

March 12, 2014

*Via Electronic Mail at rule-comments@sec.gov*

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

**Re: File No.: S7-09-13; Section II.D.1.d, “Requirements for Nonresident Funding Portals”; Release 33-9470**

Dear Ms. Murphy:

This letter addresses additional requirements for funding portals, specifically requirements for nonresident funding portals and questions 205 through 211 of the Regulation Crowdfunding Proposed Rules.

Thank you for giving the public an opportunity to provide comments on Regulation Crowdfunding. As an entrepreneur of two startup companies, Wales Capital (management consulting firm) and CrowdBureau (ratings agency), an advocate, and pioneer, I am writing to the Commission because our country’s small businesses need enhanced access to capital to grow and create jobs. Small emerging businesses also require the opportunity to gain their footing in the capital markets industry and establish their competitiveness in the global landscape.

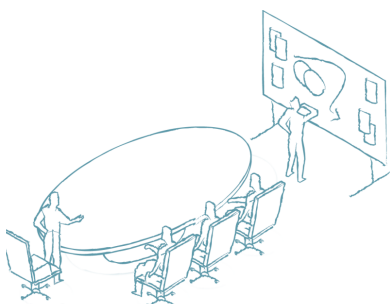
The delay in finalizing Regulation Crowdfunding Rules after the 290 days mandated by Congress has hindered and further disadvantaged America’s small businesses in not providing a means to gain funding from the capital markets. An increasing number of countries, including Italy, Australia, and the United Kingdom (for the past 6 months, 8 years and 3 years, respectively), allow equity and debt based securities crowdfunding. On February 28, 2014, New Zealand Commerce Minister Craig Foss announced their Cabinet has approved regulations for crowdfunding coming into force on April 1, 2014. There will be no investor caps for equity crowdfunding, other than the previously announced \$2 million cap that a company can raise through crowdfunding every 12 month period.<sup>1</sup>

Moreover, on a recent visit to the United States in early February, France’s President Francois Hollande promised to launch a new push for crowdfunding, with the adoption of a rule next month (March) that will promote the crowdfunding financing method of up to €1 million per 12 month period.

This worldwide perspective is important in formulating the Requirements for Nonresident Funding Portals in order to ensure that Domestic Funding Portals have the same opportunities to build competitive businesses at home and abroad. As cited in my previous letter entitled “**Limitation on Capital Raised**”, submitted on February 3, 2014, it is imperative for the Commission to reconsider raising the limits up to \$5 million for the health of small emerging companies to establish and gain global competitive opportunities while fostering domestic job growth

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<sup>1</sup> Mondaq News, February 28, 2014



particularly if the Commission extends the US market to non-resident funding portals. Three reasons raising the limitation on capital is important; 1) Foreign Currency Exchange Rates are higher than U.S. Dollar 2) Limits on Capital raises abroad are at minimum €1 million; 3) deal structure abroad is different (e.g., special purpose vehicles with a carry for the funding platform) allows for greater financial gains.

In addition, the following recommendations are included below based on the Final Proposed Rules for Regulation Crowdfunding:

*Question 205. Is the term nonresident funding portal defined appropriately? If not, how should it be modified? Please explain.*

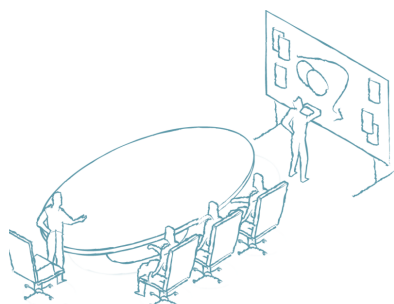
**Recommendation.** To be consistent with the definition of a corporation, which is incorporated under the laws of a different state or nation, I would recommend the term “foreign” funding portal. A “foreign” corporation must file a notice of doing business in any state or nation in which it does substantial regular business. It must name either an “agent for acceptance of service” in that nation or the Secretary of State, if applicable, to be that agent so people doing business with a foreign corporation will be able bring legal actions locally if necessary.

*Question 206. Should the Commission impose additional or different conditions for nonresident funding portals than those proposed? If so, what conditions, and why? Should any be eliminated? Why or why not? What effect might such conditions have on the development of the industry and the market, and on issuers and investors? Please explain.*

**Recommendation.** Nonresident funding portals should be subject the same rules as domestic funding portals. The issues that may arise is the limitation on capital raised and investor caps that are different per country and whether or not nonresident funding portals would be permitted to comply with their country criteria or that of the USA. If nonresident funding portals are permitted to use their country rules for limitation on capital raised and investor caps this could substantially impede the competitive opportunity for domestic funding portals nationally, unless the Commission raise the capital amounts as recommended in a previous letter that I submitted on February 3, 2013, “Limitation on Capital Raise.”

*Question 207. If, as a matter of law, it would be impossible or impractical for a nonresident funding portal to obtain the required opinion of counsel, what other actions or requirements could address our concern that we and the national securities association would be able to have direct access to books and records and adequately examine and inspect the funding portal?*

**Recommendation.** The Commission could institute a chaperoning funding portal arrangement that could be similar and consistent to that of a Foreign Broker Dealer arrangement. For example, a registered broker-dealer acting as a chaperone for a foreign broker-dealer must comply with Rule 15a-6 and related rules under the Securities Exchange Act of 1934. A chaperoned nonresident funding portal could be required to make and keep current books and records that reflect trades between the U.S. customers and the nonresident funding portal, including, but not limited to, transaction records. The chaperoning domestic funding portal may obtain this information from the nonresident funding portal or another source; however, the chaperoning funding portal would be responsible for the accuracy of its books and records.



*Question 208. Should any of the proposed requirements be more specific? For example, should only certain types of entities (such as law firms) be allowed to act as U.S. agents for service of process? Please explain.*

**Recommendation.** The nonresident funding portal should be able to name either laws firms or an "agent for acceptance of service" which may include the types of resident agents that domestic entities engage in inter-state commerce, or the Secretary of State to accept service. The proposed requirements should not be more specific.

*Question 209. Should a nonresident funding portal be required to appoint a U.S. agent for purposes of all potential legal proceedings, including those from nongovernmental entities? Why or why not?*

**Recommendation.** Yes, nonresident funding portals should be required to appoint a U.S. agent for purposes of all potential proceedings. This will be consistent with rules that currently exist between a Foreign Broker Dealer and representing agent.

*Question 210. Should we require the opinion of counsel if it might contradict the laws of a jurisdiction where an intermediary is incorporated? Why or why not? If not, should we impose an alternative requirement?*

**Recommendation.** While we do not want to encourage businesses to contradict their local laws, the Commission should require the opinion of counsel from nonresident funding portals that seek to conduct business in the U.S. because they are voluntarily subjecting themselves to our laws which were established to govern and protect issuers, intermediaries and investors.

*Question 211. Should we specify that the opinion of counsel contain any additional information? For instance, should we require the opinion to reference the applicable local law or, in the case of an amendment?*

**Recommendation.** No, the final proposed rules are sufficient.

Wales Capital remains available for further discussions relating to defining the final rules for Title III and we continue to be available to work with the Commission, to ensure a healthy ecosystem, capital formation, and investor protection whenever possible.

Respectfully submitted,



Kim Wales  
Wales Capital, Founder & CEO

