January 7, 2016

Brent Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Exemptions to Facilitate Intrastate and Regional Securities Offerings (File No. S7-22-15) – Small Businesses Need A Practical Approach to Intrastate Crowdfunding Regulation

Dear Mr. Fields:

We greatly appreciate the opportunity to comment on the recently proposed rules relating to the exemptions to facilitate intrastate and regional securities offerings referenced in File No. S7-22-15 (the "**Proposed Rules**"). NextSeed operates a Texas intrastate crowdfunding portal registered and regulated by the Texas State Securities Board. Small businesses utilize our internet platform to sell debt securities to any Texas resident, including non-accredited investors. In May 2015, we assisted a Houston hair salon in closing the first-ever intrastate crowdfunding offering in Texas. Since then, additional Texas businesses have successfully completed debt crowdfunding offerings on our platform and have begun making monthly payments to their investors in accordance with their investment agreements.

We believe that the Proposed Rules have the potential to improve small businesses' access to capital in a way that fundamentally benefits local communities across the U.S. The Proposed Rules are especially pertinent because a majority of states have already passed intrastate crowdfunding regulations in reliance on the existing exemptions, and the final rules for Title III of the Jumpstart Our Business Startups (JOBS) Act ("**Regulation Crowdfunding**") will soon be implemented nationally. We therefore wanted to share some key insights gained from our on-the-ground experiences in developing an intrastate crowdfunding platform and navigating the complex interplay between intrastate crowdfunding regulations and the relevant federal exemptions.

We respectfully request that the SEC consider three principles that we feel must be addressed in order for intrastate crowdfunding to become a more useful mechanism for millions of small businesses across the U.S. First, a small business owner should not find it more difficult or expensive to conduct an intrastate crowdfunding offering than it is to conduct a national crowdfunding offering. Second, state regulators should be granted authority to develop and enforce the rules governing intrastate crowdfunding within their own states, rather than having the SEC impose universal standards that may not take into account the unique characteristics of a particular state. Third, burdensome obligations at the federal level should be reduced, considering that small businesses are more likely to utilize intrastate crowdfunding to seek debt financing than other types of securities offerings.

I. Intrastate Crowdfunding Should Not Be More Difficult or Expensive Than National Crowdfunding

We believe small businesses will have little incentive to consider intrastate crowdfunding if it is viewed to be just as difficult or expensive as national crowdfunding,[1] which would likely be prohibitively expensive for many small businesses for reasons described below. In its current form, intrastate

[1] *See* Regulation Crowdfunding File No. S7-09-13; pg 410: SEC estimates that business conducting Regulation Crowdfunding offerings of more than $100,000 but less than $500,000 will incur between $20,667 and $56,333. These out-of-pocket costs are in addition to actual payment terms of the underlying securities that issuers will have to pay to their investors.

crowdfunding has not picked up substantial momentum despite serious efforts from a majority of states.[2] Despite all of the hard work by the SEC and well-intentioned regulators across the U.S. to date, it seems that many potential issuers and service providers (including intermediaries) do not consider intrastate crowdfunding to be a viable regime that is worth expending resources on. Without significant changes to facilitate intrastate offerings, there is a real risk that intrastate crowdfunding will be massively underutilized, as has been the case for Rule 504/505 offerings.[3]

a. "Main Street" Businesses Are More Likely to Utilize Intrastate Crowdfunding[4]

The intrastate crowdfunding regime should be nurtured as a distinct alternative to the national crowdfunding offering regime because the types of businesses that would utilize intrastate crowdfunding are likely to be very different from those that would prefer to crowdfund nationally. For example, technology-oriented start-ups often seek angel or venture capital investments because their road to success is highly dependent on factors such as "scalability" or development of valuable intellectual property, which often require a substantial amount of funding and specific expertise that may not be available in a single state. These types of companies tend to reach out to a broad investor base to find the right fit for their business models. In addition, companies that have the financial resources and professional support to navigate a national offering will likely prefer to utilize national offerings so there is no geographic limit on their investor base.

