HACKERS / FOUNDERS

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Via Electronic Submission

February 1st, 2014

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

Re: Request for Public Comments on SEC Regulatory Initiatives under the JOBS Act Relating to Section 12(g) of the Securities Exchange Act of 1934, as amended by JOBS Act Title V- Private Company Flexibility and Growth, Title VI – Capital Expansion, and Title III – Crowdfunding

To the Securities and Exchange Commission:

This letter is submitted on behalf of Hackers/Founders in regard to the rules the Securities and Exchange Commission (the "Commission") is required to adopt pursuant to the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). This letter is submitted in response to the Commission's request for public comments relating to the JOBS Act rulemaking.

The comments outlined in this letter represent the views of Hackers/Founders. Hackers/Founders would like to take this opportunity to thank the Commission for this opportunity to comment on the JOBS Act provisions set forth in Titles V and VI, and Section 303 of Title III, relating to registration of a class of securities under Section 12(g) of the Securities Exchange Act of 1934, as amended ("Exchange Act").

Because this letter is being submitted prior to the Commission's issuance of proposed rules, our comments are intended to highlight matters we believe the Commission should consider in formulating its proposed rules pursuant to Titles III, V, and VI, or in providing guidance with respect thereto.

Hackers/Founders is the largest community of tech founders in Silicon Valley, and manages a global community of over 10,000 members comprised of entrepreneurs and developers. Founded and headquartered in Silicon Valley, Hackers/Founders operates a variety of platforms and tools to support early stage companies. Our work includes a "services-for-equity" incubator, weekly events, a global newsletter, and more. Our objective is to provide services and tools to support the entrepreneur community and grow the economy. Our mission is to move the Gross Domestic Product (GDP).

In 2012, Hackers/Founders launched a program to provide services to early stage companies utilizing a services-for-equity business model. Hackers/Founders seeks to expand on the services-for-equity model by launching an online equity-funding portal to facilitate the funding of early stage companies. This funding portal will support both early stage companies in the Hackers/Founders incubator and those from the broader community. In addition, Hackers/Founders plans to use crowdfunding to fund its own operations as well.

The legal and policy group of Hackers/Founders prepared this response. Members of this group have been involved with conversations with the Commission, and provided responses to previous requests from the Commission since 2012. We respectfully submit this response to the Commission's request for comments to support Congress's intent to drive innovation and access to capital for all entrepreneurs, through a transparent process that leverages the wisdom of the crowd through the tools of information disclosure.

Summary of Our Comments

A. Issuer Related Comments

1. The provision of regulatory allowances, permitting Issuers to raise funds which are net of Intermediary fees, allows Issuers to lower the total cost of the capital raised through crowdfunding and creates the most efficient use of the platform. The final rules should exempt from regulatory limits costs directly associated with the crowdfunding issuance, as long as those costs are clearly and accurately disclosed in the offering documents.

2. The Commission should recognize the reality of the funding ecosystem and allow the crowdfunding exemption to exist alongside other offerings, as long as the existence and terms of the other offerings are disclosed.

3. The newly developed regulations permitting general solicitation for Regulation D offerings should not be prohibited from existing as a simultaneous offering. Regulation D and crowdfunding offerings target different communities and each of these exemptions operate under a different set of regulatory and disclosure assumptions: Regulation D has a much higher degree of flexibility while crowdfunding offerings have stricter mechanism(s) around offering requirements (as evidenced by this proposed regulation) and limitations around investment size.

4. There are sufficient existing exemptions for accredited Investors to invest in an Issuer under Regulation D and there should not be any further accommodation under these proposed crowdfunding regulations to accommodate accredited Investors.

5. This exemption should be available to "idea-only" companies.

6. There should be at a minimum some "plan" for the business. The power of the crowd can interpret a clear, complete, and concise offering document.

7. The provision of financial statements for an "idea-only company" provides no value to an investor because there is limited operating history and the expense of providing these financial statements would significantly add to the cost of the offering.

8. The Issuer should have to disclose a capital table and articles of incorporation (or similar corporate documents) and provide a summary of each class of security and its rights and privileges in plain English detailing what this means for the crowdfunding investor and their class of security.

B. Intermediary Related Comments

1. Section 4(a)(6)(C) should be interpreted as requiring an Issuer to use only the Intermediary's electronic platform as the sole communication method for information or discussions around an offering.

2. There should be a requirement that Intermediary platforms are open and viewable to the public, but participation (e.g., comments and questions) can be restricted to Investors, and possibly registered members on the Intermediary's platform.

3. Section 4(A)(a)(11) should prohibit an Intermediary's directors, officers, or partners from having any financial interest in an Issuer using its services. This prohibition should <u>not</u> be extended to the Intermediary itself, but any such financial interest should be disclosed to Investors.

4. An Intermediary should be permitted to provide services to the Issuer. The ability of an Intermediary to provide services to the Issuer is consistent with existing models of investing. Precluding an Intermediary from providing future services would fundamentally alter the framework of incentives Congress intended to create.

5. An Intermediary should be able to receive a financial interest under the same terms as other Investors. Disclosure of the arrangement would be sufficient for Investors (or "the crowd") to evaluate the relationship, and to prevent conflict of interests.

6. A "financial interest" in an Issuer should mean a direct or indirect ownership of, or economic interest in, any class of the Issuer's securities. That term, however, should not be expanded to include other potential forms of financial interests. Such an expansion would lead to increased confusion amongst Investors, Issuers, and Intermediaries.

7. A *de minimis* exception should not be required. As long as the agreements are disclosed, there is no need for a *de minimis* exception.

8. Issuers should not be required to include specified legends about the risk of investing in a crowdfunding transaction. Issuers seeking to leverage crowdfunding will tend to be smaller and lack the resources and sophistication of large companies. To protect Investors, the Intermediary can be required to list examples of the types of risks that Investors should be aware of that apply to all companies participating in these types of offerings.

