



December 6, 2013

Securities and Exchange Commission  
Washington, DC

RE: Comments on S7-09-13 Crowdfunding  
**II.B. "Requirements on Issuers" Responses to Questions**

Dear Staff:

We would like to respond to select questions under Section II.B. "Requirements on Issuers" of the Proposed Rules:

**Q.24 Are the proposed disclosure requirements appropriate? Should we require other disclosures?**

*Answer:* There are not enough disclosure requirements. The proposed rules do not require enough mandatory disclosure (e.g. executive compensation, pending litigation, issues with zoning/EPA/FDA, regulatory issues, etc. At a minimum we suggest the rules require more specific disclosure items in line with the "Best Practices for Funding Portals" issued by CFIRA <http://www.cfira.org/?p=2167>

*Furthermore:* Disclosure of court orders, judgments or civil litigation is appropriate for the company but should not be required of officers, directors or major shareholders as that would just seem more gossipy than relevant (e.g. to disclose that a shareholder is being sued by a neighbor because their dog dug up their garden just isn't pertinent to the offering. Disclosing the details of a divorce of a director would be nothing but embarrassing. The same is true with other issues unrelated to the issuer).

**Q.29. Are these proposed disclosure requirements appropriate?**

*Answer:* While we believe it is fine to do away with requiring a formal written business plan or lean business model, we think it's imperative to set at least some minimal standards of disclosure regarding the businesses plan. At a minimum there should be specific discussion of the issuers' business value proposition, revenue model, and team (the 3 primary tenants an investor should have in order to properly evaluate a business opportunity).

*Furthermore:* The issuer should be required to disclose litigation (pending or threatened), regulatory issues, executive compensation and other standard disclosures associated with private offerings of securities.

**Q.51. Should we exempt issuers with no operating history or those in existence less than 12 months from the requirement to provide financial statements?**

*Answer:* No, they should not be exempt as financial statements are important for investors. However it would be reasonable to exempt them from the audit requirements.

**Q.59. Have we adequately addressed...income tax returns?**

*Answer:* How much of the company tax returns should be made public? Just the primary 2 pages, or all pages including schedules and K-1's? It would seem reasonable to simply require the top 2 pages and not schedules.

**Q.64. Regarding audit requirement at \$500,000 capital raise, should we identify additional criteria other than the offering amount?**

*Answer:* Yes, new businesses should be exempt from this requirement as it's practically useless and very expensive. The due diligence BD's will perform should be sufficient for these types of issuers.

**Q.66. If an issuer cannot obtain an audit without unreasonable expense or effort, then only the balance sheet must be audited. Should we include a similar provision in the proposed rules?**

*Answer:* Yes, family owned and other small businesses will often have a long history of poor record keeping, sometimes extending back for generations. An audit would literally be impossible, and yet it would be unfair to shut the company out of the ability to raise capital. This would be both fair and VERY beneficial for small businesses.

**Q.70. Should we allow for a qualified audit opinion?**

*Answer:* Yes, this would be fair. The costs of obtaining a complete audit can effectively shut the market down before it even begins. If CPA's are allowed to rely on certain representations made by the company, and issue a qualified opinion as a result, then the costs can be reduced to a level where businesses can actually afford to use the 4(a)(6) exemption. Plus, of course, it is to be expected that nearly every single audit of a small business will contain an "ongoing concern" clause in the audit, and this should not affect the ability to raise capital.

**Q.71. Should we require a CPA to be in good standing for at least 5 years?**

*Answer:* Absolutely not. That was a very self-serving suggestion by the commenter. The JOBS Act is going to be an exceptional way for new CPA's, attorneys and other professionals to build their practices. Licensed professionals are already held to standards of conduct and belong to industry associations, it would be inadvisable to apply additional requirements to professionals in their industry. Imagine if the NY Bar Association passed a rule saying that a Series 7 licensed securities professional could not execute a stock trade unless they've had 5 years of experience. It's up to the SEC and FINRA to regulate their industry, not the NY Bar.

**Q.75. Should we exempt issuers from filing progress reports as long as the intermediary prominently displays the progress?**

*Answer:* Yes, this would be very reasonable. Intermediaries can easily display both text (e.g. "\$125,000 of \$500,000 raised thus far") and graphics (e.g. a status bar graph) of the offering progress.

