December 4, 2013

Securities and Exchange Commission
Washington, DC

RE: Comments on S7-09-13 Crowdfunding
II.A. "Limitation of Capital Raised" Responses to Questions

Dear Staff:

We would like to respond to select questions under Section II.A. "Limitation of Capital Raised" of the Proposed Rules:

Q.1. Should the $1M limit be net of fees?
Answer: No. Doing this could really complicate calculations on requirements for audited/reviewed financial statements, could lead to questions about whether or not investors annual investment limitations should also be adjusted to reflect costs, and a myriad of other issues. It's just not worth incurring all the potentially confusing situations. If the issuer needs more than $1M they can always do a concurrent 506c-D offering.

Q.2. We believe issuers should not have to consider the amounts raised in offerings made pursuant to other exemptions.
Answer: We agree with this! 4(a)(6) should be separate from 506-D and other exempt offerings. Otherwise unaccredited investors might be denied the chance to participate early (e.g. start-up Facebook or Twitter) in situations where the company has raised over $1M in professional funding via a 506 offering.

Q.3. Should we prohibit an issuer from concurrently offering securities in both a 4(a)(6) and another exemption (including 506c-D)?
Answer: It is a stroke of brilliance that the proposed rules allow concurrent offerings. There are many reasons for this, a few of which we will cite here…

a. There will be many, many instances where an issuer raising funds via a 506c-D offering would want to have a concurrent 4(a)(6) offering. These include involving their local community, including customers and business partners in the opportunity that they wouldn't otherwise have.
b. It allows issuers to include their customers and business associates in an opportunity even when collectively raising a larger round (e.g. they might raise $5M from accredited investors via 506c-D but want to allow unaccredited investors to participate via, say, a $250K 4(a)(6) offering).
c. As we don't expect many institutions, PE firms, venture funds, angel groups, wealthy individuals or other accredited investors to participate in 4(a)(6) offerings due to the $100,000 annual cap, the only method of getting accredited investors to participate in small business capital formation will be via 506c-D offerings. At the same time it would be inappropriate to exclude unaccredited investors from the opportunity, especially when they may represent the customers of, and ambassadors for the company.

Q.7. Is it appropriate for income/net-worth to be calculated jointly (*where the investors are individuals*)?
Answer: Yes, that's appropriate.

Q.8. Is it appropriate for the issuer to rely on the intermediary?
Answer: Yes, this is very easy for the intermediary to do and a reasonable requirement.

Q.9. Should accredited investors be subject to the investment limitations?
Answer: The rules ensure that there will be practically zero participation in 4(a)(6) offerings by accredited investors due to the $100,000 annual cap (just not worth their time). However, by allowing a concurrent 506c-D offering that problem is mitigated nicely.

Q.10. Should we adopt rules for another crowdfunding exemption?
Answer: No, the rules are good enough in this regard.

Q.12. Is it appropriate to prohibit issuers from conducting concurrent offerings from using multiple intermediaries?
Answer: Yes and no. It is appropriate that only one intermediary be the "lead", while other selling participants be syndicate members, as is standard industry practice for BD's in selling private offerings. The lead broker should have the responsibility of being the one where the offering memorandum is hosted on their platform and who performs due diligence, reviews any changes in the offering, handles exception reports and abuse alerts, manages the book of subscriptions from investors regardless of which BD assisted them, and archives the offering memorandum and all historical status updates and crowd vetting pursuant to regulations and industry practice.

Q.13. Should we define "platform" as an Internet website or similar electronic medium?
Answer: <u>No!!!</u> A "platform" is a software program, accessible via the Internet, that is designed to provide an eco-system for issuers, investors, intermediaries and other interested parties with a means of conducting business pursuant to section 4(a)(6).
Furthermore: <u>A "website or other electronic medium" is just a way of accessing the platform, but is not in itself the platform.</u>

Q. 14. Should it be allowable for an issuer to conduct 4(a)(6) offerings offline?
Answer: No, that would defeat the entire purpose and make it nearly impossible to crowd vet, to manage, to ensure compliance, or to archive the offering.

Q.15. Should we allow intermediaries to restrict who can access their platforms?
Answer: Yes, absolutely. It is in everyone's interest to do so. There will be instances where an issuer, for competitive reasons, will want to selectively approve who can see the details of their offering memorandum. And there will be intermediaries who just want to serve niche markets, such as geographic or industry, or specifically built to serve a select group (e.g. veteran owned businesses, woman owned businesses, etc).

Q.19. Do the proposed rules provide sufficient protection regarding the risks investors face with "idea only" ventures?
Answer: No. The proposed rules do not require enough mandatory disclosure (e.g. executive compensation, pending litigation, issues with zoning/EPA/FDA, etc). And they don't require a standard business plan or even a lean business model. At a minimum we suggest the rules require more specific disclosure items in line with the "Best Practices for Funding Portals" issued by CFIRA, and at a minimum a 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).

Respectfully,

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