January 29, 2014

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

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

Dear Ms. Murphy

I am writing this comment to suggest two steps for improving the functionality and future effectiveness of the Proposed Title III Rules:

1 Expand the definition of "qualified third party" to include, in addition to a bank, a self-clearing broker-dealer that maintains minimum net capital pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934 (the "Exchange Act") to also include segregated Special Reserve Account(s)(one per Issue), wherein the Crowdfunding Intermediary is either a $250,000 Self Clearing Broker-Dealer ("SCB/D"), or a more restricted Intermediary conducting its activities through a written agreement with a SCB/D for services including, but not limited to, holding Subscriber deposits pending the outcome of the Contingency Event, then terminating the Special Reserve Account, as directed by the pending Title III Rules.

2 Create a new Rule 15c3-3(b) "Control" location for Title III securities, thereby providing an innovative clear path, one year after issue, for secure, efficient, paperless electronic trading and settlement of Title III securities transactions.

As background I, James P. Lennane CRD # 4499196, was the Founder and Principal Shareholder, through its parent bidnask.com ,inc., of a $250,000 Self Clearing, Broker/Dealer named ex24, Inc.("ex24") CRD # 120449

ex24 was also a full Participant in the Depository Trust Corporation ("DTC") in order to have an approved "Control" location for the Section 12 Securities that ex24 held on behalf of its Customers.

ex24 provided a full service facility that allowed small investors to conduct Person to Person, odd lot trades in Title 12 securities. These trades were settled instantly, on a cash basis, completely within the ex24 system.

In my opinion, a Self Clearing Broker/Dealer, with a strategic focus similar to ex24's, who wished to actively support the soon to be permitted Title III securities, could solve many of the issues that are sure to arise as these issues go forward.

Once a Title III Offering has been successfully completed, and the required one year waiting period for trading has passed, I believe that a SCB/D, could do an excellent job in creating a complete paperless trading and settlement facility plus regular reporting capability for both Investors in the issued Title III securities and the Issuers of those securities. During a Title III offering a SCB/D could provide high levels of protection for Subscriber funds and streamline the Crowdfunding process.

The following are the details of my two recommendations:

1. **EXPAND THE DEFINITION OF "qualified third party"**

Title III Crowdfunding offerings are "best-efforts all–or none". "Qualified Third Party" "Bank" Escrows are the singular Proposed Rule's method of holding Subscribers' funds pending the Contingency Event.

This is one possible approach.

However, the process could be greatly simplified and streamlined, yet offer equal Subscriber protection, if a Title III Intermediary is itself a SCB/D or, an Intermediary that has made a written service agreement with a SCB/D, to provide services the Intermediary may not be permitted to, or may not wish to, provide.

In such a case the step of creating an "Escrow" account, with its attendant three way Escrow Agreement involving a Bank, could be effectively eliminated by allowing a SCB/D to establish a separate named account for each and every Title III offering, in a Bank, absent the three parties being required to enter into an Escrow Agreement. It is unknown how difficult it may be difficult for smaller Intermediaries to find banks willing to enter into such agreements with the banking industry's perceived attendant risks involving small Investors, small Issuers and small Intermediaries.

My proposed approach is consistent the concepts of SEC Rule 15c2-4 offerings, described in the FINRA document entitled:

87-61 Suggested Escrow Agreement Provision for Members' Compliance With Securities and Exchange Commission Rule 15c2-4

In this documents **AGREEMENT – <u>Establishment of Escrow Account</u>** there are the following two paragraphs under:

"Comment:

a. *A $5,000 broker-dealer is required to establish an escrow account to hold subscribers' funds until the contingency occurs, may only receive investors' checks payable to an unaffiliated bank acting as an escrow agent and may not receive cash or checks payable to the issuer or the broker-dealer.*

b. *As an alternative to establishing an escrow account, $25,000 broker-dealers unaffiliated with the issuer may act as agent or trustee for a separate bank account until the offering contingency occurs. A "separate bank account" is one which is independent of the broker-dealer's operating account and is specifically identified as being for the benefit of a particular offering. If the "separate bank account" method of holding customer funds is elected by a $25,000 broker-dealer, a separate account at a bank must be maintained by the firm for each offering in which it is acting as an underwriter or selected dealer; funds of different offerings may not be commingled.*

   A $25,000 broker-dealer is permitted to receive cash and checks payable to the broker-dealer. Therefore, if all members of the selling group are $25,000 broker-dealers, it is not mandatory to have checks made payable to the Escrow Agent. However, pursuant to SEC staff interpretation of Subsection (b)(2) of Rule 15c2-4, a $25,000 broker-dealer affiliated with the issuer must forward checks to an escrow account and may not act as agent or trustee for a separate bank account. Further, any checks received by an issuer affiliated with a broker-dealer are considered received by the broker-dealer and must be forwarded to an escrow account.