**Q.77. If an issuer amends Form C, should the intermediary be required to notify investors?**

*Answer:* Yes, absolutely, that seems a natural part of the duty of a BD.

*Escrow Safe Harbor:* The rules need specify that "Pending" investors do not need to have funds removed from escrow, and that escrow may retain the funds until such time as the investor either reconfirms or rescinds their commitment (or, if the deal closes prior to such happening, then the investors' funds are to be returned to them at that time). Without this safe harbor things could get extraordinarily messy with escrow.

**Q.79. Should issuers have to amend Form C regardless of materiality?**

*Answer:* No, it would be crazy to require an issuer to amend Form C just because they corrected an insignificant item in the offering memorandum (e.g. a typo from "teh" to "the").

**Q.80. Should we require ongoing annual reports as disclosed?**

*Answer:* We think it's important that the Staff state that the rules regarding reviewed or audited financials are only applicable to initiating a fundraiser and are not required as part of the going-forward annual reports. Otherwise the future cost of a current capital raise will be extremely prohibitive.

**Q.82. Should we require issuers to also notify investors...by email? And to directly deliver the annual reports to them via email?**

*Answer:* Yes, this would be appropriate. However there should also be a safe harbor to specify that it is the investors' responsibility to ensure that they have kept the issuer up to date with their current email address, and that they have whitelisted the issuers' domain name in their spam system.

*Furthermore:* Any requirement that the issuer send reports via physical delivery would be extremely cost and resource prohibitive. The funds were raised in an electronic world, and all communication can reasonably be relied on the same way.

**Q.83. Should we require investors be represented by a nominee...to facilitate physical delivery?**

*Answer:* Absolutely not! This may be fine for public companies, but far too resource and cost prohibitive for small businesses.

**Q.84. Are the proposed ongoing disclosure requirements appropriate?**

*Answer:* Requiring financials reviewed by the company CEO is reasonable, but do not require any continued audits or CPA reviews or this will be too expensive for businesses on an ongoing basis.

**Q.86. Should we require reviewed or audited financial statements based on a trigger other than the amount being raised?**

*Answer:* This is a great idea and would solve many of the problems people are having with this requirement! We propose that the requirements only apply to businesses who have greater than \$15M in annual revenue (as determined by the most recent 12 months).

**Q.93. Should issuers be required to file Form C in electronic format only?**

*Answer:* Yes, this is appropriate given that the entire experience is intended to be online. Plus it should be very easy for platforms to create systems that enable the reports to be filed automatically on the issuers' behalf.

**Q.97. Should we require issuers to file with the Commission or intermediary a copy of any notice directing investors to the intermediaries platform?**

*Answer:* No, absolutely not. This would be impossible to enforce and do nothing but create chaos and nearly complete non-compliance. Small businesses are not sophisticated and would not remember to report every "Tweet", every Facebook "Like", every sign they post for customers at their place of business, etc. It's simply not realistic to expect that such a rule would be complied with, regardless of how pure the intentions are.

**Q.98. Is this definition appropriate?**

*Answer:* Yes, it's very reasonable.

**Q.99. Should we restrict the media that may be used for promotion?**

*Answer:* No. Again, setting restrictions would have the affect of setting the entire system up for failure as unintentional non-compliance would be rampant.

**Q.100. Should we require a specific format for issuer notices?**

*Answer:* No. Gone are the days of newspapers and magazines with tombstone ads. A tweet, a like, a phone call, an Instagram posting, and a broad spectrum of communications options, both that exist now and those that will be created in the future, are impossible to regulate pursuant to the way things used to be. It's better to simply state that all prospective investors must be directed to, and can only invest via, the platform where all details and disclosures can be reviewed.

**Q.101. Should we permit the issuer to include any additional information in the notice?**

*Answer:* Yes. This falls into the "why not?" category. As long as everyone who sees (or hears) a notice is only able to make an investment via the platform, where they will have access to all disclosures, details and crowd vetting, then there should be no problem with an issuer saying additional things.

Respectfully,



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