



Brent J. Fields
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-22-15

January 2, 2016

Dear Mr. Fields:

CrowdCheck, Inc., which provides compliance, disclosure and due diligence services for online capital formation, is pleased to submit comments with respect to the Commission's proposals to facilitate intrastate and regional securities offerings.

We would first like to commend the Staff and the Commission for responding to changes in technology, state regulation and capital formation practices in a pro-active and flexible manner. We believe that the proposals, if adopted, will broaden the capital-raising options of early-stage and small companies with no loss of investor protection. Our comments particularly relate to the interplay between federal and state law as they govern the crowdfunding provisions recently adopted by many states.

Rule 147

Create a new exemption in addition to modernization of existing Rule 147

We support the creation of a new Rule 147 as a standalone exemption under the Commission's general exemptive authority. However, many of the recently-created state exemptions for crowdfunding offerings are specifically based on Section 3(a)(11) of the Securities Act. Where these exemptions are created by state statute as opposed to regulation, state law will need to be revised in order to allow issuers to take advantage of the Rule as proposed. Some state legislatures meet infrequently. In order to permit issuers in as many states as possible to take advantage of the new Rule, and also to prevent issuers from losing the guidance and protection provided by Rule 147's safe harbor if their states' legislatures do not quickly amend their crowdfunding statute, we recommend the following:

- Adopt new Rule 147A as proposed (with the changes suggested below) under the general exemptive authority; and
- Amend existing Rule 147 to mirror as closely as possible the new Rule.

Eliminate the current restriction on offers

We support, as proposed, the Commission's proposal to eliminate the current restriction on "offers" while continuing to require that sales be made only to residents of the issuer's state. No investor protection provisions are compromised by permitting investors to hear about securities offerings that they are not permitted to participate in, and the ability to use the internet and other means of communication enhances issuers' ability to access capital efficiently.

We support, in general, the requirement that all offering materials include a prominent disclosure that sales may be made only to residents of the issuer's state. However, appropriate concessions should be made to permit use of space-constrained social media communications such as Twitter.

Eliminate the current requirement that the issuer be organized in the state where sales occur

We support the creation of an exemption that is not dependent upon the state of incorporation or organization of the issuer. There are valid business reasons for incorporating or organizing in states such as Delaware, and the fact that an issuer does so does not in any way diminish its connection to the state in which its principal place of business is located.

While we recognize that the statutory provisions of Section 3(a)(11) may limit the ability of the Commission to amend existing Rule 147 to permit issuers incorporated out of state to rely on the Rule, we encourage the Commission to consider whether there might be an alternative reading of the statute, since this outdated requirement results in many companies being precluded from intrastate capital-raising.

Do not impose offering size or investment size limitations

We do not believe it is appropriate to impose offering size or investment size limitations on Rule 147. The Rule in its current form imposes no such requirements. Imposition of such limits is antithetical to the intrastate exemption, which assumes that states themselves are best placed to decide what limits are appropriate for the protection of their investors. States should be free to decide for themselves whether some combination of offering and investment limits, or no limits at all, are most appropriate for their investors.

Adopt the alternative "doing business" definitions

We generally support, as proposed, the revised formulation for determining whether an issuer is "doing business" in a state. We believe that some guidance as to whether financial assets are to be included in the "asset" test (thus possibly forcing an issuer to use an in-state bank in circumstances in which it would not otherwise do so) would be appropriate.

We also support the proposed limitations on making an intrastate offering in a different state than the state in which a previous offering took place.

Require a “reasonable belief” as to investors’ state residency

We support eliminating the requirement of a written representation as to a potential investor’s residence. We agree with the Commission’s concern that obtaining such a representation would encourage issuer’s to take a “check the box” approach. However, we are concerned that eliminating the requirement might signal to issuers that an even less rigorous method than checking the box (for example, deemed representations) might be acceptable, whereas it is apparent from the commentary in the Proposing Release that this is not the case. It is clear from the discussion of state drivers’ licenses, utility bills and the like, that the Commission would require substantive steps to be taken to establish a “reasonable belief”. For that reason, we support the creation of an explicitly non-exclusive safe harbor setting out the means by which a reasonable belief may be established. This should include the circumstances in which an issuer may rely on the steps taken by a third party (service provider or intermediary).

Reduce the nine-month coming to rest requirement to six months

We believe that a period of six months is adequate to establish that securities have come to rest in a state. The nine-month period does not exist elsewhere in securities law, and the potential exists for confusion. We believe that a six-month period, by analogy to parts of Rule 144, is more appropriate.

We support measuring the period from the time at which the securities are acquired by a specific investor. Crowdfunding offerings by their nature can take several months to complete.

We do not believe securities sold under Rule 147 should be treated as “restricted” under Rule 144(a)(3). The “coming to rest instate” purpose of the nine-month restriction is sufficiently distinct from the policy considerations underlying Rule 144. We support no longer conditioning the availability of the exemption on investor compliance.

Rule 504

Increase the Rule 504 offering limitation to \$10 million

We support the increase of the Rule 504 offering limitation, but believe in order to be of use to early-stage capital formation, the limitation should be increased to \$10 million. Having recently gone through the coordinated review process in the context of a Regulation A offering, we believe that the compliance cost involved in state registration and review is significant, and Rule 504 will only be of interest to issuers if they can raise enough capital to offset this burden.

Bad Actor disqualification

We support the imposition of Bad Actor disqualifications on Rule 504 offerings.

Applicability of Section 12(g) Exchange Act registration requirements

In the event the proposed changes are adopted, both Rule 147 and Rule 504 will provide attractive options for early-stage capital formation. However, their utility for a crowdfunding offering will be limited if the offering results in an issuer acquiring 500 or more shareholders of record who are not accredited, which seems quite likely. Crowdfunding investors are unlikely to have the means to invest \$2,000 or more, and thus a relatively modest \$1 million intrastate crowdfunding offering will need to call on more than 500 investors.

If accessing a large number of investors results in a company being required to register a class of securities under Section 12(g) of the Securities Exchange Act of 1934,¹ issuers may have to favor accredited investors or investors who can invest large amounts of money.

From a policy point of view this would be regrettable. The purpose of crowdfunding is not only to provide issuers with additional sources of capital, but also to offer family, friends and fans of an enterprise the opportunity to share in its success, and broaden the investment opportunities of small investors. We suggest that a conditional exemption from Section 12(g) would be appropriate. Appropriate conditions might include compliance with any state reporting requirements and asset or revenue tests, but the conditions should not be so onerous as to make it likely that issuers will inadvertently fall out of compliance.

Thank you for your consideration.

Sincerely,

/s/Sara Hanks

Sara Hanks
CEO, CrowdCheck, Inc.

¹ We note that the assets of even small enterprises may exceed the \$10 million specified in Section 12(g), and increases in the offering limit of Rule 504 will increase this likelihood.