9. We believe GAAP should be the standard because it provides a sufficient and generally understood framework that is easy for Investors, Issuers, and Intermediaries. As an industry standard, GAAP enables Issuers, Investors, and Intermediaries to leverage the wisdom of the crowd; it provides sufficient flexibility for different types of companies; and, it reduces the costs of crowdfunding because of the ability to compare standardized financial statements across Issuers and Intermediaries.

C. Offering Related Comments

1. Issuers offering up to $500,000 or less during their crowdfunding offering should provide financial statements certified by the principal executive officer to be true and complete in all material aspects.

2. We agree that Issuers should be required to amend offering statements to reflect material changes during or after the offering within a prescribed time period. Once the offering has closed, notice provisions for material changes can be done quarterly, along with traditional financial accounting housekeeping tasks.

3. The Intermediary should provide the infrastructure for a nominee or advocate selection through a pro rata share voting system that should, at the very least, accommodate original purchasers. However, no nominee or advocate need be required of an offering if purchasers of the offering are not inclined to take such action.

4. A standard format should be required when Issuers disclose information pursuant to Section 4A(b)(1). However, Issuers should be able to provide additional information as well.

5. Intermediaries should present the standard core offering information as disclosed in Form C, but should be free to flexibly sort and display the data. Issuers should be allowed to augment that data with multimedia, if they summarize the non-XML material into the Form C disclosure.

6. All communications in which the Issuer officially comments on the offering should occur on the Intermediary platform. However, the Issuer should be allowed to replicate its own official communications—that were first posted on the Intermediary platform—elsewhere via a proposed "first post replication" process. Additionally, the Issuer's official communications on the platform should be limited in that the Issuer will always be required to identify itself as the Issuer in its communications.

7. An Issuer's official communications on the Intermediary platform should be limited so that the Issuer is required to identify itself as the Issuer in its communications. Moreover, all communications in which the Issuer officially comments on the offering should occur on the Intermediary platform.

8. An Issuer should be able to communicate information that does not refer to the terms of the offering both on and off the Intermediary's platform. The Issuer must still be able to conduct its normal business and operations, including notifying and engaging users and Investors of company news, products, and services.

9. There should not be a specific valuation methodology. Because of the great variety of business models, revenue streams, and goodwill allocations, attempts to define a single valuation methodology will likely favor particular companies and prejudice others. Such unintended favoritism could well inhibit a range of innovative models from accessing the crowdfunding exemption.

<u>Discussion</u>

ISSUER RELATED COMMENTS

1. Should we propose that the $1 million limit be net of fees charged by the Intermediary to host the offering on the Intermediary's platform? Why or why not? If so, are there other fees that we should allow Issuers to exclude when determining the amount to be raised and whether the Issuer has reached the $1 million limit?

One of the most powerful tools of the crowdfunding platform is the power of the crowd. When Investors are provided complete and accurate information, in the aggregate, the wisdom of the crowd will assist Investors in making decisions that are best for them and their goals. Providing a system that allows Issuers to raise funds which are net of Intermediary fees allows Issuers to lower the total cost of the capital raised through crowdfunding and to create the most efficient use of the platform. The final rules should allow any amount raised to be net of costs directly associated with the crowdfunding campaign, as long as those costs are clearly and accurately disclosed in the offering documents. The Commission has recognized the significant costs associated with crowdfunding and should be allowed to exclude related legal, accounting and Intermediary fees from the $1M limit. This form of capital raising has a number of fixed costs that are the same whether a company is raising $100k or $1M (offering preparation, Intermediary fees, and legal fees). Disclosure of the direct costs would allow Investors to determine if the costs are an unreasonable amount or burden on the offering.

2. As described above, we believe that Issuers should not have to consider the amounts raised in offerings made pursuant to other exemptions when determining the amount sold during the preceding 12-month period for purposes of the $1 million limit in Section 4(a)(6). Should we require that certain exempt offerings be included in the calculation of the $1 million limit? If so, which types of offerings and why? If not, why not? As noted above, at this time the Commission is not proposing to consider the amounts raised in non-securities based crowdfunding efforts in calculating the $1 million limit in Section 4(a)(6). Should the Commission propose to require that amounts raised in non-securities-based crowdfunding efforts be included in the calculation of the $1 million limit? Why or why not?

Crowdfunding is part of a fundraising ecosystem that can include friends and family, Angel Investors, Venture Capitalists and debt financing. Issuers rely on multiple sources of fundraising, and any proposed integration with other simultaneous offerings relying on other exemptions could make crowdfunding a less attractive vehicle for companies. The Commission should recognize the realties of this funding ecosystem and allow the crowdfunding exemption to exist alongside other offerings, as long as the existence and terms of these other offerings are disclosed. As a corollary, many additional funding mechanisms have their own distinct exemptions (Rule 506, Intra-state, etc.) and there is no need to fold these additional avenues of financing into the crowdfunding exemption. The current system of exemptions allow a company to rely on multiple exemptions for different Investors and tranches of financing, and this system should continue with the integration for the crowdfunding exemption.

3. As described above, we believe that offerings made in reliance on Section 4(a)(6) should not necessarily be integrated with other exempt offerings if the conditions to the applicable exemptions are met. How would an alternative interpretation affect the utility of crowdfunding as a capital raising mechanism? Are there circumstances under which other exempt offers should be integrated with an offer made in reliance on Section 4(a)(6)? If so, what are those circumstances? Should we prohibit an Issuer from concurrently offering securities in reliance on Section 4(a)(6) and another exemption? Why or why not? Should we prohibit an Issuer from offering securities in reliance on Section 4(a)(6) within a specified period of time after or concurrently with a Rule 506(c) offering under Regulation D involving general solicitation? Why or why not? Should we prohibit an Issuer from using general solicitation or general advertising under Rule 506(c) in a manner that is intended, or could

reasonably be expected, to condition the market for a Section 4(a)(6) offering or generate referrals to a crowdfunding Intermediary? Why or why not? Should Issuers that began an offering under Section 4(a)(6) be permitted to convert the offering to a Rule 506(c) offering? Why or why not?

