“AST”), I am writing to you in response to the Securities and Exchange Commission’s (the “Commission”) request for comments on the recently proposed rulemaking (“Proposed Rules”) implementing the crowdfunding provisions of the Jumpstart Our Business Startups Act (“JOBS Act”), and Section 4(a)(6) (“Crowdfunding Exemption”) of the Securities Act of 1933 (“Securities Act”). These provisions will expand access to capital for small businesses by reducing some of the regulatory costs associated with fundraising, while also preserving important investor protections.

AST provides comprehensive stock transfer and employee plan services to over 2,800 public companies and maintains approximately 6,000 issues. Our clients are located throughout the United States and in over 22 foreign countries, ranging in size from initial public offerings to Fortune 100 companies. Founded in 1971 and headquartered in New York, AST provides clients with customized solutions to fit their specific needs along with access to the best systems, services, processes and products available today — around the globe. AST is a limited liability trust company organized under the Banking Laws of the State of New York, and is a transfer agent registered with the Commission under Section 17A of the Securities Exchange Act of 1934 (the “Exchange Act”). As a bank under New York State law, regulated by the New York Department of Financial Services, and a transfer agent regulated by the Commission, AST is a highly regulated entity, required to meet an ever increasing number of regulations promulgated by the Commission, all 50 states, and other Federal agencies.

AST is pleased to join and expand on the comment letter of the Securities Transfer Association (the “STA”), which was filed with the Commission on or about December 18, 2013. AST supports the comments of the STA in support of the goals of the JOBS Act and the efforts by the Commission to weigh investor protection concerns against the objective of allowing small businesses to access the capital markets in a cost effective way.



#### A. The Maintenance of Accurate Records of Shareholders Are Essential For Investor Protection

The maintenance of accurate shareholder records, including the recording of address changes, is an integral part of the investor protection framework. The failure to record or accurately maintain shareholder records, and the failure to prevent fraudulent transfers, may harm an investor in the same way as if his or her funds were stolen or otherwise taken from him or her by fraud. In enacting Section 17A of the Exchange Act, Congress recognized the importance of assuring the protection of investors. Section 17A requires that persons or entities, including issuers, who provide recordkeeping and related services on behalf of public companies, register as transfer agents, and become subject to the regulations promulgated by the Commission under Section 17A.

The regulations promulgated under Section 17A serve a significant investor protection function. Among other things, they assure that transfer agents maintain accurate records, act in a timely manner to process shareholder transfer requests, have sufficient backup and disaster recovery systems, and act in ways to protect the interests of shareholders. Additionally, all registered transfer agents are subject to inspection and examination by regulatory authorities, including the Commission.

Issuers relying on the Crowdfunding Exemption will not be subject to registration under Section 12 of the Securities Act and could potentially have hundreds or more small shareholders. Under the Proposed Rules, such issuers would not be required to retain the services of a registered transfer agent or to register as a transfer agent themselves. This would result in a scenario where the people responsible for maintaining the records of the investments by these individuals, processing their transfer requests, or assuring the protection of their investments would not be subject to the regulatory oversight to which registered transfer agents are subject. This presents the possibility that the interests of the shareholders will not be protected in any manner.

The JOBS Act greatly expands the definition of companies which can stay private and become essentially unregulated entities. Under the JOBS Act, companies having up to 2,000 shareholders will have no meaningful regulatory oversight. While Title II involves investors who are “accredited investors,” issuers under Title III could have hundreds or even thousands of unsophisticated investors. For these investors, the potential for fraud or gross negligence in the absence of such regulatory oversight are multiplied exponentially.

Rule 303(e)(2) of the Proposed Rules requires that a Funding Platform, which are the portals through which investors and issuers can be brought together, direct investors to transmit their funds to a qualified third party bank escrow agent. This is essential to ensure that investors’ funds be protected, particularly in the context of Title III crowdfunding companies, where the investors will primarily be unsophisticated investors. Because of the significant investment opportunities presented through Title III crowdfunding, which will also involve inexperienced issuers, we believe the potential for massive fraud in this context will dwarf the significant microcap fraud that the Commission and regulated entities have, over the past years, worked together to limit.





Throughout our more than 40 years of acting as a registered transfer agent, AST has received records from countless issuers who have acted as their own transfer agent. Often those records are vastly inaccurate and/or incomplete: Typical errors include: (i) being out of balance; (ii) missing complete and accurate shareholder information; (iii) containing inaccurate or missing information regarding restrictions on shares; (iv) containing incorrect recording or processing of corporate actions, such as stock splits; and (v) lacking basic processes to verify shareholder interests or to replace lost securities. More importantly, areas such as anti-money laundering and OFAC are often completely ignored or overlooked. Full compliance with recent changes to regulations other than those of the Commission, such as the abandoned property rules of the various states, IRS cost basis rules, and the IRS FATCA rules, require significant investment of time and resources which many issuers simply do not have internally. It is extremely unlikely that issuers relying on the Crowdfunding Exemption will have such time and resources. The Commission's rules, many of which were recently changed, including the Red Flag Rules and Privacy Rules, also serve as a significant component of investor protection. Against this regulatory expansion, the Commission has proposed that issuers must certify to their Funding Platforms that they have the capability to, and that they will, maintain accurate records. As we have learned through our interaction with those companies who have acted as their own transfer agent, these issuers will likely not even understand that such obligations exist, and thus will be unable to adequately make the required certification.

