June 1, 2020

Comments to SEC

RE: 33-10763 Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets; Other Release No: 34-88321

Dear Commissioners and Staff:

Having spent, since my U.S. Army Infantry and subsequent Judge Advocate prosecutorial days 4+ decades ago, the bulk of my professional life representing legal clients involved with matters touching upon many of the subjects of your proposed regulation, and seeing the comparative dearth of in depth comments by early last week, I pen this letter. Having reviewed and considered all prior posted comments addressing portions of this proposed rule's questions, I add my observations, conclusions, and recommendations to the mix with the hope that they provide some modest benefit. I note my bias in favor of the underdog, whether investor or business owner or leader, who ethically wants and tries to do what is right and fair regardless of circumstance.

My comments result from my distillation of my own internal data set accumulated over 40+ years of observations, studies, thoughts, experiences, writings, presentations, and, I trust, considered judgments having cumulatively represented, during the course of my career in which securities matters were involved, hundreds and hundreds, I would guess, of small and lower middle-market businesses and their owners, individual investors, FINRA registered investment bankers and non-registered business intermediaries, registered and non-registered financial advisors, and investment crowdfunding-related persons (including a portal).

(Note: I have attached, in your question and answer format, those questions you posited in the proposed rule along with my question specific comments in red, eliminating those questions for which I either concurred with the Proposed Rule [apart from any modifications inherent in adopting my suggestion modifications] or for which time does not permit answering. Amongst my preliminary portion of the latter [specifically questions 43, 49, 50, 51, 53, 55, and 57], I have inserted comments of a professional colleague, Rebecca DiStefano, with whom, over the past number of years, I have collaborated in addition to coauthoring with her two Lexis Practice Advisor SEC blockchain related articles . I concur with her comments [to which I have made but a few minor modifications as to form]. She has authorized their inclusion as her personal views and not those of her firm. Her insights, drawn from her extensive Reg A+ practice these past years, you may find particularly helpful with regard to your Reg A+ related requests for comments. Lastly, I have appended a selected list of resources and additional comments of mine as I felt may be of interest and/or use.)

My summary comments are these:

1. The proposed regulation was, both in approach, substance, and form, likely the most what I consider enlightened and progressive step taken by the SEC to benefit small and lower middle-market businesses and small investors which I have observed since beginning my civilian legal practice.

2. If adopted, the proposed rule seems likely to have somewhat more-than-modest effects over time on the availability of investment capital for small and lower middle-market businesses and

available opportunities for the small investor to invest and support those in such investors networks and others. This I believe due primarily to the elimination of the ceiling on accredited investors' crowdfunding investments (with a further boost if the accredited investor definition is changed as proposed) and the increase in Regulation A+ limits and secondarily through the Demo Days provision and the Test-the-Waters provision though without the wider benefit (to each of the social, economic, and investment opportunity availability divides) to the investing non-accredited investor and small and lower middle-market business owners public which moving to permit general solicitation of them under Regulation CF could provide.

3. This wider benefit should be provided through a further modification to the proposed rule to permit solicitation to both non-accredited and accredited Regulation CF potential investors. While the Proposed Rule is likely to be beneficial to both small and lower middle-market businesses and investors, it seems unlikely, without such yet further change, to provide the necessary conditions to permit of a realistic opportunity for most small businesses, qualified as the investors over time determine to worthy investment-related metrics, to have a fair shot at investment capital, and small investors the risks and opportunity to support such networks or persons or ideas as they find worthy. Economic harm by such change will come to those additional small investors, and their families, who lose money through such investments which they might not otherwise have lost without such a change. Such harm will also befall the small and lower middle-market business owners (and affected employees, investors and suppliers and their families) who would have fared better had they never opened up shop, tried to develop a better product or service, or folded their business earlier. Yet, in a balancing of the SEC missions to better adapt and balance, such a further change is warranted.