As mentioned in the prior response, the various exemptions which the Commission has promulgated potentially overlap to cover any one particular offering (i.e., an offering could simultaneously satisfy 4(2), 506(c) and Intrastate offering exemptions), depending on the nature of the offering and the Investor. However, much like we do not see a basis for integrating offerings in light of the dollar limitations, the newly developed regulations permitting solicitation under Regulation D offerings should prohibit a Regulation D offering from co-existing with crowdfunding offerings. Regulation D and crowdfunding offerings target different types of communities and each one of these exemptions operate differently: Regulation D has a much higher degree of flexibility while crowdfunding offerings have stricter mechanism(s) around offering requirements (as evidenced by this proposed regulation) and investment size limitations. The issuing company can take reasonable steps to ensure that the correct offering reaches the correct Investor and even in the event that an investor does not qualify for a Regulation D offering, the existence of a crowdfunding offering may still allow them to become an active participant in the fundraising and success of the Issuer.

9. Should institutional and accredited Investors be subject to the investment limits, as proposed? Why or why not? Should we adopt rules providing for another crowdfunding exemption with a higher investment limit for institutional and accredited Investors? If so, how high should the limit be? Are there categories of persons that should not be subject to the investment limits? If yes, please identify those categories of persons. If the offering amount for an offering made in reliance on Section 4(a)(6) is not aggregated with the offering amount for a concurrent offering made pursuant to another exemption, as proposed, is it necessary to exclude institutional and accredited Investors from the investment limits since they would be able to invest pursuant to another exemption in excess of the investment limits in Section 4(a)(6)?

There are sufficient existing exemptions that allow accredited Investors to invest in an Issuer under Regulation D. For example, in the event that an accredited investor learns of a company through a crowdfunding offering, an Issuer should be allowed to use Regulation D exemptions to allow an accredited investor to make a larger investment that the limits of the crowdfunding exemption would allow. This additional investment may provide a significant source of capital for an Issuer and could strengthen the overall financial health of an Issuer that is engaged in a crowdfunding offering.

19. What specific risks do Investors face with "idea-only" companies and ventures? Please explain. Do the proposed rules provide sufficient protection against the inherent risks of such ventures? Why or why not?

We agree that this exemption should be available to "idea-only" companies. The history of the non-equity fundraising platform is centered on idea-only companies and products, and we feel that this is an important element of the success of the crowdfunding power. Investors can still analyze the business opportunity and associated risks, effectiveness of management team, even for just an idea-only company.

20. Does the exclusion of Issuers that do not have a specific idea or business plan from eligibility to rely on Section 4(a)(6) strike the appropriate balance between the funding needs of small Issuers and the information requirements of the crowd? Why or why not? Are there other approaches that would strike a better balance among those considerations? If the proposed approach is appropriate, should we define "specific business plan" or what criteria could be used to identify them? How would any such criteria comport with the disclosure obligations described in Section II.B.1.a.i.(b) (description of the business) below?

We agree with the Commission that a balance can be struck between a specific business plan requirement and an idea-only company, and that some of the best opportunities come from entrepreneurs that only have ideas. Though we do not see the need to have a specific format for the business plan, we do feel that there should be at a minimum some "plan" for the business; there should be some articulation of how the Issuer will build value for the shareholder.

48. Should we exempt Issuers with no operating history from the requirement to provide a discussion of their financial condition? If so, why? Should we require such Issuers to specifically state that they do not have an operating history, as proposed? Why or why not?

See the answer to Question 51 below.

51. Should we exempt Issuers with no operating history or Issuers that have been in existence for fewer than 12 months from the requirement to provide financial statements, as one

commenter suggested? Why or why not? Specifically, what difficulties would Issuers with no operating history or Issuers that have been in existence for fewer than 12 months have in providing financial statements? Please explain.

Requiring that an idea-only company provide financial statements would provide no real investor protection to investors because (a) there is limited operating history that is reflective of the company; and, (b) the expense of providing these financial statements would significantly add to the cost of the offering. For new Issuers the capitalization table and capital structure are more important to an investor than the financial statements. With a new Issuer, the investor is investing in the promise and potential, not the current balance sheet.

113. Should we limit the types of securities that may be offered and sold in reliance on Section 4(a)(6) (*e.g.,* should the exemption be limited to offers and sales of equity securities)? If so, to what securities should crowdfunding be limited and why? Should we create a separate exemption for certain types of offerings of limited types of securities, as one commenter proposed?

This regulation does not need to limit the type of security that can be used, but the Issuer should have to disclose its capital table and corporate formation documents (i.e. articles of incorporation) and provide a summary of each class of security and its rights and privileges. The disclosure document should contain a plain English description of what this means for the crowdfunding Investor and their class of security. We believe the combination of market forces, from the crowd and Intermediaries, will generate industry standards to allow for comparisons across companies and Intermediaries. By requiring explicit disclosure of the capital table, the crowd will be able to evaluate and determine the applicable risks of investment.

INTERMEDIARY RELATED COMMENTS

14. Should we permit crowdfunding transactions made in reliance on Section 4(a)(6) to be conducted through means other than an Intermediary's electronic platform? If so, what other means should we permit? For example, should we permit community-based funding in reliance on Section 4(a)(6) to occur other than on an electronic platform? To foster the creation and development of a crowd, to what extent would such other means need to provide members of the crowd with the ability to observe and comment (e.g., through

discussion boards or similar functionalities) on the Issuer, its business or statements made in the offering materials?

We agree that Section 4(a)(6)(C) should be interpreted as requiring an Issuer to use only one electronic platform Intermediary. Allowing multiple platforms, especially non-electronic platforms, would undermine the critical objectives of fostering the creation and development of a crowd. A centralized location serves as a publicly accessible platform, whereby information can be collected, archived, shared, and commented on. We further agree that defining the term "'*platform*' *to mean an Internet website or other similar electronic medium through which a registered broker or a registered funding portal acts as an Intermediary in a transaction involving the offer or sale of securities in reliance on Section4(a)(6)*" is a sufficient definition to provide for advances in technology, such as applications for mobile communication devices, that are consistent with the objectives of enabling the crowd to identify and fund new businesses in a transparent process.