The Funding Platforms will have little or no interest in confirming whether the certifications they receive are accurate and complete, leaving investors with little confidence that their investments will be properly recorded. Unfortunately, the regulators involved in this process will also be unable to adequately oversee issuer compliance with their regulatory requirement to maintain adequate and complete records.

#### B. The Proposed Safe Harbor

AST agrees with the STA's proposal for a safe harbor for issuers who contract for recordkeeping with a registered transfer agent. As the STA stated, "if the issuer retains a registered transfer agent or broker-dealer – then for purposes of Rule 301 Funding Platforms should be entitled to presume that there is a reasonable basis to believe that the issuer's records will be properly maintained." An entity such as a registered transfer agent or broker-dealer is subject to oversight that would assure investors that their interests are protected in the same manner as investments made in Section 12 issuers.

The barriers to registration as a transfer agent are not significant, although the effort required to maintain the records in accordance with the rules promulgated under Section 17A can be considerable. It is this recordkeeping that provides investors with the protections they both require and deserve, and the Commission should amend Rule 301(b) to provide a safe harbor for issuers utilizing a registered transfer agent or broker-dealer, including the requirement that the recordkeeping function include the ability to process transfers of ownership.



Issuers who don't use a registered transfer agent or broker-dealer should be required to certify annually that their shareholder records are accurately maintained, that they are balanced, and that their recordkeeping complies with IRS regulations, including cost basis and FATCA, escheatment compliance, Red Flag and Privacy Rules, and that they maintain adequate back-up and disaster recovery capabilities.

i. Shareholder Statements

Similarly, issuers should be required to send to investors, no less than annually, statements reflecting the investor's holdings. We agree with the Commission that book entry recordkeeping should be the standard method of recordkeeping. As a registered transfer agent, we are aware of the significant additional concerns raised by the issuance of certificates, and believe that book entry will alleviate many of these concerns. Providing investors with annual statements will enhance investor protections by providing shareholders with confirmation of their holdings.

ii. Costs

In the Proposing Release, the Commission asked about the potential costs associated with having a regulated transfer agent for small issuers.

The transfer agent industry is highly competitive, and we believe that registered transfer agents either have in place, or can develop, business models that will serve small issuers and provide protection to small investors without the issuers being charged fees that would adversely affect their ability to utilize the funds raised for their intended purposes. We believe that the potential size of this market will compel registered transfer agents to develop compensation arrangements that will be innovative, competitive, and reasonable for the issuers.

The anticipated costs of the use of a registered transfer agent should be weighed against the extensive additional protections that will be provided to investors, and this comparison shows that the protections provided for investors tremendously outweigh the limited costs to issuers.

iii. The "Reasonable Basis" Standard

We generally agree with other comments that suggest that a "reasonable basis" standard is insufficient. The term is undefined, and there is no way to apply the standard with any consistency. Regrettably, absent defined standards, such as those which are set forth in the rules promulgated under Section 17A of the Exchange Act, investors would have limited assurance that their investments are protected. We believe a more specific set of standards, requiring issuers to certify annually that their shareholder records are accurately maintained, that they are balanced, and that their recordkeeping complies with IRS regulations, including cost basis and FATCA, escheatment compliance, Red Flag and Privacy Rules, and that they maintain adequate back-up and disaster recovery capabilities should be set forth in the rules. This would provide investors with the protections they require.





### C. Escrow Requirements

AST strongly supports the Proposed Rule's requirement that Funding Portals be required to utilize qualified escrow agents to hold the investor assets prior to transmittal to issuers. Qualified escrow agents are generally regulated banks, and this additional step provides additional protections for investors. Further, AST agrees with the STA's position that the addition of conditions, such as meeting a minimum commitment level, patterned after Rule 15c2-4 of the Exchange Act, would provide even greater protection for investors and should be considered.

AST acknowledges the efforts of the Commission in trying to balance the differing interests which have arisen in implementing the JOBS Act and the crowdfunding provisions. We sincerely appreciate the opportunity to submit our views on these subjects and hope that our comments will aid the Commission as it considers rules which will allow the crowdfunding issuers to be successful while serving to protect the investing public.

Very truly yours,

A handwritten signature in black ink, which appears to read 'Mark C. Healy', is positioned above the printed name.

Mark C. Healy  
President and Chief Executive Officer