



May 22, 2020

Re: File Number S7-05-20 – Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets

The Crowdfunding Professional Association writes to voice its support for the SEC’s goal to simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections.

We would like to respectfully request consideration of the following comments on the proposed rule changes:

1. “Solicitations of Interest”

We support the proposal to allow a generic solicitation of interest as set forth in proposed Rule 241. In the discussion of the proposed rule, there is a statement that “the issuer would not be able to follow a generic solicitation of interest that used a general solicitation with an offering pursuant to an exemption that does not permit general solicitation, such as Rule 506(b), if the offerees contacted in connection with the Rule 506(b) offering were solicited by means of the general solicitation.”

This implies that even if a generic solicitation of interest using general solicitation occurred months or even years before an offering pursuant to an exemption that does not permit general solicitation, that no one who saw the generic solicitation could *ever* invest in an issuer pursuant to a private offering (unless there is a pre-existing substantive relationship). We request a safe harbor of 90 days whereby so long as an offering pursuant to an exemption that does not allow public solicitation occurs 90 days or more following any public solicitation under the generic solicitation of interest exemption those who were contacted in the generic solicitation of interest would not be barred from investing in the private offering.

2. “Other Regulation Crowdfunding Offering Communications”

We support the proposal to clarify that oral communication is permitted under Rule 204. However, we request additional changes to the rules governing offering communications under Regulation Crowdfunding.

The current rules are extremely complicated and difficult to comply with. Trying to explain to an issuer what they are allowed to say when they are discussing “terms” versus when they avoid

mentioning terms is almost impossible and violations of the rules are incredibly common because issuers accidentally let it slip that they are raising equity rather than debt or mention when their campaign ends when they are making a presentation about their company's offering. We do not believe that these rules do anything to protect investors – instead they make communication awkward and challenging.

We request that the rules be modified to allow issuers to discuss the terms of their offerings both orally and in writing outside of the funding portal so long as they always direct investors to the funding portal or broker as part of the communication.

3. “Harmonization of Disclosure Requirements”

We support the proposed changes to the disclosure requirements under Rule 506(b).

In addition, we request clarification that disclosures are only required to the extent that they are “material to an understanding of the issuer, its business and the securities being offered.” (Section 230.502(b)(2)(i))

4. “Offering and Investment Limits”

a. Increased limits under Regulation Crowdfunding

We support the proposed changes with the reservations expressed below. In addition to the proposed changes we would like to request that all investors be permitted to invest \$2,200 *per transaction* regardless of the number of transactions in a given year.

If an investor wishes to invest more than \$2,200 in a transaction, we request the limit be modified as follows: the total invested in any 12-month period shall not exceed the greater of \$10,000 or 10 percent of the greater of the annual income or net worth of such investor.

b. Greater Portal responsibility to accompany increased limits

While we support increasing the investment limits, we do have a concern regarding the quality of the disclosures being provided on some of the Regulation Crowdfunding portals that we believe would be wise to address in conjunction with these changes.

A large number of the offerings on funding portals do not comply with the disclosure required under Regulation Crowdfunding. There is no enforcement mechanism to ensure that these disclosures are adequate. This does a disservice to issuers as well as investors, because issuers are often unaware that their offerings are not compliant. Unfortunately, portals that want to maximize the number of campaigns on their sites do not always ensure that issuers fully understand their obligations.

We propose that the SEC create a mechanism that requires funding portals to certify that they have reviewed a campaign for compliance prior to posting it on their platform, and in general address compliance failures with respect to both initial offerings and ongoing disclosure requirements.

5. Additional Comments

In addition to the proposals in the Proposing Release, we would like to request consideration of the following additional regulatory amendments.

a. Regulation Crowdfunding Required Financial Disclosures

We request that Section 227.201(t) be amended to state that the financial disclosures are only required to be provided to the extent that they are “material to an understanding of the issuer, its business and the securities being offered.” There is no value in an issuer with minimal operating history providing GAAP compliant or reviewed financials as these are not material to an investment decision and are quite costly to prepare.

b. Regulation Crowdfunding – Nonprofit Investment Funds

Under the current rules, companies that are excluded from the definition of investment company under Section 3(b) or 3(c) of the Investment Company Act are ineligible to conduct offerings under Regulation Crowdfunding.

This means that a nonprofit organization that is raising funds to invest in disadvantaged businesses and communities cannot conduct an offering under Regulation Crowdfunding.

We believe that the investing public should have an opportunity to invest in such nonprofit organizations. We therefore request that companies that are exempt under Section (3)(c)(10)(A) of the 1940 Investment Company Act (nonprofit) be permitted to conduct offerings under Regulation Crowdfunding.

c. Investment Company Act – Intrastate Exemption

We would like to propose an exemption from the application of the Investment Company Act for wholly intrastate offerings.

We very much appreciate the opportunity to submit these comments.

Sincerely,

Jenny Kassan, Esq.
Director