We recognize the desire to balance transparency with the flexibility to address the needs of communities that might seek to use other portals; nonetheless, an Intermediary's electronic platform provides the most effective tool to achieve Congressional intent and mitigate confusion in the market place. An electronic platform allows the Issuer to operate on a centralized platform to communicate information to Investors, provide updates on any material changes, and respond to any questions or comments. Alternative methods would require coordination of information across all of the methods employed to ensure that information is current. This increases the costs for the Issuer and increases the risk of litigation around the failure (inability) of early stage companies to provide material information, or changes thereof, across every method employed.

In addition to the above—allowing an Issuer to communicate information about the offering and business directly—the introduction of means other than an Intermediary's electric platform would lead to increased uncertainty amongst Investors; thereby defeating the objective of creating and developing a crowd. Restricting transactions to only the Intermediary's electronic platform allows Investors to be certain of where all information is located and creates the ability to leverage the wisdom of the crowd. This facilitates the development of an informed crowd that has confidence about the source of information from the Issuer. Thus, the Issuer, Investors, or third parties would all be able to direct all parties and discussion regarding an offering to the Intermediary's platform; the purposes of which are consistent with the "*central tenet of the concept of crowdfunding* [*to present*] *members of the crowd with an idea or business so members of the crowd can share information and evaluate the idea or business*."

Finally, it is important to note that significant amounts of information will likely be generated—the offering itself, commentary on the offering by Investors, and any other additional materials provided by the issuing company. These details must be accessible to as many people as possible. This corpus of information must be collected and structured in a way to allow filings and the tracking of information across time. As the sole method for these offerings, the Intermediary's electronic platform is best equipped to collect, manage, archive, and disseminate information to consumers and to Investors and the Commission. Restricting transactions to an Intermediary's electronic portal has both the capacity to be universal and to serve the functions of generating the desired value-add of crowd wisdom.

15. Should we allow intermediaries to restrict who can access their platforms? For example, should we permit intermediaries to provide access by invitation only or only to certain categories of Investors? Why or why not? Would restrictions such as these negatively impact the ability of Investors to get the benefit of the crowd and its assessment of an Issuer, business or potential investment? Would these kinds of restrictions affect the ability of small Investors to access the capital markets? If so, how?

We concur that "a *central tenet of the concept of crowdfunding is presenting members of the crowd with an idea or business so members of the crowd can share information and evaluate the idea or business*." Open participation is an important part of any crowdfunding community. A completely open platform, however, could prove to be unwieldy and increase the "noise" of non-relevant discussions and information from the issuing company. In so doing, it would undermine the very objective of allowing the crowd to assess an idea or business. An alternative approach, that would still address this challenge is to require Intermediary platforms to be open and viewable to everyone, but to restrict participation (e.g., comments and questions) to Investors, and possibly registered members, where registered members might be individuals that may or may not be Investors, but are verified by the Intermediary, e.g.

as legitimate potential Investors, subject matter experts, or have some other other defining qualifying factor.

This approach would ensure that information for the crowd to evaluate would remain open, leveraging the wisdom of the crowd, but would restrict “noise” because only Investors and registered members would be able to comment. Such an approach is consistent with industry practices in other areas that allow for commentary, even those areas where crowd feedback is actively desired: commentators must be registered members and in some instances, they must have verified accounts. Furthermore, such an approach would enable information to be universally accessible (i.e. the Issuer, potential Investors, and Investors), with publicly displayed information; but also focusing the discourse to substantive information. It would also facilitate the Issuer and Intermediary to respond more quickly to material questions about the offering, business idea, or other relevant questions. Accordingly, limited restrictions should be allowed because without these types of restrictions, Investors will likely be negatively impacted.

Moreover, any potential negative impact of such limited restrictions will result in a net gain benefitting the crowd’s wisdom in assessing the Issuer, business, or potential investment because (a) free market mechanisms will naturally punish those Issuers that overly restrict access of registered members or classes of Investors; (b) too much information can be just as negative as too little: limited restrictions will encourage substantive assessments benefitting those most interested in the idea or Issuer; and, (c) verified registration accounts allows non-Investors to participate in the evaluation, thereby increasing the size of crowd, but in a way that provides for increased accountability from individuals.

122. Should we permit an Intermediary to receive a financial interest in an Issuer as compensation for the services that it provides to the Issuer? Why or why not? If we were to permit this arrangement, the proposed rules on disclosure requirements for Issuers would require the arrangement to be disclosed to Investors in the offering material. Are there other conditions that we should require? If so, please identify those conditions and explain.

We agree with *Section 4(A)(a)(11) requiring an Intermediary to prohibit its directors, officers, or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an Issuer using its services*, but we do not agree that *Section 4(A)(a)(11)* should extend the prohibition to the Intermediary itself.

Concerns about any conflicts of interests can be sufficiently addressed through (a) rules requiring disclosure of the financial interest an Intermediary has in an issuing company; and, (b) rules requiring specified periods of time for any financial interests held by the Intermediary. Such a framework is consistent with Congressional intent and with the Commission's principle of leveraging the wisdom of the crowd and establishing a transparent framework. Furthermore, rules that preclude the Intermediary from holding any financial interest would overly restrict the Intermediary environment; for example, such restrictions might prevent a diverse set of platforms from developing that serve the specific needs of different communities. The impact of which might disproportionately impact certain communities, such as the not-for-profit community.

Requiring the clear disclosure of an Intermediary's financial interest in an issuing company rather than precluding such an interest is a more consistent approach with the Commission's efforts to leverage the wisdom of the crowd. Additionally, rules requiring the Intermediary to hold any equity in the issuing company for specified periods of time address the specific concern of preventing speculative pricing, while ensuring Investors have time to evaluate the financial interests.