In contrast, the vast majority of "Main Street" businesses that form the backbone of our country are inherently local (e.g., our favorite restaurants, coffee shops and hair salons operated by our friends and families), but unfortunately, it is very difficult for these businesses to obtain financing through traditional sources.[5] In many instances, these local businesses are not looking to raise millions of dollars, but are in need of much smaller amounts that traditional lenders are increasingly reluctant to fund.[6] In this context, the value proposition of intrastate crowdfunding could be very high for local businesses if implemented the right way. Not only can intrastate crowdfunding help meet the underserved financing needs of small "Main Street" businesses, it can also help build stronger relationships between these businesses and their local communities through a natural alignment of their financial interests.

b. Rule 147 Should Remain a Safe Harbor to Section 3(a)(11) of the Securities Act[7]

Any amendments to Rule 147 should keep it as a safe harbor to Section 3(a)(11) of the Securities Act of 1933 (the "**Securities Act**") rather than making it a new exemption under the Securities Act. In this matter we agree with the comment letter previously submitted by Mr. Anthony Zeoli.[8] As noted above, tremendous effort has already been expended to guide the intrastate crowdfunding movement to

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[2] *See* File No. S7-22-15; pg 75: Since December 2011 and as of Sept 2015, despite the fact that 29 states and the District of Columbia enacted state crowdfunding provisions, only 102 state crowdfunding offerings were reported to be approved or cleared nationally, and almost all of the entities conducting offerings were small issuers.

[3] *See* File No. S7-22-15; pg 76-80: During 2009-2014, capital formation in reliance of Rule 504 constituted 0.1% of capital raised in all Regulation D offerings, and the SEC is now contemplating a complete repeal of Rule 505.

[4] This section seeks to address File S7-22-15 Question 68 (pg 135) and related discussions.

[5] *See* File No. S7-22-15; pg 92-96: The SEC itself acknowledges how hard it is for small businesses to obtain traditional financing, by citing information such as bank lending to small businesses falling by $100 billion from 2008 to 2011; FDIC report showing that as of June 2014, small business loans less than $1 million is 17% lower than in 2008; SBA guaranteed loans are only 18% of balance of small business outstanding; many small businesses find it difficult to meet loan requirements imposed by banks.

[6] *See* Karen Gordon Mills and Brayden McCarthy, "The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game" (July 22, 2014), *available at* http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf. The authors observed that since the 2008 financial crisis, small business loans are down 20%, this trend exacerbated by increasing community bank failures and growth of larger banks, and the fact that small business loans (under $1 million) are considerably less profitable than large business loans for traditional lenders. As an example, some banks significantly reduced or eliminated loans below $100,000 or $250,000, despite the reality that over 50% of small businesses are seeking loans under $100,000.

[7] This section seeks to address File S7-22-15 Section II(C) – Preservation of Section 3(a)(11) Statutory Intrastate Offering Exemption

[8] *See* Comment letter from Mr. Anthony Zeoli to the Securities and Exchange Commission (November 16, 2015), *available at* http://www.sec.gov/comments/s7-22-15/s72215-2.pdf.

where it is today. Forcing states to take new actions to gain the benefits of improved intrastate crowdfunding rules seems unnecessary and counterproductive in light of the SEC's desire to facilitate intrastate crowdfunding. We believe the more efficient approach would be to retain amended Rule 147 as a safe harbor to Section 3(a)(11) – states would then be free to take actions to modify their own crowdfunding rules further as they see fit.

c. Rule 147 Should Be Amended to Reflect Commonly Utilized Technology and Practical Developments[9]

The requirement that "offers" be made strictly to in-state residents makes intrastate crowdfunding an impractical option for small businesses, and eliminating this limitation is essential to spurring growth of the intrastate crowdfunding market. Many small businesses have limited resources to spend on marketing. Given the prevalent usage of internet marketing and social media in daily communications today, intrastate crowdfunding will remain handicapped if issuers cannot utilize these readily available technologies to amplify their outreach efforts. If the actual sale of securities is limited only to reasonably verified in-state residents, as proposed, then intrastate offerings would maintain their in-state intent. We believe that no reasonable person residing in a different state would assume that an offer was intended for him/her if the marketing materials clearly state that the offering is only intended for residents of a particular state.