Today, each of you, as members of the Staff or Commissioners, likely have and will have for the rest of your lives, a high level of economic security and economic freedom. Barring a revolution, you have a secure job. You also have a defined-benefit pension plan with an assured level of far above average medical care. You have a net of disability income protection. Many of you have a career-long future with big or boutique law, private equity, academia, not-for-profits, big business other big government, or similar opportunities which fit into what Thomas Piketty characterizes an economic status of Super-Managers, which future provides similar-or-better assurances and classification under the life-long top quintile or better of Americans for both wealth and income. (I ask, as you weigh mine and all other comments, to keep in mind, in trying to make the right decision, your own biases.)

By contrast, most small and lower middle-market business entrepreneurs do not and will not see such an economically secure future. Nor, as would seem likely, will a majority of non-accredited investors. Though I have represented selected clients in the top percentages of wealth and income, my sentiments, and the bulk of my life-long experiences, lie with the small business, the small investor.

So consider, might not these non-accredited investors (perhaps also you as a staff member, if you are one) feel, and might not your existing regulations (including after adoption of the Proposed Rule) be, like most feel when, as children, parents said that only 10% of a weekly allowance could be used for interests or opportunities other than what they, as parents approved? I submit they do, and which sort of regulation will always come with some resentment, particularly to adults who feel, regardless of

ability, each should be able to make his or her own investment decision. Yet, I am one who does support many restrictions on investment. I support such restrictions, and most others as would be modified by the proposed rule, as ones, referencing John Stuart Mill's perspectives as shared in his 1867 Inaugural address to the University of St. Andrews, appropriate and necessary restraints on the consciences of small investors and small and lower middle-market business leaders alike—and the proper subject of restraints in accord with SEC missions and the law as it has evolved.

Yet time passes. Changes occur. 2020 is not 1989, 1949 or 1929. The ways to better accomplish and balance missions adapt and evolve. The Jobs Act was implemented. Regulation CF was adopted. A landscape for regulated investment portal for investors and small and lower middle-market businesses was made operational. Technology has advanced. Businesses and investors have choices. Yet, as my attached comments will further note, without the direct ability to generally solicit and be generally solicited, meaningful small and lower middle-market businesses capital access will yet not have fair access, small investors will be protected against practical exposure to opportunities to support their own networks through their investments, and through both, a likely-over-time decrease in wealth and income disparities.

So is not, will not, the annual American allowance which you set and which you are able to at any times revise—the annual non-accredited Regulation CF investment limit—be, in this day, for American's shared future, and with an experienced Regulation CF ecosystem in place, a sufficient enough protection without a continued ban on general solicitation?

Would not a lifting of such restriction under Regulation CF be a better small-investor, small-business balancing of partially conflicting SEC missions, a sounder, surer step towards an economically fairer nation (both in opportunity for all to lose or gain, with returns or gains being a concept broader than simply dollars, an annual [invested for a diaspora-of-reasons] permitted amount or to fail or succeed in business) which better fulfills this integration of the SEC's missions?

Should you not now see your way to take action to further broaden general solicitation and permit each 18 through 120 year old legally competent adult to be directly exposed to, and perhaps ill-advisedly convinced to invest in, a both dangerous and uplifting universe of dreams, ambitions, plans, and investment risks and opportunities towards the betterment of both themselves and humanity, ones emanating from their families, their friends, their connections, their networks and strangers?

May it not now be the time for a decision—individually and collectively your, Leviathan's, decision--to end the cloistering of the non-accredited investor under Regulation CF?

As obvious, after over 40 years of direct experience and reflection from all sides of the issue, my considered judgment and voice says that such a course of action would be the right decision, at the right time, for the right reasons, and with a fulness of understanding of the potential resulting harm and good as well as the tools remaining available to the SEC to permit such further adaptations as considered experience may show to be appropriate.

Thank you for these steps you have and are taking, your consideration, and your courage to take such actions as you believe are the right ones.

Most Respectfully,

Bill Hubbard
Chicago
[redacted]

Responses Attachment to Comments of Bill Hubbard [redacted] Submission in Response to the SEC's Request for Comments Pertaining to Releases Numbered 33-10763 and 34-88321, June 1, 2020

(Questions and responses, where included, appear below in a manner corresponding to the SEC Release numbered questions, followed by a selected list of resources. Uncorrected formatting appears throughout.)