Intermediaries should be allowed to take a financial interest in an issuing company because it would appropriately align the interests of the Intermediary, the Issuer, and the Investor. Furthermore, allowing Intermediaries to take a financial interest in Issuers would expand the marketplace for Issuers, benefiting Issuers and Investors. Allowing an Intermediary to receive a financial interest as compensation would allow different pricing options for Issuers, creating a downward pressure on the costs of an offering. The ability of an Intermediary to receive financial interests would allow further diversity in services provided, such as services for equity agreements, which would provide Issuers with more options to raise capital in accordance with their objectives and needs. Prohibiting an Intermediary from holding any financial interest would also prevent an Intermediary operating as a not-for-profit (with lower costs) that might serve the particular needs of a target community. Although exemptions can be created for not-for-profit entities, this would increase the cost of compliance.

Should an Intermediary receive a financial interest in an issuing company, clear requirements can be erected as a safeguard. Specifically, (a) all financial interests received by the Intermediary during the same offering must be on the same terms and conditions as the other Investors; (b) the Intermediary must fully disclose any interest in the issuing company within the offering documents, with information about the relationship and the amount of interest held; and, (c) the Intermediary must publicly disclose the relationship in a clear and prominent manner on the website or a public profile of the offering. Clear disclosure requirements about the existence and value of the Intermediary's interests, combined with requiring that the Intermediary's terms are equal to those of other Investors, balances the need for market competition with transparency to allow the crowd to make informed decisions.

Finally, restrictions on the ability of the Intermediary to transfer any financial interests can be erected to further ensure an Intermediary's interest are aligned with the issuing company and fellow Investors. For example, an Intermediary with financial interests in an issuing company should not be allowed to transfer its interests in the Issuer unless there is a sale of the assets of the Issuers, or a "change of control" of the Issuer, or after a 3-year period.

123. If an Intermediary receives a financial interest in an Issuer, should it be permitted to provide future services as long as it retains an interest? Why? Or why not?

Yes, an Intermediary should be permitted to provide services to the Issuer. The ability of an Intermediary to provide services to the Issuer is consistent with existing models of investing. In current industry practices, Investors are allowed to, and often do, provide additional services to support the issuing company's probability of success. Similarly, the Intermediary should be allowed to contract with the issuing company to provide future services. Because of the nature of the relationship, Intermediaries are well positioned to understand the issuing company's needs and to provide cost effective solutions, with economics of scale, to multiple Issuers.

Furthermore, precluding an Intermediary from providing future services would fundamentally alter the framework of incentives Congress intended to create. Prohibiting an Intermediary from providing future services creates divergent incentives between Investors and Intermediaries. The ability of Intermediaries to provide future services further cements a vested interest in the long-term viability and success of the issuing company. In so doing, the Intermediary's potential relationship with and support for the issuing company extends beyond the offering phase.

Finally, the Intermediary should retain its interest in the Issuer unless there is a sale of the assets of the Issuers, or a "change of control" of the Issuer, or after a 3-year period.

124. One commenter suggested that an Intermediary should be able to receive a financial interest under the same terms as other Investors participating in an offering made in reliance on Section 4(a) (6). We request comment on this suggestion. How could an Intermediary address potential conflicts of interest that may arise from this practice? Would disclosure of the arrangement be sufficient? Please explain.

We agree that the Intermediary should be able to receive a financial interest under the same terms as other Investors. Furthermore, we believe that disclosure of the arrangement would be sufficient to address potential conflicts of interest. Disclosure of any financial interest with the Issuer provides the crowd with the information necessary to evaluate the idea, the business, and the relationship between the Intermediary and the issuing company. Conflicts of interests can be addressed through explicit requirements around disclosing the financial interests and the terms. By requiring disclosure of the terms, the crowd is empowered to evaluate the terms and risks, both for the issuing company, and for comparing Intermediaries against each other. For example:

(1) Disclosure of an Intermediary's financial interests under the same terms will minimize any conflict of interest. Moreover, such a disclosure will align the interest of the Intermediary, the Issuers, and the Investors. An Intermediary's financial interest in an issuing company is not, *a priori*, a factor that will negatively influence the crowd; rather, the crowd's evaluation will depend on the Intermediary, its historical record, mission, etc.

(2) Disclosure allows the crowd and Issuers to compare Intermediaries. The crowd's ability to evaluate Intermediaries in aggregate supports Issuers by providing an additional resource to evaluate the costs of a relationship with the Intermediary. It also helps Investors to leverage the wisdom of the crowd to evaluate costs, terms, and conditions across Intermediaries.

Finally, we agree that any financial interests must be *under the same terms as other Investors participating in an offering made in reliance on Section 4(a)(6).* This approach (a) aligns an Intermediary's interests with Investors because both stakeholders have the same long-term financial interest in the success of the Issuer; (b) prevents confusion and increases Investor confidence by ensuring the process is transparent; and, (c) reduces the costs for Issuers, because they do not have to worry about comparing and negotiating different terms and conditions offered by various intermediaries.

Finally, we would also support a holding period requirement of 3 years. This holding period would ensure that an Intermediary does not use the investment to stimulate interest in the offered, but instead holds a longer-term alignment with the Issuer.

125. The proposed rules define "financial interest in an Issuer," for purposes of Securities Act Section 4A(a)(11), to mean a direct or indirect ownership of, or economic interest in, any class of the Issuer's securities. Should we define the term more broadly to include other potential forms of a financial interest? For example, should the term include a contract between an Intermediary and an Issuer or the Issuer's directors, officers or partners (or any person occupying a similar status or performing a similar function), for the Intermediary to provide ancillary or consulting services to the Issuer after the offering? Should it include an arrangement under which the Intermediary is a creditor of an Issuer? Should it include any carried interest or other arrangement that provides the Intermediary or its associated persons with an interest in the financial or operating success of the Issuer, other than fixed or flat-rate fees for services performed? Should any other interests or arrangements be specified in the term "financial interest in an Issuer?" If so, what are they and what concerns do they raise?