In addition, we believe that (i) the proposed "principal place of business" requirement on a prospective issuer based on its physical business presence is a reasonable test to determine a business's in-state nature, and (ii) the proposed application of the various "80% tests" better reflects the inherently fluid nature of commerce today. Likewise, the same physical presence test for "principal place of business" should apply consistently with respect to investors when determining the residence of an entity investor that seeks to participate in an intrastate offering. Since Rule 147 was first adopted in 1974, there have been tremendous technological advancements and practical developments in corporate law that are readily available and commonly utilized by businesses and investors, which we believe should be reflected in an appropriately amended Rule 147.

II. State Regulators Should Be Granted Deference to Develop and Enforce Their Own Rules Governing Intrastate Securities Offerings

a. State Regulators Know Their State's Needs Better than the SEC [10]

Given the inherently local characteristics of intrastate securities offerings, we believe that state regulators are in the best position to develop the rules governing the terms and conditions of intrastate offerings in their own states. Each state that has passed intrastate crowdfunding rules to date has differing views on certain matters, as the legislators and regulators of such states have taken into account the unique histories and experiences of their states. On the flip side, certain states have refused to pass intrastate crowdfunding rules because they do not believe that such rules are currently suitable for their states. Such views should also be respected. In light of the foregoing, rather than imposing universal requirements on all states with respect to the terms of intrastate offerings, the SEC should provide clear guidance on what types of transactions would be considered intrastate securities offerings and would not require SEC oversight.

Once the broad intrastate exemption framework has been determined by the SEC, state regulators should have the authority to develop specific rules for their own intrastate offerings. For example, the

[9] This section seeks to address File S7-22-15 Section II(B)(1)~(3) and related discussions.
[10] This section seeks to address File S7-22-15 Section II(B)(4)(f) – State Law Requirements and related discussions.

size of permitted transactions under intrastate crowdfunding rules (assuming Rule 504 increases the permitted cap to $5 million) as well as individual investor (whether non-accredited or accredited) investment limitations should be determined by state regulators based on their experience dealing with such matters in the context of intrastate offerings.

b. States' Establishment of Intrastate Crowdfunding Intermediaries Should Be Supported to Facilitate Intrastate Crowdfunding[11]

The SEC requested comments on whether to provide guidance regarding intrastate crowdfunding intermediaries and the operation of the intrastate broker-dealer exemption under the Securities Exchange Act of 1934 (the "**Exchange Act**"). Clear guidance on these matters would be helpful to avoid any unnecessary confusion and legal uncertainty for all parties involved, especially as some states have actually mandated the use of an intrastate intermediary over the internet for any issuer to pursue intrastate crowdfunding.[12] In some cases, states have established a new type of intrastate intermediary that is not a traditional broker-dealer, which must be utilized to pursue intrastate crowdfunding. These new state-level crowdfunding intermediaries are analogous to the new "Funding Portal" licenses established under Regulation Crowdfunding, which the SEC exempted from traditional broker-dealer registration. We believe a practical approach to this matter would be for the SEC to clarify that any state-regulated crowdfunding intermediaries may rely on the intrastate broker-dealer exemption and not be subject to federal broker-dealer registration.

