FEINSTEIN LAW, P.A.

Todd Feinstein, Esq.
Florida Bar Admitted

5447 Haines Road North, #140
St. Petersburg, Florida 33714
Phone: 619.990.7491
www.feinsteinlawfirm.com
Email: [redacted]

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Ms. Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Crowdfunding
File No.: S7-09-13

Ms. Murphy

Feinstein Law, P.A. would like to take this opportunity to comment on the Commission's Regulation Crowdfunding proposed rules. Specifically, we would like to take this time to address the request for comment regarding:

"Should we prohibit an issuer from concurrently offering securities in reliance on Section 4(a)(6) and another exemption? Why or Why not?"

In 1982, when the Commission promulgated the Rules under Regulation D, two of the main goals were to provide issuers, specifically small businesses, with an easier access to and formation of capital. With these same goals in mind, the Commission has proposed these Crowdfunding Rules to provide startups and small businesses with new and alternative avenues to raise capital. Since its inception, Regulation D has provided small business with an important tool in raising capital, while providing an exemption that alleviates some of the cost and burdens of the reporting requirements under Federal law. If the Commission were to prohibit the ability of an issuer to concurrently offer securities in reliance on Section 4(a)(6) and another exemption (e.g. Regulation D.) it would inadvertently and unduly penalize the issuer for having to exclusively rely on either the newly created Regulation CF method to raise capital or another exemption.

Crowdfunding platforms have predicted that a so called "side-by-side" offering will allow the issuer to raise capital under Regulation CF to unaccredited friends and family (and also other interested persons in the "crowd"), while also allowing the issuer to tap in to the accredited investor market through a private offering exemption (e.g. a Rule 506(b) offering).[1] By prohibiting concurrent offerings, the Commission would effectively penalize an issuer's decision to raise money through the newly created Regulation CF by capping the amount of capital that could be raised through other exemptions. The result of forcing an

[1] *See* e.g., www.crowdcheck.com's memo on "Regulation Crowdfunding" Under Section 4(a)(6) of the Securities Act.

issuer to choose between exemptions could shift more issuers to a CF offering and inadvertently apply the one million dollar cap to other exempt offering options by integrating the offerings.[2]

The ability of issuers to make an offering under Section 4(a)(6) while simultaneously making an offering under another exemption (namely under Regulation D Rule 506(b)) is in line with the Commission's goal of easing the access and cost of capital to small businesses because it allows the issuer to keep the cost of capital up to a million dollars relatively low while also leaving the door open for an unlimited amount of capital formation from accredited investors. As the data in a recently released white paper by the Division of Economic and Risk Analysis demonstrates, the prevalence and consistent reliance of small businesses on Regulation D is a vital tool for capital formation.[3] Effectively taking away an exemption (if the issuer chooses and exhaust their CF exemption) that has been so heavily used by small business issuers while giving them a new one in the CF Regulation is an inadvertent penalty that should be avoided by the Commission.

The ability of issuers to use as many avenues of capital formation as possible is necessary for the continued growth of small businesses and the Nation's economy as a whole. We urge the Commission to keep the rule as proposed, because to prohibit a "side-by-side" offering and integrate an issuer's offering would unduly penalize the issuer and would run counter intuitive to the SEC's goal of providing small business with easier access to and formation of capital.

Respectfully,

Todd S. Feinstein
Feinstein Law, P.A.

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[2] It is the Firm's position that, in the present market conditions, a start-up company would most likely choose Crowdfunding based on perceived lower cost and ease of access to investors. Following this logic, by eliminating the ability of a concurrent offering, if investors that could have been offered under a 506(b) are, as a consequence, "forced" into a CF offering, this will reduce the overall amount an issuer can raise by prohibiting the start-up from raising a potentially unlimited an unlimited amount of capital through a 506(b) offering.

[3] Table 1 on page 4 of the report indicates during calendar years 2009 – 2012 the median amount sold (in dollars) of securities in reliance of Regulation D was between 1.4 and 1.5 million; indicating a large number of small offerings. Additionally, while hedge funds and other pooled investment vehicles lead the tally of aggregate capital raised, "non-financial issuers" account for the majority (60%) of all new offerings and Form D filings indicating that businesses (e.g., banking, technology, real estate, health care, energy, manufacturing, retailing, etc.) are by far the majority of issuers taking advantage of the exemption.