We agree that a "financial interest" in an Issuer should mean a direct or indirect ownership of, or economic interest in, any class of the Issuer's securities. That term, however, should not be expanded to include other potential forms of financial interests. Such an expansion would lead to increased confusion amongst Investors, Issuers, and Intermediaries.

Contracts and other forms of relationships between Issuers and Intermediaries should be adequately disclosed. But a more effective approach would be a model that combines current industry best practices whereby the Intermediary can be an important source of financial and operational advice with disclosure of the relationship in clear and precise terms.

It is in the best interests of the issuing company and the company's Investors that the Intermediaries be allowed to provide additional services and access to partners. Similar models exist in venture capital. Venture capital firms often provide services in addition to capital, such as access to technical, operational, legal, accounting, and other professional contacts. These added benefits are not necessarily demarcated in contractual relationships between the Issuer and the Investor, but are benefits, often reasonably expected, to occur as a result of the relationship.

The lack of clearly defined services to be provided, however, means Issuers do not always know what added benefits they will receive, or of what quality. By allowing an Intermediary to provide additional services, and requiring that those additional services be disclosed, Issuers and Investors benefit from additional information in terms of cost and services offered. Furthermore, this information allows cost comparison about the value of the Intermediary within the crowdfunding sector. In so doing, the Intermediaries can increase transparency in more traditionally private areas of exempt offerings as well.

Intermediaries should be required to disclose additional services provided, in order to ensure transparency of the Intermediary-Issuer relationship. This form of disclosure would assist companies in comparing Intermediary platforms to identify hidden costs or added benefits. Such a disclosure should occur at the moment of pricing, and not in the offering disclosures.

126. In light of the reasons for the prohibition, should there be a de minimis exception? Why or why not? If so, what would be an appropriate de minimis amount? For example, would a one percent holding be an appropriate amount? Would another amount be more appropriate? Please explain. Should there be disclosure requirements for any de minimis exception? Why or why not?

We do not believe a *de minimis* exception is necessary. Furthermore, a *de minimis* exception would likely create more confusion and obscure a transparent process with regard to costs and the relationship between the Intermediary and the Issuer. A more practical approach that serves the Congressional intent would rely on a narrow and clear definition of a financial interest *"direct or indirect ownership of, or economic interest in, any class of the Issuer's securities"* and disclosure of any additional agreements with individuals and partners. So long as the agreements are disclosed, there does not need to be a *de minimis* exception.

41. Should we require the Issuer to include certain specified legends about the risks of investing in a crowdfunding transaction and disclosure of the material factors that make an investment in the Issuer speculative or risky, as proposed? Why or why not? Should we provide examples in our rules of the types of material risk factors an Issuer should consider disclosing? Why or why not? If so, what should those examples be?

No. Issuers should not be required to include specified legends about the risk of investing in a crowdfunding transaction. Issuers seeking to leverage crowdfunding will tend to be smaller and lack the resources and sophistication of large companies that can provide specific details about risks related to their offering. As a result, attempts by early stage companies to disclose risks are likely to generate increased confusion amongst Issuers, Investors, and Intermediaries, as well as unnecessarily increase the costs of the offerings.

An alternative approach is to require a universal legend managed by the Intermediary. The Intermediary can be required to list examples of the types of risks that Investors should be aware of that apply to all companies participating in these types of offerings. This approach would (a) inform Investors of the risks, with tangible examples for the least sophisticated and/or links to trusted sources, such as the Commission; (b) centralize information to create a consistent disclosure of the risks involved across all companies on a platform and across intermediaries; and, (c) incentivize intermediaries to create tools to assist Investors in identifying risks specific to particular industries, types of early stage companies, or risks common amongst the community with which the Intermediary works. Examples of risks that an Intermediary might provide include: the illiquidity of the investment, lack of a trading market for the securities, arbitrary determination of purchase price, revisions to business plan and use of funds, unpredictability of revenues and customer acquisition, competition, dependency on management (or lack of experience of management), need for additional financing and impact of potential future dilution, and government regulation.

50. Under the statute and the proposed rules, Issuers are required to file with the Commission, provide to Investors and the relevant Intermediary and make available to potential Investors financial statements. The proposed rules would require all Issuers to provide a complete set of financial statements (a balance sheet, income statement, statement of cash flows and statement of changes in owner's equity) prepared in accordance with U.S. GAAP. Should we define financial statements differently than under U.S. GAAP? If so, what changes would be appropriate and why? What costs or challenges would be associated with the use of a model other than U.S. GAAP (e.g., lack of comparability)? What would be the benefits? Please explain.

No. U.S GAAP provides a sufficient and generally understood framework that is accessible to Investors, Issuers, and Intermediaries. As an industry standard, U.S. GAAP allows crowd wisdom to be leveraged by nearly all Investors; allows Issuers to immediately be comparable across industries, and with larger, already-existing, companies; and, enables Intermediaries to create template forms to collect the information, thereby increasing transparency.

OFFERING RELATED COMMENTS

58. The proposed rules would require Issuers offering $100,000 or less to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects. Should we require Issuers offering more than $100,000, but not more than $500,000, and/or Issuers offering more than $500,000 to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects? Why or why not?

Yes, Issuers offering up to $500,000 or less during their crowdfunding offering should provide financial statements certified by the principal executive officer to be true and complete in all material aspects.

We agree with the Commission that "*Issuers engaging in crowdfunding transactions in reliance on Section 4(a)(6) are likely to be at a very early stage of their business development and may not have an operating history*." As such, we believe that little additional protection will be provided to Investors, and some not insignificant cost will be incurred by Issuers in producing financial statements.

However, we also recognize that in order for crowd wisdom to produce market dynamic incentives and tools, a greater degree of transparency and disclosure is required. Here, even in those cases of newly formed Issuers with a limited operating history, we expect that the required financial statements will not be overly burdensome. For those Issuers with a more substantial operating history, disclosure of certified statements can only aid the crowd wisdom mechanic.

