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February 3, 2014

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

RE: Comments on Regulation Crowdfunding (File Number S7-09-13)

Dear Ms. Murphy:

We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC's" or "Commission's") new proposed Regulation Crowdfunding ("Proposed Rules") under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). The subject of crowdfunding is controversial and we know developing the Proposed Rules was challenging. We commend the Commission and its staff on its success in performing such a daunting task. We write to express our views on three matters. Specifically, (i) broker-dealers that hold cash and securities on behalf of customer accounts pursuant to SEC Rule 15c3-3 and maintain net capital pursuant to SEC Rule 15c3-1(a)(2)(i) (referred to herein as "Carrying Brokers") should not be subject to the requirements of SEC Rule 15c2-4(b),[1] which has been incorporated into the Proposed Rules; (ii) that such Carrying Brokers should be added to the definition of "qualified third party" under Section 303(e)(2) of the Proposed Rules; and (iii) we would like the Commission to clarify in the context of proposed Regulation Crowdfunding, that a Carrying Broker would not be deemed to "accept any part of the sale price of any security" for purposes of SEC Rule 15c2-4 under specific circumstances as set forth below. We believe the thoughts expressed herein are non-controversial and that the outcome we propose would be in the best interest of investors.

Although there is no specific discussion of why incorporation of SEC Rule 15c2-4 into the Proposed Rules was advisable, we agree it was sensible for the Commission to begin with its existing rules regarding securities distributions when developing rules for crowdfunding. However, as the Proposed Rules make clear, the advent of crowdfunding, and the expansion more generally of the exemptions for private offerings and certain

[1] We believe this suggestion should be applicable across all offerings pursuant to the Jumpstart Our Business Startups Act ("JOBS Act") (as well as existing private offering exemptions under the Securities Act) and more broadly through an amendment to Rule 15c2-4. Specifically, the amendment would add that money or other consideration received could be promptly deposited into a customer account with a Carrying Broker. To the extent that any such amendment would require a proposing and adopting release, we request that the process begin as soon as convenient.

public offerings under the JOBS Act, has resulted in a new environment for securities distributions and existing rules may not result in the best policy. In fact, some existing rules, and specifically current SEC Rule 15c2-4, may be counter-productive and against investors' and issuers' best interest. Consequently, we respectfully request that the Commission briefly re-examine the purpose of SEC Rule 15c2-4, and, at least in the context of proposed Regulation Crowdfunding, adopt a more modern approach reflecting the vast changes in the market since the rule was adopted in 1962.

Rule 15c2-4 was adopted in 1962 for the purpose of ensuring that funds received before a contingent offering closed would be better safeguarded.[2] In the proposing release, the Commission stated:

> In some cases the "sale" becomes final only if all the securities are sold within a specified period of time; and the arrangement contemplates that the payments made by customers will be returned to them if the distribution is not completed in the required time. The failure of the underwriter or a participating broker-dealer to transmit the funds, or to maintain them so that they will be insulated from and not be jeopardized by his unlawful activities or financial reverses, could involve a fraud either upon the person on whose behalf the distribution is being made or upon the customer to whom the payment is to be returned if the distribution is not completed.[3]

Since that time, the securities laws have evolved considerably – especially in connection with the regulation of brokers under the Exchange Act and the protection of customer funds and securities. In particular, and as an example, the Securities Investor Protection Act of 1970 ("SIPA") was adopted and the Securities Investor Protection Corporation ("SIPC") was created to provide insurance for investor assets.

Today, there are many trillions of dollars of customer funds and securities protected by SIPA, SIPC insurance and the Exchange Act while held by Carrying Brokers. It is, at best, an extraordinary anachronism that, concurrent with this regulatory framework and extraordinary expansion of the industry, the Commission maintains a rule premised on the lack of protection for customer funds and securities in the narrow context of contingent offerings. There simply is no justification for concluding that Carrying Brokers are capable, and able to handle well, the safety of trillions of dollars worth of funds and securities in the ordinary course, but are not so capable and able in the simple context of these offerings. Such a conclusion could not be the Commission's intent.

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[2] Securities Exchange Act Release No. 6905 (October 3, 1962), [1961-64 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,869.

[3] Securities Exchange Act Release No. 6737 (February 21, 1962), [1961-64 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 76,825.