In addition, state crowdfunding intermediaries should be permitted to use the internet to facilitate intrastate crowdfunding offerings pursuant to Rule 147 and still be able to rely on the intrastate broker-dealer exemption. As noted above, the sole purpose of these intermediaries is to facilitate intrastate crowdfunding pursuant to Rule 147 and applicable intrastate crowdfunding rules, which may require offerings to be conducted *solely* over the internet. In this context, if the SEC requires state crowdfunding intermediaries to register as a federal broker-dealer simply to comply with applicable intrastate crowdfunding rules, we do not believe that many organizations will seek to act as an intrastate crowdfunding intermediary. In turn, small businesses will have even less options to pursue intrastate crowdfunding, and the potential impact may be that the intrastate crowdfunding rules that currently mandate the use of state intermediaries are rendered practically useless. Overall, state regulators should be granted the authority to determine what type or scope of regulation is appropriate for intermediaries to operate in their states.

c. *Intrastate Securities Offerings Should Not Be Integrated with Any Other Exempted Offerings*[13]

As discussed in Section I(a) above, and based on our experience talking with hundreds of local business owners over the past year, we believe that the businesses interested in intrastate offerings are likely those that would not be able to afford a broader national or public offering. These businesses also have a difficult time accessing traditional capital and if they are unsuccessful in raising the entire amount they need under a Rule 147 offering, their only remaining option may be to raise capital privately at whatever terms they can find. In such cases, there should not be a blanket assumption that the potential investors in the subsequent private placement learned of such investment opportunity through general solicitation that occurred during the Rule 147 offering (for example, intrastate crowdfunding rules may

[11] This section seeks to address File S7-22-15 Section II(B)(4)(f) – State Law Requirements and related discussions about intermediaries (pg 49).
[12] *See, e.g.*, Texas Administrative Code Rule 115.19, which sets out detailed conditions and requirements to become a registered Texas Crowdfunding Portal, which is the only intermediary permitted to facilitate intrastate crowdfunding in Texas (*available at* https://www.ssb.texas.gov/texas-securities-act-board-rules/texas-intrastate-crowdfunding), and must conduct intrastate crowdfunding over the internet only.
[13] This section seeks to address File S7-22-15 Section II(B)(4)(d) – Integration and related discussions (pg 36).

limit issuers' ability to inform their private networks).[14] Therefore, any private placements made by an issuer pursuant to Section 4(2) Regulation D after termination of such issuer's Rule 147 offering should not be subject to integration. There should also be language in the rule expressly stating that an offering made in reliance on Rule 147 will not be integrated with another exempt offering made concurrently, provided that each offering meets the requirements of the claimed exemption. In short, intrastate crowdfunding offerings under Rule 147 should be afforded the same non-integration protections as available under Regulation Crowdfunding.

III. Burdensome Obligations at the Federal Level Should Be Reduced Considering That Small Businesses Are Likely to Seek Debt Financing in Intrastate Crowdfunding

Although the Proposed Rules (and Regulation Crowdfunding) permit the sale of any type of security, they do not seem to consider the possibility that small businesses are likely to seek debt financing more frequently than equity offerings. While investor protection is a natural concern when considering the prospect of highly illiquid equity offerings for unproven businesses, as noted in Section I(a) above, equity offerings are more likely to be attractive to technology-based, high-growth companies that cannot financially support debt obligations. For most small businesses, debt financing traditionally dwarfs equity sales: in 2013, small business borrowing in the U.S. was nearly $1 trillion ($585 billion in business loans and $422 billion from finance companies), and debt financing accounted for 87% of all financing activities, compared to just 4% from angel and venture capital.[15] Obtaining traditional financing from banks is still a tall order for many small businesses (especially for smaller amounts) and as a natural result, alternative lenders have increasingly been entering the small business lending market.[16] Intrastate crowdfunding provides a new alternative to obtain debt financing for small businesses, but if this process is too difficult for small business owners to navigate, many owners would likely have to resort to borrowing from unregulated alternative lenders at potentially far higher costs.

a. Additional Federal Administrative Obligations Should Not Be Imposed on Issuers for Conducting Intrastate Crowdfunding[17]

Additional federal administrative obligations should not be imposed on issuers conducting intrastate crowdfunding pursuant to amended Rule 147 (e.g., potentially new minimum disclosure or delivery requirements, registration and/or additional filings with the SEC that are discussed in the Proposed Rules). Issuers pursuing intrastate crowdfunding are already required to comply with comprehensive state-specific rules set by their state regulators. If these issuers are then required to further comply with new federal obligations, the potential burden and costs for smaller issuers would increase disproportionately. As an example, the first issuer on NextSeed that successfully completed an intrastate crowdfunding offering borrowed $25,000 in aggregate from 17 local investors. Over the past 8 months, this issuer repaid nearly 70% of the loan, and the entire loan is expected to be paid in full in 4 more months. Another issuer borrowed $100,000 in aggregate from 40 local investors, and is expected to pay its investors in full in 18 months. If small business owners like these who are looking for a small amount of debt financing from their communities are required to also comply with burdensome federal requirements, we believe that many would simply refuse to pursue intrastate crowdfunding.