Additionally, we wish to discourage inefficient incentives that may arise as a result of requiring more stringent financial statement disclosure certification from Issuers seeking offerings between $100,000 and $500,000. Estimates of the minimum amount of capital to launch even a lean startup in the software/mobile app sector into the marketplace range from $750,000 to $1,500,000.[1] Accordingly, if the financial statement requirement is certification by principal executive officers so long as the offering sought is under $500,000, we expect that Issuers seeking an offering in the $100,000 to $500,000 range would customarily make offerings near $500,000. However, if the financial statement requirement for offerings between $100,000 and $500,000 were substantially more stringent than those below $100,00, Issuers may be incentivized to pursue multiple offerings of $100,000 or less. In doing so, those Issuers could effectively bypass the elevated financial statement certification requirements and potentially aggregate to the maximum $1,000,000 crowdfunding offering annually. Incentivizing Issuers to pursue multiple offerings of $100,000 or less increases transactional costs of raising funding, burdens Issuers with duplicative inefficiencies, and generally hinders economic growth by acting as a drag on new businesses developing along the funding arc. Because there are substantial transactional offering costs to Issuers and practically little benefit when operating histories are negligible, Issuers should be allowed to certify financial statements up to offerings of $500,000.

76. Should we specify that an amendment to an offering statement must be filed within a certain time period after a material change occurs? Why or why not? What would be an appropriate time period for filing an amendment to an offering statement to reflect a material change? Why?

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[1] Stuart Ellman, *How Much Money Does A New Startup Need?*, BUSINESS INSIDER (Sep. 26, 2014), www.businessinsider.com/how-much-money-does-a-new-startup-need-2013-9.

Yes, offering statement amendments reflecting material changes during or after the offering period must be filed within a prescribed time period. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether or not to purchase the securities. We suggest that "materiality" education and training be part of the suite of services or knowledgebase that intermediaries provide.

In determining the prescribed time period, we note that there is an important distinction for material changes *during* the offering versus *post* offering. Offerings often move quickly and can be open for narrow periods of time. In non-equity crowdfunding, substantial "goals" in the hundreds of thousands can be reached in hours.[2] In the equity crowdfunding context, we expect offerings to move just as quickly. Thus, timely notification of material changes is necessary, especially if transparent disclosure is to enable crowd wisdom to thrive.

We believe that the following time periods reflect reasonable time periods for communicating material changes:

- (5) days during the offering period.
- (90) days (quarterly) after the offering period.
- Once the offering has closed, notice provisions for material changes can be done quarterly, along with traditional financial accounting housekeeping tasks.

83. After completion of the offering, should we require that Investors be represented by a nominee or other party who could help to facilitate physical delivery of the annual report to Investors? Why or why not? Should the nominee or other party have other responsibilities, such as speaking on behalf of and representing the interests of Investors (e.g., when the Issuer wishes to take certain corporate actions that could impact or dilute the rights of Investors, distribution of dividend payments, etc.)? If a nominee or other party should be required, what structure should this arrangement take and why?

Yes and no. The Intermediary should provide the infrastructure for a nominee or advocate selection through a pro rata share voting system that should, at the very least, accommodate

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[2] *See, e.g.*, Yancey Strickler, *Ouya's Big Day*, KICKSTSARTER BLOG (July 11, 2012), https://www.kickstarter.com/blog/ouyas-big-day (Five projects raised more than a million dollars in less than seven days); Graeme McMillan, *Veronica Mars Kickstarter Breaks Records, Raises Over $2M in 12 Hours*, WIRED.COM (03.14.13 6:52 PM), www.wired.com/underwire/2013/03/veronica-mars-kickstarter-record,

original purchasers. However, no nominee or advocate need be required of an offering if purchasers of the offering are not inclined to take such action.

After completion of the offering, the Intermediary should continue to be the platform through which all communication is channeled. If the Intermediary ceases operation, then the Issuer can preferably (1) host the crowd communications infrastructure for the purchasers of its offering, or (2) email the Investors directly, in the case of offerings ≤ $500,000. The former method is preferred as it addresses concerns of post-offering trading by original purchasers.

To accommodate the potential need for transferring the offering data package, including archived crowd communications such as comments or forums, we suggest that the Intermediary be required to (a) maintain the data in a standardized portable format, such as Edgar XML, or (b) maintain the ability to export their data into such standardized portable format.

We believe that this schema preserves continued disclosure and transparency, thereby leveraging crowd wisdom and market dynamic incentives to create an investor advocate whenever appropriate.

92. Should we require a specific format that Issuers must use to disclose the information required by Section 4A(b)(1) and the related rules?

Yes. A standard format should be required when Issuers disclose information pursuant to Section 4A(b)(1). However, Issuers should be able to provide additional information as well.

We agree with the SEC approach of providing "*key offering information in a standardized format*" and giving Issuers "*flexibility in the presentation of other required disclosures*." We believe flexibility in presentation is especially important for three reasons: (a) different Issuers relying on the crowdfunding exemption will encompass a wide variety of industries at different stages of development; (b) potential Investors will have different engagement or investment styles that focus on different elements; and (c) potential Investors will have different learning inclinations, such as audio-visual preferences. In these cases, it is in the best interest of Issuers and Investors to utilize multiple formats and methods of communications and presentation (e.g., text, video, charts, graphics, audio, etc.) to describe the business to Investors and to the Commission.

In order for crowd wisdom to be achieved, the crowd must be adequately informed. Thus, we recommend a comprehensive and varied disclosure methodology to ensure the achievement of complete transparency.

94. In what format would the information about an Issuer be presented on an Intermediary's platform? Will there be written text, graphics, charts or graphs, or video testimonials by the founder or other key stakeholders? Will the information be presented in a way that would allow for the filing of the information as an exhibit to Form C on EDGAR? If not, how should the rules address these types of materials?

We agree with a standard format that can be customized by the Issuer. Intermediaries should present the standard core offering information as disclosed in Form C, but should be free to flexibly sort and display the data. Issuers should be allowed to augment that data with multimedia, if they summarize the non-XML material in their Form C disclosures.

