To: rule-comments@sec.gov

Re: File Number S7-09-13

To The Honorable Mary Jo White, Commissioner Luis A. Aguilar, Commissioner Daniel M. Gallagher, Commissioner Kara M. Stein, Commissioner Michael S. Piwowar, and Title III Team (Sebastian Gomez Abero, Jessica Dickerson, Division of Corporation Finance, and Joseph Furey, Joanna Rutkawski, Leila Bham, Timothy White and Carla Carriveau, Division of Trading and Markets):

First, I would like to thank you in advance for acceptance of this late commentary submission on the proposed rules. I recognize the tremendous effort expended thus far in the development and drafting of the complex rules required to implement Title III of the JOBS Act.

I am encouraged with the Chair's consistent public position that finalization of Title III rules are a high priority and that the goal is to publish the final rules by year end. An entire industry is waiting to be launched and hundreds of thousands of new jobs will be created consistent with the legislative intent behind the JOBS Act as soon as the rules are finalized.

A recent survey of political and media banter may suggest that Title III, as structured under the proposed rules, is "unworkable." It appears under close examination, however, that such arguments are based on theory and hyperbole and not on actual industry experience. Furthermore, in some cases, the comments are based on limited experience and even potentially self-serving agendas. Having invested in over 57 startups as a partner in Los Angeles's largest tech accelerator, and having personally launched 4 startups, I want to share my experience. Below, I raise each of the major contrarian arguments and present empirical evidence supporting the approaches currently set forth under the proposed rules.

Reasons Why Title III As Set Forth In The Legislation And Proposed Rules Are Commercially Viable

1) **Financial reviews and financial audits should be required and are far less expensive than often stated**

    - Almost everyone agrees it is important to have third party verification of historical financial reports to improve honesty, consistency, and reliability.
    - The challenge is that audits and reviews usually cost tens o thousands of dollars, thus rendering a Title III offering unworkable from a cost benefit perspective.

- The factual fallacy in this argument is that existing fee structures are based on audits and reviews for larger, highly complex companies. Additionally, the proposed rules wisely recognized that PCAOB scrutiny drives costs event higher.
- It is virtually guaranteed that the audit industry will evolve to meet the requirements of Title III. In fact, it already has.
- One new CPA audit and review entrant, www.crowdfundcpa.com, provides audits and reviews typically in the range of $1,500 to $10,000 for smaller, newer companies. This new breed of CPA firms will emerge—ones that are efficient, focused, and technologically advanced and cost conscious.
- The reduced overhead and efficiency of these firms allows them to operate at lower billing rates and complete high quality reviews and audits in a fraction of the time of larger firms.
- The bottom line is that there are already market solutions to provide CPA audits and reviews at a price that make sense for Title III crowdfunding.

2) <u>The current $1 million year cap is sufficient to fund most Title III Companies</u>

- In angel and tech investing, companies often have several rounds of capital *<u>below</u>* $1 million.
- Congressional intent and regulatory objectives of spurring innovation and creating jobs is served with the current $1 million market cap.
- No evidence exists that actual issuer   find it unworkable to launch Title III campaigns with the $1 million cap—in fact, thousands of companies have raised less than $1 million on gift/donation portals.
- Thousands of companies are waiting and preparing to launch Title III offerings, even with the $1 million cap.
- A large number of Title III investors for each offering will prove that there is a market for the issuers' products or services.
- Follow-on angel or venture capital investors will also be more inclined to invest in companies with proven market traction. (i.e. Title III investors)
- Therefore, the $1 million cap is sufficient for issuers to prove their model and raise additional capital.

3) <u>Unaccredited does not mean unfit</u>

Current market leaders knowledgeable in the proposed rules agree that Title III is imminently workable as written for the following reasons:

- No evidence supports the proposition that unaccredited investors will take wild risks against their net worth.
- Likely investment range will be between $50-250 per investment.
- Investors are ready, willing, and able to comply with limitations set forth in the proposed rules.
- Congress and the SEC proposed rules lay out reasonable investor protections.

4) Fraud is not inherent

- There is a preconception that equity crowdfunding is inherently tied to fraud. Yet, available data from markets where equity crowdfunding currently exists says otherwise.
- The UK, Australia, and the Netherlands all already have equity-based crowdfunding markets, and no accounts of fraud have been reported. (http://www.huffingtonpost.com/victoria-silchenko/crowdfunding_b_2275160.html)
- Fraud is prevented through well-thought-out screening processes set forth in the proposed rules, and the fact that crowdfunding itself is inherently based off social media, the most powerful tool for weeding out fraud. (http://crowdfundcapitaladvisors.com/resources/26-resources/120-crowd-detects-fraud.html)
- Existing disclosure and due diligence requirements will ignite an entire industry of high integrity background check companies such as www.crowdcheck.com.

