February 3, 2014

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

Re: File Number S7-09-13
Crowdfunding; Proposed Rules

Submitted via E-mail: rule-comments@sec.gov

Dear Ms. Murphy,

In connection with the proposed rules on crowdfunding to implement the requirements of Title III of the Jumpstart Our Business Startups (JOBS) Act (the "CROWDFUND Act"), Seed&Spark welcomes the opportunity to comment on the proposed rules and express our greatest concerns with the rules as proposed.

[Seed&Spark is the world's first crowdfunding and streaming distribution site made just for independent film. Seed&Spark's platform helps independent films build audiences from the first twinkle of an idea through the finished product: from crowdfunding, to production tools and resources, all the way through digital distribution.]

We believe that securities-based crowdfunding has the potential to revolutionize the way filmmakers (one of the primary types of users of our platform) create, develop and produce their projects. Therefore, with respect to our users and our platform we have set forth below our major concerns about the proposed rules:

- **Cost.** The proposed rules would make it cost-prohibitive for both filmmakers and other fundraisers to raise capital in small increments and for existing crowdfunding sites to expand into equity crowdfunding. Thus minimizing the purpose of the law-–expanding access to capital.

- **Advertising.** The advertising restrictions will fundamentally alter the integral, collaborative promotion of crowdfunding projects.

Cost

In the proposed rules set forth in Securities and Exchange Commission ("SEC") Release Nos. 33-9470; 34-70741 (the "Release"), the SEC, citing the Congressional Record, presents the intent of the provisions of the JOBS Act: to make relatively low dollar offerings of securities less costly.[1] As noted in the Release, registered offerings are often prohibitively expensive for small businesses and startups and current private placement exemptions are difficult to rely upon given the limitations on solicitation, number of investors and purchaser qualifications.[2] However, as we explain below, if made effective the proposed rules, though less costly, will still make it cost-prohibitive for filmmakers to use the crowdfunding rules to raise capital and for potential funding portals to facilitate investment.

From the filmmaker (and issuer) perspective, the independent filmmaking space is particularly cost-sensitive, as filmmakers seek to raise funds not to start or grow a company but simply to support one or more stages of the film production process. Consequently, non-securities based crowdfunding, specifically in its iteration on our site, generates small donations in increments of $25 or $50, often for filmmakers starting from an initial budget of $0. Therefore, any regulatory cost burden on issuers creates a hurdle to financing entry that would make securities-based crowdfunding a less-attractive option. But particularly for smaller projects, the hurdle to entry will be prohibitive. 75% of the projects funded on our platform seek to raise $25,000 or less. To offer an example of the cost burden, initial preparation of Form C by an issuer would cost approximately $24,000 per the SEC's estimate.[3] A filmmaker in need of $50,000 to fund a project would need to raise 50% more capital in order to be able to cover professional service fees related to the initial filing alone—before taking into account future preparation of Form C-U, Form C-AR and ongoing compliance and other service fees. To that end, with respect to the Request for Comment on Question #1, the SEC should give serious consideration to excluding a reasonable threshold of regulatory fees (including professional service fees) from the $1 million limit.

On a related note, the proposed rules create a framework that is more cost-effective for a smaller number of larger investments and less cost-effective for a larger number of smaller investments, such as those of the size currently donated on our platform. When individual investors are giving in such small increments, the per capita cost of compliance may far exceed the investor's investment, which in turn reduces the incentive to use equity crowdfunding.

From the registered funding portal perspective, the cost concerns are also substantial. The SEC's estimate of $417,000 in initial costs of registration as a

---

[1] *See* Release at page 7.
[2] *See* Release at pages 8-9.
[3] *See* Release at page 431.

funding portal and $90,000 per year for ongoing expenses creates a significant burden given that potential funding portals (i.e. those startups and small businesses already operating in the non-securities based crowdfunding space) operate on modest budgets and thin margins.[4] This entry burden has the potential to skew entry to the intermediary space toward existing registered broker-dealers that will only have to bear the incremental costs of registration and operation while smaller non-securities based crowdfunding sites will be disincentivized to offer a parallel funding platform because of the additional regulatory costs.

Advertising

Successful crowdfunding depends heavily on the collaborative and distributive nature of social media. Particularly in the film industry, buzz about a project, sharing, liking and employing other social sharing techniques are integral to the success of the funding and the project as a whole. Our concern is that the advertising restrictions as proposed in Rule 204 of Regulation Crowdfunding will severely restrict the ability of filmmakers to market and raise money for their films and also may restrict the ability of a platform to feature and distribute films that are also being offered to investors. With respect to issuers, Rule 204(a) should be clarified with respect to "indirectly" advertising the terms of Section 4(a)(6) offering. Particularly in the context of social media distribution of information about film projects, issuers need reassurances that third-party distribution (e.g. a forwarded e-mail or "retweet" of information that may incidentally contain the terms of the offering) will not be attributed to the issuer. Additionally, clarification from the SEC is needed with respect to what restrictions apply specifically to a platform that operates simultaneously as a distribution and promotional platform as well as a funding portal.

Seed&Spark believes that the CROWDFUND Act and Regulation Crowdfunding will create exciting new opportunities for both investors and creators. We sincerely appreciate your consideration of our comments and welcome your questions. [If you have any questions about our company or concerns, please contact Max Silverman at max@seedandspark.com].

Sincerely,

Max Silverman
COO, Seed&Spark
www.seedandspark.com
@seedandspark

---

[4] *See* Release at page 385.