First, Intermediaries should begin with the Issuer's disclosure to the SEC, i.e. the standard XML readable format with the core offering information as disclosed in Form C. Intermediaries could then flexibly sort and display data from that standard format. Additionally, Issuers should be allowed to augment that data through concurrent display of multimedia. Because multimedia (presumably) may not be able to be integrated into the portable and standard XML format, summaries of the non-XML material presented to Investors should be provided and integrated into the standard and portable XML readable format file.

[See also answer to #92]

102. Should we limit the Issuer's participation in communication channels provided by the Intermediary on the Intermediary's platform? Why or why not? If so, what limitations would be appropriate?

Brief Answer: Yes and No. All communications whereby the Issuer officially comments on the offering should occur on the Intermediary platform. However, the Issuer should be allowed to replicate its own official communications—that were first posted on the Intermediary platform—elsewhere via a proposed "first post replication" process. Additionally, the Issuer's official communications on the platform should be limited in that the Issuer will always be required to identify itself as the Issuer in its communications.

[Full Response to #102, #103 below]

103. The proposed rules would allow an Issuer to communicate with Investors and potential Investors about the terms of an offering through communication channels provided by the Intermediary on the Intermediary's platform, so long as the Issuer identifies itself as the Issuer in all communications. Is this approach appropriate? Why or why not? If not, why not?

Yes, the Issuer's official communications on the Intermediary platform should be limited so that the Issuer is required to identify itself as the Issuer in its communications. Moreover, all communications whereby the Issuer officially comments on the offering should occur on the Intermediary platform.

Transparency on the part of the Issuer is a prerequisite to the proper functioning of the crowd's ability to evaluate an offering, business idea, and Issuer. Understandably then, the Issuer and all pre-offering interested persons (Investors, Issuer founders, Issuer employees, Issuer board of directors, etc.) must disclose their interested nature in their communications regarding the offering. Consequently, Investors and potential Investors will be able to distinguish between official Issuer statements versus opinion, speculation, and the operation of the crowd wisdom dynamic. Additionally, the Intermediary platform should consider a tagging function for comments that identifies the interested nature of the communication.

Centralization of communication on the Intermediary platform ensures that all information relevant to the offering is equally accessible and there are no "back" channel conversations. This ensures complete and fair disclosure to all potential Investors, facilitating the crowd wisdom mechanic. However, centralization of the Issuer's communications does not necessarily require exclusivity on the Intermediary platform.

We propose a "first post replication" mechanism for Issuers to communicate the terms of its offering external to the Intermediary platform. Issuers must first communicate on the Intermediary platform but then should be able to replicate their own communications elsewhere, e.g., on the press release section of their website. Additionally, should Issuers desire to replicate a two-way communication or conversation with an Investor or potential

Investor, they would have to abide within the terms of the Intermediary's privacy notice, and potentially secure the individual consent of the Investor.

104. The proposed rules would not restrict an Issuer's ability to communicate information that does not refer to the terms of the offering. Is this approach appropriate? Why or why not? If not, what limitations should we include on an Issuer's communications that do not refer to the terms of the offering and why?

Yes and No. An Issuer should be able to communicate information that does not refer to the terms of the offering both on and off the Intermediary's platform. The Issuer must still be able to conduct its normal business and operations, including notifying and engaging users and Investors of company news, products, and services. However, the Issuer as an entity should still identify itself in communications relating to the Issuer company, even if not relating to the offering in question.

Transparency on the part of the Issuer is a prerequisite to the proper functioning of the crowd's ability to evaluate an offering, business idea, and Issuer. Understandably then, the Issuer as an entity and all pre-offering interested persons (Investors, Issuer founders, Issuer employees, Issuer board of directors, etc.) must disclose their interested nature in their communications regarding the offering, even if such interested persons communicate off the Intermediary's platform. Consequently, Investors and potential Investors will be able to distinguish between official Issuer statements versus opinion, speculation, and the operation of the crowd wisdom dynamic.

115. Should we require or prohibit a specific valuation methodology? If so, what method and why? Should we specify a maximum valuation allowed as suggested by one commenter? Why or why not?

No, there should not be a specific valuation methodology. Methods and valuations of early stage companies vary dramatically and justifiably so.[3] Because of the great variety of business

[3] Asheesh Advani, *How to Value Your Startup*, ENTREPRENEUR.COM, www.entrepreneur.com/article/72384 (last visited Jan. 30, 2014) ("valuing a startup business is squarely in the domain of the artist"); *High Tech Startup Valuation Estimator*, CAYENNECONSULTING, www.caycon.com/valuation.php (last visited Jan. 30, 2014) (listing 25 variables impacting pre-money valuations).

models, revenue streams, and goodwill allocations, attempts to define a single valuation methodology will likely favor particular companies and prejudice others. Such unintended favoritism could well inhibit a range of innovative models from accessing the crowdfunding exemption.

Prescribing a narrow valuation methodology would needlessly limit flexibility of the marketplace to vet and support new innovative models of business. Allowing different valuation methods, so long as truthfully disclosed, would promote transparency and allow the market dynamic to access crowd wisdom in evaluating early stage companies. Accordingly, there should not be any specific valuation methodology.

Similarly, there should not be a maximum valuation specified. Even if a standard valuation methodology was promulgated, the maximum valuation of an Issuer can be significantly influenced by a variety of factors.[4] These factors make it incredibly difficult to set a maximum or respond to the dynamics of the marketplace. Accordingly, requirements should require disclosure of an Issuer's valuation, which, in turn, should provide sufficient information for the crowd to evaluate.

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Hackers/Founders appreciates the opportunity to submit these comments. The authors are available to meet and discuss these matters with the Commission and its staff and to respond to any questions.

Thank you,

/s/ Charles Belle
/s/ Kenneth Priore
/s/ Timothy Yim

[4] William H. Payne, *Valuation of Pre-revenue Companies: The Venture Capital Method*, ENTREPRENEURSHIP.ORG, www.entrepreneurship.org/resource-center/valuation-of-prerevenue-companies--the-venture-capital-method.aspx (last visited Jan. 30, 2013).