

To: rule-comments@sec.gov

Re: File Number S7-09-13

Subject: Supplemental Formal Comment on Title III - Issuer Costs and Related Comments

To: The Honorable Mary Jo White, Chair, and Securities and Exchange Commission

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

Dear Chair White,

First, thank you in advance for the opportunity to submit this comment. During a telephone call on Thursday, September 18, 2014 with the following staff members, Jessica Dickerson, Sebastian Gomez Abero, Eduardo Aleman and Leila Bham, we discussed a number of issues.

One key issue was a request by your staff to provide additional information on the estimated costs for an issuer to raise capital under Title III. Other related issues that we discussed include the sufficiency of the \$1.0MM cap and liability of the portals for misstatements and omissions of issuers aggregation with offerings under other sections or laws.

Accordingly, I would like to assist by providing further data on the following:

I. Costs to Issuers to Raise Capital Under Title III of the JOBS Act:

There are a number of costs which are likely to be incurred by an issuer raising capital under Title III. In order to fulfill the requirements, an issuer will likely incur the following costs and expenses:

Low – High

• Corporate Formation	\$300 - \$500	LegalZoom
• Title III Filing Disclosure/ Compliance	\$1,000 - \$4,000	FundHub/CrowdCheck
• Financial Statements/Projections	\$2,000 - \$5,000	Temp CFO
• CPA Review	\$1,950 - \$3,750	Crowdfund CPA
• CPA Review	\$4,000 - \$9,000	BizCFO
• CPA Audit	\$3,100 - \$5,950	Crowdfund CPA
• CPA Audit	\$4,000 - \$9,000	BizCFO
• Portal Fees	6-15%	StartEngine/TruCrowd

Estimated Total Cost to Raise:

<u>\$99,000</u>		<u>\$499,000</u>		<u>\$1.0MM</u>	
Low	High	Low	High	Low	High
\$9,300 (9.4%)	\$24,500 (24.7%)	\$33,240 (6.7%)	\$84,750 (17%)	\$72,800 (7.3%)	\$168,500 (16.9%)

I submit that the above vendors are just a few of the early entrant support companies that were created to help issuers comply with the requirements of Title III. I am certain that once the final rules are implemented, a significant number of other vendors will launch to help further the compliance and support of Title III issuers. The competitive nature of these entrepreneurs will drive quality up and costs down as time goes forward.

II. \$1MM Is Sufficient For The Overwhelming Majority Of Issuers:

Given the overriding purpose and Congressional intent of Title III to democratize investment opportunities and boost entrepreneurship and innovation, the current \$1.0MM cap is sufficient. While raising the cap to \$5.0MM would further enhance the achievement of those objectives, most startups receive significantly less than \$1.0MM as a first round of funding.

Today, there are three basic paths that a startup will take in order to raise the capital necessary to initially launch a new company – (1) self-fund, (2) accelerators/incubators and (3) outside angel investment. In each case, the data clearly shows that the amount of initial investment is significantly below \$1.0MM.

Here are some of the leading accelerator/incubators and the amount of initial investment:

- StartEngine \$20k
- Amplify LA \$50k-150k
- Mucker Labs \$20k
- YCombinator \$120k
- 500 Startups \$250k
- Plug and Play \$25k

Further, the average amount of angel capital investment is also significantly below \$1.0MM:

- Angel Capital Association 2008 - \$277,000 Median investment per round
- Center for Venture Research 2013 - \$350,830 Median investment per round. (Angel investments continue to be a significant contributor to job growth with the creation of 274,800 new jobs in the United States in 2012, or 4.1 jobs per angel investment. The average angel deal size in 2012 was \$341,800 and the average equity received was 12.7 percent with a deal valuation of \$2.7 million. Read more: <http://www.unh.edu/news/releases/2013/apr/lw25cvr.cfm#ixzz3EjGjvWZC>)
- Venture Beat News/ citing the HALO Report 2013 - \$680,000 Median investment per round

Finally, and perhaps most significantly, the SEC has received formal comments from over 125 prospective Title III issuers in the past 45 days stating that the \$1.0 MM cap is sufficient and that they intend to use Title III to raise capital for new ventures.

III. Liability of Portals

It is anticipated that hundreds and then thousands of companies will utilize Title III crowdfunding portals to raise capital through individual crowdfunding campaigns. Each company will submit an investor presentation including but not limited to background of the founders and company, business plans, historical and projected financial use of proceeds and information about intellectual property owned or used. It is reasonable to anticipate that some of these companies will face claims and/or litigation from disgruntled investors who claim that the issuer misstated or omitted material facts.

There is no legal basis in the JOBS Act to render Title III portals liable for misstatements or omissions of issuers that they had no knowledge of. The section defining liability for misstatements and omissions applies specifically to issuers and does not designate funding portals. Second, portals cannot be “offerors” or “sellers” since they are not legal or equitable owners of shares. Finally, holding portals liable for each and every issuer statement or omission would render portals “insurers” of each offering. This would effectively dissuade portals, extinguish the industry and defeat the legislative intent and purpose of the JOBS Act. Clearly, the language in the proposed rules at page 220 is inconsistent with the statute. (Please see attached legal memorandum for further explanation)

IV. Stakeholder Data

Over the past 45 days the SEC has received the following:

- A letter signed by 24 bi-partisan members of the House urging the Commission to finalize Title III rules;
- A letter from Senator Warner, a key Banking Committee member, urging the Commission to finalize Title III rules;
- Over 125 letters from prospective issuers, portals and stakeholders urging the Commission to finalize Title III rules.

Clearly, there is overwhelming Congressional and Market support encouraging finalization of the rules.

V. We are Close

As you know, all of the critical steps to make investment based crowdfunding under Title III a reality have been taken. We have a law on the books, we have your hard work on the proposed rules, thoughtful, constructive comments have been submitted and the Chair has stated several times this year that Title III remains a high priority to the Commission and that she intends to finalize it this year. Your staff also confirmed that the staff has considered the comments and feedback from the industry and that you are ready as soon as you move to put it on the final agenda for a vote. We, as an industry, appreciate the considerable work effort taken so far and anticipate that a final vote will be taken shortly.

Respectfully,

Ron Miller
CEO
StartEngine Crowdfunding, Inc.

