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February 6, 2014

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

RE: File No. S7-09-13, Scope of Statutory Liabilities for Intermediaries
Release No. 33-9470

Dear Ms. Murphy:

I am writing you on behalf of the Crowdfund Intermediary Regulatory Advocates ("CFIRA"), a crowdfunding trade organization that advocates for regulations that will support the crowdfunding industry in connection with Title II and Title III of the Jumpstart Our Business Startups Act of 2012. CFIRA's role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members are comprised of intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in, or who intend to engage in, business under Titles II and III.

The purpose of this letter is to provide CFIRA's comments in response to the proposed rules for Regulation Crowdfunding "Miscellaneous Provisions" the subsection for "Scope of Statutory Liabilities.," at Section II.E.5. of the Proposed Release.

Section 4A(c) provides that an issuer will be liable to a purchaser of its securities in a transaction exempted by Section 4(a)(6) if the issuer, in the offer or sale of the securities, makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of the untruth or omission, and the issuer does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Importantly, Section 4A(c)(3) defines an "issuer," for purposes of the liability provisions of Section 4A, to include not just the enterprise raising capital but "any person who offers or sells the security in such offering." The Commission states in the Release that:

"On the basis of this definition, *it appears likely that intermediaries, including funding portals, would be considered issuers for purposes of this liability provision.*" (emphasis added).

CFIRA recommends that the Commission take the following steps with respect to the aforementioned provisions pertaining to statutory liability provided that funding portals prominently disclose to investors that they are not considered an issuer for purposes of the securities laws and will not be liable for misstatements, or omissions, of material fact:

(a) Exempt from liability under Section 12(a)(2) of the Securities Act so long as the funding portal follows the requirements of the final crowdfunding rules adopted by the Commission;
(b) Provide a safe-harbor for activities that can be taken by a funding portal in posting offering materials on behalf of issuers relying on the final crowdfunding rules adopted by the Commission that would not bring the funding portal within the definition of an issuer; and
(c) Provide a list of reasonable steps that can be undertaken by a funding portal to preclude liability under Section 12(a)(2) of the Securities Act.

The above recommendations are consistent with Congressional intent under the JOBS Act of creating sufficient latitude for funding portals to serve a limited, facilitative purpose of enabling issuers to connect with, and communicate offering materials to, prospective investors without regulatory burdens that are practically and economically prohibitive.

Respectfully Submitted,

Robert C. Carbone, CFIRA Board Member