5) Inconsistent state level crowdfunding laws create market chaos and inefficiency

- State law differentiation is inconsistent with the nature of the Internet.
- State law differentiation is inconsistent with the needs of investors to have equal access.
- State law differentiation is inconsistent with the needs of issuers to raise sufficient capital to meet their goals.
- Regulatory efficiency and decreased risk to investors will be achieved with a consistent federal structure.
- Given the pace of state level adoption of crowdfunding laws, now is the best time for the SEC to publish final rules.

6) At least 30-40 Title III portals are now ready or will soon be ready to launch

- There is no evidence that legal risk to portals will be unworkable.
- Industry standards will evolve to perform diligence on issuers consistent with the proposed rules.
- Insurance products are likely to emerge.
- Portals are ready, willing, and able to perform investor education and screening consistent with the proposed rules.

7) Issuers agree that disclosure requirements, including tax, financial, and employee information are workable

- Issuers acknowledge that a reasonable balance was achieved in the propose rules in requiring financial and operational information.
- IP can still be protected under current proposed rules.

- Potential Title III issuers understand the disclosure requirements and they value the opportunity to raise capital even if it involves disclosures.

8) Reporting requirements under proposed rules are reasonable

- New companies are already developing products to help issuers comply with post-funding compliance requirements.
- For example, see www.capschedule.com.
- Highly efficient accounting support services specifically designed to support Title III compliance requirements have developed.
- For example, see www.tempcfo.com.

9) The proposed rules achieve appropriate balance of an efficient capital market against investor protection

- No set of rules—especially first-time rules—is perfect.
- Markets and/or legislative initiatives will adjust to proven realities.
    - New products and services will be created
    - Legislative change
- Publishing final Title III rules now best serves economic and legislative objectives.

When Seen For Its True Market Purposes, The Proposed Rules Under Title III Are Workable

Title II crowdfunding and Title III crowdfunding are fundamentally different businesses. While I note that many portals have launched under Title II while awaiting publication of final Title III rules, two critical distinctions make Title II crowdfunding a very different business than Title III crowdfunding. The two key distinctions are 1) different issuer purpose and 2) different customers.

As to the difference in purpose, a typical Title II campaign's primary goal is to raise capital—and usually in significant amounts. More importantly, a Title II investor's purpose is often singular—to earn a significant return on invested capital.

In contrast, Title III issuers often seek to recruit and engage an army of brand ambassadors with a secondary purpose of raising capital. To share actual market experience, StartEngine's first two issuers are established consumer companies whose primary objective is to grow their businesses by leveraging the social network of new Title III investors and shareholders. While capital is important, the priority objective for both companies is to gain an army of brand loyalist to promote their companies to friends.

These first two issuers recognized the radical change in the marketing paradigm—broadcast, media, and print ads are out and social media is in. Millennials, and in particular, those that reach age 20 in 2020, ascribe little credibility to corporate messaging. Instead,

they ascribe great credibility to what their friends and social networks say. In other words, millennials don't buy a Ford Mustang because of a TV ad (which they don't see that often), but rather, they will buy a Ford Mustang if friends in their network tell them it is a good car. Prospective Title III issuers recognize this new phenomenon, and are highly interested in engaging a large group of small investors who will be committed to promoting their brands on a long-term basis.

Second, the target market of Title III is radically different than that of Title II. Accredited investors' demographic are much older—typically above age 50. As a group, 50-year-olds do not usually invest in new technology or innovation—rather, they prefer to invest in assets—real estate and proven businesses. Moreover, 50-year-olds typically do not go to the Internet to source deals and invest in them.

In contrast, Title III investors are more likely to mirror today's gift and donation contributors (Kickstarter, Indiegogo). Largely under ag 35, these investors' purpose is to "be a part of" helping someone in the community do something great. They are highl inclined to support true innovation and technology because they understand it and they place a high value on it. Despite the lack of any financial return, 3.2 million investors contributed $500 million to over 19,000 Kickstarter campaigns last year alone.

With an understanding of these differences, one can more clearly see benefits to an issuer that are far more significant than a simple math equation about total raise minus costs equals proceeds. Finally, if a majority of Title III investments are in denominations of $50, $100, or even $500, the purpose of the issuer can be met—even with a $1,000,000 cap.

For the reasons articulated above, I urge you to move forward with the vote to publish the final rules.

Respectfully,

Ron Miller

CEO
StartEngine Crowdfunding, Inc.