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[14] *See, e.g.,* Texas Administrative Code Rule 139.25(g)(1), which requires that "all communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this section must occur through the internet website of the registered general dealer or Texas crowdfunding portal" and only permits a limited "written notice" advertising. As a legal matter, an issuer is not permitted to separately reach out to private investors to discuss its crowdfunding offering.

[15] *See* "2014 Small Business Finance FAQ," SBA Office of Advocacy (Feb 2014), *available at* https://www.sba.gov/sites/default/files/2014_Finance_FAQ.pdf.

[16] *See* Footnote 6.

[17] This section seeks to address File S7-22-15 Questions 47-48 (pg 52) and related discussions.

b. Debt Offerings via Intrastate Crowdfunding Should Be Exempt from the Trust Indenture Act

In the event debt securities are sold in an intrastate crowdfunding offering pursuant to an amended Rule 147 as contemplated under the Proposed Rules, the Trust Indenture Act of 1949 (the "**Trust Indenture Act**") may apply unless specifically exempted.[18] The SEC recognized this potential issue in Regulation Crowdfunding as well, but noted that any debt security offerings made in reliance on Section 4(a)(6) can already rely on the existing exemption provided under the Trust Indenture Act.[19] However, assuming that interstate offers would become permissible under amended Rule 147, debt securities offered in an intrastate crowdfunding offering could trigger the application of the Trust Indenture Act. Therefore, we believe there should be a specific exemption from the Trust Indenture Act for debt securities offered under Rule 147. If the SEC decides that Rule 147 should be amended as a new exemption from the Securities Act rather than as an existing safe harbor from Section 3(a)(11), the new exemption should also be exempt from the Trust Indenture Act.

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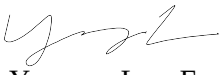
We fully understand and appreciate the complexity of the issues addressed under the Proposed Rules, and the difficulty of developing comprehensive amendments that would apply to all forms of intrastate securities offerings for the first time in over 40 years. Based on our research and experience building a successful intrastate crowdfunding platform in Texas focused on assisting small businesses, we believe this unique form of intrastate offering has tremendous potential to benefit both small businesses and ordinary investors across the U.S. Therefore, our comments in this letter mostly focused on the Proposed Rules pertaining to intrastate crowdfunding offerings for small businesses. If the SEC believes that any of our comments in this letter are not appropriate for general application to all forms of intrastate offerings but are nonetheless valid in the context of crowdfunding, it would be extremely helpful for the SEC to specify their applicability to intrastate crowdfunding. Similarly, if the SEC believes that any of our comments are valid for debt crowdfunding or smaller-sized offerings, it would also be helpful to specify their applicability to such offering categories.

Thank you again for your consideration of this comment letter, and please feel free to contact us to discuss any questions. We hope that the final rules on these important matters will modernize Rule 147 appropriately so that hard-working small business owners across the U.S. will have the opportunity to utilize intrastate crowdfunding to achieve their goals and improve their lives.

Regards,



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[18] Section 302(b) of the Trust Indenture Act states "… public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means that instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public…"

[19] *See* Regulation Crowdfunding File No. S7-09-13; pg 150 ("*The final rules do not limit the types of securities that may be offered in reliance on Section 4(a)(6), and thus debt securities may be offered and sold in crowdfunding transactions. As we stated in the Proposing Release, in general, the issuance of a debt security raises questions about the applicability of the [Trust Indenture Act].*")