"(end Comment)

Section "a." is very close to the currently proposed Rule for a "qualified third party"

If a Section "b" escrow arrangement would be additionally defined as a "qualified third party" escrow for Title III Issues, that definition would permit a SCB/D acting as an Intermediary, or a SCB/D providing an escrow on behalf of an Intermediary, to hold and account for the Subscriber funds, in a separate, per Issue, account pending the Contingency Event. No three party bank escrow agreement would be required.

My second comment is forward looking toward the certain trading of Crowdfunded Title III securities:

2. **PHYSICAL CUSTODY AND CONTROL**

I am making this comment from my perspective as a prior operator of the ex24 fully integrated securities trading system. It is my belief that many Issuers of Title III securities hope one day to see an active interest in the public trading of their Issues. A SCB/D, if it selected by an Issuer, to support such trading, would offer excellent Customer protection and efficient settlement system.

However, Rule 15c3-3(b)(1) under the Exchange Act states, *"A broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of customers."*

"physical possession" is from a prior era. Paper certificates are abhorred throughout the financial industry. For years the DTC has sought to fully dematerialize all Section 12 Securities. Title III securities deserve the full benefit of this thinking and direction.

Paper Certificates are an anachronism. If in fact, they emerge in any significant way, as proof of Title III ownership, that situation will make their electronic trading, as well as efficient stock record maintenance, close to impossible and certainly inefficient. We only need review the U.S. securities history of Paper Certificates in the late 60's to see what chaos they caused as stock trading increased in volume. Paper Certificates are reputed to have been stacked in piles at brokerages-basically out of control! This situation lead to the formation of the DTC in 1973. I recommend we avoid repeating the past mistakes by relying on Paper Certificates as the primary evidence of Title III ownership.

A well drafted comment submitted by the Securities Transfer Associations, Inc.("STA") on December 18, 2012 makes it abundantly clear, that improper record keeping by Issuers who keep their own stock records, or who utilize unregistered Transfer Agents, will result in much confusion, non-compliance with professional stock record keeping practices and, further, increase the chance of Investor loss and fraud.

There are a number of enumerated "Control" locations for an SCB/D trading securities of various types under Rule 15c3-3.

However, for Section 12 equities, as far as I recall, the single approved permanent Control location, accessible for timely settlement, is the Depositary Trust Corporation ("DTC").

Title III Securities are not Section 12 Securities. Involvement of the DTC in holding Title III Securities is not proposed, nor is it desirable. To propose that such inherently small issues should be involved in the DTC process is unwise and overly cumbersome.

Yet, some lightweight mechanism must be instituted if Title III issues are to be held and/or tradable electronically, using electronic record ownership. This is particularly true if they were to be held and subsequently traded within a SCB/D who previously conducted or assisted in conducting an Issuers initial Title III offering.

Absent, redefining “Possession” from “Physical Possession”, which is headed toward extinction, to include some form of “Electronic Possession”, the most viable option would be to design and approve a new “Control” location for Title III securities within the currently Proposed Rules.

As the STA states in their comment, both registered Transfer Agents and Broker/Dealers are capable of properly maintaining stock records. The Broker/Dealers the STA refers to are implied to be SCB/Ds since only SCB/Ds can have Physical Possession or Control of Customer Securities.

I agree fully with the STA’s comment with regard to record keeping of Title III securities ownership. Homegrown maintenance of an Issuer’s stock record is going to lead to some record keeping chaos as well as Investor dissatisfaction and loss.

Further, I support the STA’s comment that a Safe Harbor should be created for Intermediaries who contract with either a Registered Transfer Agent [or a SCB/D by implication] for discharging the Intermediaries’ recordkeeping obligation under the Title III Regulations.

However, the STA Comment letter does not address the concept of the SCB/D’s “control” of fully paid customer securities.

