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Alexandria VA 22301

May 22, 2020

Ms. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NW  
Washington, DC 20549-1090

Re: Proposed Rule and Concept Release, Publication or Submission of Quotations Without Specified Information  
File No. S7-14-19

Dear Ms. Countryman:

CrowdCheck appreciates the opportunity to comment on the Commission's proposals regarding the Rule 15c2-11 (the "Rule"). CrowdCheck, together with its affiliated law firm, CrowdCheck Law, provides a wide range of compliance, diligence and legal services for capital formation by early-stage companies and the intermediaries who support them. CrowdCheck works with a large number of companies that seek liquidity for investors in their securities but are not yet ready to seek a listing on a national securities exchange.

As an initial matter, we would note that the Commission's attention to the Rule is timely in that the Commission has the ability to coordinate any changes to the Rule with rule changes currently being considered with respect to the exempt offering matrix. In particular, we would like to note the intersection between two sets of rules at the federal and state level that relate to the trading of unlisted securities and that should work together but do not. The Rule is intended to assure investor protection by ensuring that quotation (and thus trading) occurs only where certain information is made available. State securities laws with respect to exemptions from registration for secondary trading have a similar objective. A majority of states provide an exemption for trading under the so-called "Manual Exemption." The information required under the various Manual Exemptions differs from the information required under the Rule, but both sets of rules have the same objective: investor protection through the provision of adequate current information. The Commission in its recent Proposing Release<sup>1</sup> asked whether federal preemption should be extended to secondary sales of Regulation A or Regulation

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<sup>1</sup> <https://www.sec.gov/rules/proposed.shtml>, Question 65.

CF securities, for example by extending the definition of “qualified purchaser.” We believe that the Commission should do so (without making any distinction between the exemption from registration under which securities were originally offered), and should do so on the basis of the same package of information that is required to be provided under the Rule.

We strongly support the modernization of the Rule in general but would urge attention to the following issues:

**The information review requirement.** We are in favor of permitting broker-dealers to rely on the determinations of an IDQS as to compliance with the Rule.

Several commentators have drawn attention to the burden imposed by the requirement that broker-dealers or IDQs ascertain the “accuracy” of information provided under the Rule. We urge the Commission to consider those burdens in revising the Rule, and consider which market participants are best placed to ascertain the accuracy of information that in many cases is prepared and disseminated by the issuer itself. Consider, for example, the information in a Form 1-A or 1-K prepared in connection with a Regulation A offering.<sup>2</sup> That information will include details of the issuer’s business, a discussion of its recent financial performance, a description of the rights of its capital stock, details of its ownership and management, and numerous material contracts. It is very difficult to see how the “accuracy” of this information could be ascertained in less than 20 hours of professional time. The cost of this may not be recouped by charging the issuer,<sup>3</sup> and it is unlikely that brokerage fees or quotation fees that could be charged would cover the expense. The net result of this requirement will always be that brokers and IDQs will provide services for larger companies with a more significant trading volume, and the smallest issuers will fail to find any liquidity for their investors.

At the very least, we would point out that it would be both appropriate and consistent with investor protection if brokers and IDQs were explicitly permitted to rely on confirmations of accuracy of information made by unrelated third parties, such as due diligence providers which such brokers and IDQs know to be reliable sources of information. We note that Question 92 explicitly asks whether brokers should be able to rely on entities other than qualified IDQs to perform the Rule’s information review requirements and we believe that not only should brokers be able to rely on such entities, but so should IDQs.

**FINRA and Form 211.** Many of our clients have experienced the frustration of working with potential market makers who must respond to FINRA’s requests for information as part of the Form 211 process. We find that the information requested is often inconsistent and unpredictable. We would urge the Commission to work with FINRA to smooth and shorten the Form 211 process, and that a single filing of a Form 211 by an IDQS should permit broker-dealers to initiate quotations without separate filings.

**Quotation on an “expert” market.** We agree with the comments of OTC Markets, to the effect that securities no longer eligible for public quotation should be permitted to be quoted on an “expert”

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<sup>2</sup> Required to be reviewed pursuant to Rule 15c2-11(a)(3).

<sup>3</sup> FINRA Rule 5250.

market.<sup>4</sup> Forcing these securities out of the regulated public markets altogether could lead to more fraud.

**Identification of company insiders.** We are concerned that the proposed process for identification of company insiders is too complex, and would discourage market makers from making a market in the securities of very small companies.

**The role of market participants who are neither brokers, IDQs or national securities associations.** In several of the questions asked (for example, question 92 and 98), the Proposing Release raises the prospect of relying on parties other than brokers, IDQs or registered national securities associations in ascertaining compliance with the Rule. We believe that the Commission should consider the possibility that such entities could play an important role. For example, there is no reason why such other entities could not serve as information depositories. They could both collect and verify the information required under the Rule, and provided that they showed that their written policies and procedures were adequate, they might provide rather better investor protection than if these functions were limited to brokers and IDQs. In the event their expenses were covered by fixed fees, there would be no concern that they had an incentive (as might be the case with other market participants) to “pass” an issuer’s information in order to facilitate trading. We would urge the Commission to recognize that compliance with the Rule might be enhanced if a broader range of market participants were involved, and that the functions of information collection and assessment do not necessarily need to be carried out only by entities holding broker or ATS licenses.

CrowdCheck and its officers would be very happy to discuss any of these issues in further depth at the Commission’s convenience.

Sincerely,

/s/ Sara Hanks

Sara Hanks  
CEO  
CrowdCheck, Inc.

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<sup>4</sup> Letter of OTC Markets Group, December 30, 2019, and related letters.