Accordingly, we believe Carrying Brokers should be distinguished from other broker-dealers in the context of Regulation Crowdfunding and not be subject to the requirements of SEC Rule 15c2-4(b). A Carrying Broker should not be required to take funds that it is otherwise qualified to hold, and is holding for customers in customers' accounts, remove them from those accounts and deposit them into a bank or escrow account merely because an investor is purchasing securities in a contingent offering instead of a different securities transaction. Such a requirement introduces greater, and unnecessary, operational and regulatory risk by requiring funds to be transferred between entities. Further, it (i) introduces a separate and distinct body of laws and regulatory oversight applicable to banks, (ii) increases the costs for offerings such as those pursuant to Securities Act Section 4(a)(6) by imposing an additional requirement not subject to cost-effective automation and full audit trail and controls, (iii) significantly reduces the transparency and protections for investors by eliminating their ability to see where their money resides, (iv) removes investor funds from the protections of SEC Rules 15c3-1 and 15c3-3; and (v) limits insurance coverage to the extent of Federal Deposit Insurance Corporation ("FDIC") insurance (currently, $250,000 per customer), as compared to having the possibility of both SIPC insurance and the protections of FDIC insurance through a cash sweep program administered by a Carrying Broker where funds are swept daily into multiple FDIC-insured bank accounts to insure the entire cash balance even when well in excess of $250,000.[4]

For the same reasons as noted above, we believe that other intermediaries – specifically portals and non-Carrying Brokers – should be able to utilize Carrying Brokers to the identical degree they would be able to utilize banks under Rule 15c2-4, and Carrying Brokers should be included, along with banks, as qualified third parties under proposed Rule 303(e)(2) .

Separately, we seek clarification from the Commission in the context of proposed Regulation Crowdfunding, that a Carrying Broker would not be deemed to "accept any part of the sale price of any security" for purposes of SEC Rule 15c2-4 when (i) there is an indication of interest in a contingent offering that is supported by funds in the customer's account carried by such broker, (ii) such indication of interest is revocable by the customer at will until the time of closing,[5] (iii) the funds are maintained in the customer's account,

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[4] We would also note that it is not clear that SEC Rule 15c2-4 actually serves much purpose as under the rule a Carrying Broker may serve as the "agent or trustee" for its customers with respect to the bank account and so has unfettered access to the funds if it were otherwise inclined to act unlawfully. By contrast, as noted in the text, the combination of SEC Rules 15c3-1 and 15c3-3 and SIPC insurance actually provide better protection for investors.

[5] Depending on the terms of an offering, a customer may not be required to have available funds in the customer's account prior to submitting an indication of interest. The treatment in the text would be triggered only at the time the customer has funds in the account to support the customer's indication of interest. Obviously, if the indication of interest is accepted without funds, then 15c2-4 is inapplicable by its terms (for so long as no funds are involved).

reflected on the customer's statement, and the customer remains the beneficial owner for all purposes including receiving any interest or dividends payable on such funds and receiving any applicable insurance coverage,[6] (iv) the funds will be released if the customer cancels the indication of interest at any time prior to the closing as permitted under Regulation Crowdfunding, and (v) if the transaction closes, the funds will then (and only then) be removed from the customer's account upon closing and be promptly transmitted to the issuer (and the issuer's securities promptly deposited into the customer's account).[7] Although we believe that this procedure currently is consistent with Rule 15c2-4 on the basis that the Carrying Broker would not be "accept[ing] any part of the sale price" until closing, at which time funds would be promptly transferred to the issuer, additional clarity would be helpful to ensure that the proposing release for Regulation Crowdfunding does not introduce confusion if read by some as containing an implication to the contrary.

We believe that by providing that intermediaries that are Carrying Brokers are not subject to the requirements of SEC 15c2-4(b) and adding Carrying Brokers to the definition of "qualified third parties" under Regulation Crowdfunding, the Commission would be creating a regulatory framework that offers more protection to investors, while also furthering the objective of the JOBS Act. This alternative would encourage capital formation by eliminating unnecessary parties and additional overhead costs to intermediaries, while also potentially lowering the cost of conducting an offering under Section 4(a)(6) of the Securities Act to small issuers.

Thank you again for the opportunity to comment on the Proposed Rules.

Sincerely,

Michael J. Hogan
President & Chief Executive Officer

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[6] The funds may be subtracted from "cash available for trading" or "cash available for withdrawal" indications, but are otherwise held in the ordinary course in the customer's brokerage account. This prevents trading in excess of available cash and withdrawal of the funds without the customer intentionally canceling the indication of interest.

[7] This is, in essence, the identical treatment accorded trillions of dollars in transactions now for limit orders, stop orders, stop-limit orders, timed orders or other order types with various contingencies where no part of the sales price for the security being bought by the investor is deemed "accepted" by the Carrying Broker and removed from the customer's account until the sale actually occurs and the security is scheduled to settle.