For control, a SCB/D must have, or itself be, a permitted/defined control location for Title III securities. The SEC should designate either SCB/Ds or Registered Transfer Agents, or both, as control locations under Rule 15c3-3 with respect to Title III securities. To procrastinate in defining a new Control location in the final Title III Rules prevents firms interested in electronically trading Title III Issues from innovating efficient and economically viable trading and settlement systems for Title III issuers, their investors and future Title III holders. Moreover, SCB/Ds would have to rely on SEC No-Action letters, which cannot be issued by the SEC staff until the final Title III Rules are promulgated. The No-Action Letter process, with its attendant uncertainty and delay, does not permit timely planning or investment direction for a SCB/D, in preparing for the certainty of Title III trading.

There are already many variants of Control location for non-Equity securities such a Limited Partnership holdings. Defining Control Location for Title III securities would benefit all concerned if promulgated in the Final Rules.

What I recommend is that either the Book Records of a Transfer Agent, or the Book Records of an SCB/Ds, would be designated as control locations, but as mutually exclusive control locations, in order that only one exist for a given Issuer.

Under my comment/proposal a security holding would either be held in one of two states:

a. Direct Registration at the Transfer Agent or in Direct Registration at the SCB/D. In either case the security holding would not be in a state of readiness for trading just as it would not be in a state of readiness at the DTC today while it is in Direct Registration , or
b. **In a Customer Account at the SCB/D or, at the Transfer Agent in the Street Name of the SCB/Ds, in which case the security holding would be in a state of readiness for trading.**

This model is similar to the current model involving an SCB/D (or a Clearing Firm), the Transfer Agent and the DTC, but does not involve the DTC for these Title III securities. In the case of the SCB/D utilizing Transfer Agent as a Control location for the Title III Customer Holdings, the location would be the SCB/D's Street Name account at the Registered Transfer agent.

(Well understood DTC terms are used in the following example but no involvement with the DTC is implied).

The following example has a SCB/D, coincidentally named ex24, who is itself the Intermediary in an Offering of a Title III Issue of XYZ, Corp. where "RTFA" is the Registered Transfer Agent selected by the Issuer, XYZ Corp.

- XYX contracts with ex24, as an intermediary, to conduct a Title III Offering solely using dematerialized ownership(paperless) at the RTFA.
- There is a successful Title III offering by the XYZ Company of 100,000 Title III Shares utilizing ex24 as the Intermediary.
- During the Offering Subscribers of 95,000 shares of XYX indicated they want to become Customers, or are already Customers, of ex24. The remaining 5,000 shares elect for Direct Registration under their owner's name, John Smith at RTFA, who while a Subscriber in the Offering, elected not to become a Customer of ex24.
- At the Closing, ex24 notifies the RTFA to register 95,000 shares in ex24's Street Name and 5,000 shares in John Smith's Name.
- The One Year holding period passes. Title III shares of XYZ are ripe for trading.
- John Smith decides to sell 2,000 shares. He opens a new Customer Account at ex24 and instructs RTFA to transfer 2,000 shares to ex24.
- John Smith now retains 3,000 shares in Direct Registration at the RTFA and ex24 has 97,000 shares in its Street Name at RTFA including 2,000 John Smith shares which were recently transferred into ex24.
- John then sells the 700 shares of his 2,000 shares on ex24's trading platform where his book entry at ex24 is instantly reduced to 1,300, and Mary Revere, a longtime Customer of ex24 who bought the shares has her book entry in XYZ at ex24 increased to 700 shares of XYZ.

- Mary then Direct Registers 200 of her XYZ shares in a Direct Registration at the RTFA to her son Paul Revere Jr.
- The status at RTFA is then 96,800 in ex24 Street Name, John Smith 3,000 and Paul Revere at 200;
- The ex24 Book Entry System has John Smith 1,300 and Mary Revere 500, others 95,000 – a total of 96,800.
- The entire transaction is completely electronic and in balance.
- This scenario mimics the current Section 12 system with the DTC except the Control Location, both in SCB/D sense and in a bookkeeping sense is the Street Name Direct Registration of ex24 at the Transfer Agent.
- The same goal could be accomplished solely within the SCB/D by having a segregated set of book records for Direct Registered Share holdings. The segregated book records would hold the securities of Investors in Title III offerings who were not yet Customers of the SCB/D either because they had not completed the Customer Agreement of the SCB/D or because they wanted to Direct Register their Shares.

The entire equity securities industry is being dematerialized toward the level of zero paper. Title III securities, being a modern and innovated concept, deserve to be endowed from birth with the best level of efficient ownership, and trading, of U.S. Securities, that the industry has developed to date.

I want to thank the Commission and the other commenters for their work and participation.

Sincerely,

James. P. Lennane

jplcrowd@aol.com