1. Should we adopt a comprehensive integration framework for registered and exempt offerings, as proposed? **Yes, the competing concerns are appropriately balanced by your proposal.** Is the proposed general principle of integration, which requires an issuer to consider the particular facts and circumstances of each offering, appropriate? **Yes, based upon 35+ years of seeing the increased competitive disadvantages of smaller companies.** Should the framework also include provisions applying this general principle to particular fact patterns? **Unnecessary.** If so, are the proposed provisions appropriate? Are there other provisions applying the general principle to specific fact patterns that we should include? **Should others suggest any which require addressing, specific carve-outs for each should result.** In light of the proposed provisions, should the rules define the terms "pre-existing" and "substantive relationship"? **No; existing guidance, authorities, and the text of the proposed regulation provides sufficient clarity.** Should we instead eliminate the concept of integration altogether and rely on general anti-evasion principles to prohibit the use of multiple closely timed offerings to evade the securities laws? **Only should it be decided to favor the largest of companies, FINRA broker-dealer financial interests, the trial bar, and those who would restrict capital access further while not materially adding to investor protection.**

2. Should we replace the five-factor test of integration, currently set forth in Rule 502(a), with the more recent approach to integration adopted in rulemakings involving Regulation A, Regulation Crowdfunding, and Rules 147 and 147A, as proposed? **Yes, upon the general**

rationale the proposed regulation articulates. Is there another integration principle that should apply in this context? **No.** Are there situations in which the five-factor test should continue to apply? **If so, suggest a narrow construction limited to otherwise problematic situations.** If so, should the current factors be revised, such as by adding new factors, or should we provide guidance with respect to the relative importance of the factors to the analysis? **If so, any guidance should be narrowly tailored providing meaningful gradations.** Are there uses of the five-factor test for purposes other than the integration of offerings? **No meaningful comment.**

3. Should we adopt specific safe harbors as part of the proposed integration framework? **Yes.** If so, are the proposed safe harbors appropriate? **Very much so. In general, the smaller the business the more challenging its sustainability and growth, the more uncertainty as to capital raising paths, and the greater the practical need and benefit to comparatively short time-lines and clear boundaries such as the proposed regulation provides. Most entrepreneurs and business owners want to comply with the law, yet compliance requirements need be reasonable, clear, and take into account the speed with which business conditions and investor intent may change between an indication of interest and delivery of an offering document.** Are there additional or different safe harbors we should codify? **Perhaps, yet the proposed changes should be made final as soon as practicable.** What effect, if any, would the proposed safe harbors have on investor protection or on issuers' ability to raise capital in the exempt offering markets? **Likely neutral effects on investor protection and very significant and meaningful effects over time for growth and sustainability of smaller companies, entrepreneurship, minority access to capital, and a decrease of the wealth gap (say over a 20 year period) noted by Piketty and, today, a host of others.** Should any of the integration provisions in proposed

Rule 152(a) be reframed as safe harbors in proposed Rule 152(b)? **On several readings, it does not seem necessary.** Similarly, should any of the safe harbors in proposed Rule 152(b) be reframed as principles of integration in proposed Rule 152(a)? **Not without a good rationale.**

4. Do the proposed rules make clear the interaction between the integration provisions set forth in proposed Rule 152(a) and the non-exclusive safe harbors set forth in proposed Rule 152(b)? **In each case they appear to do so.**

5. Should we include an integration safe harbor that would apply to any offering made more than 30 calendar days prior to, or more than 30 calendar days after, another offering, as proposed? **This should not be required; you seem to have struck a reasonable balance. I note the seeming reasonableness of the timetables permitting of staggered compliant offerings which seem to take it the need or objective to provide opportunities for further compliant offerings to non-accredited investors as well as further reasonably spaced more sophisticated offerings.** Is this time period too short? **It does not seem to be.** Would a longer time period such as 45, 90, or 120 days be more appropriate? **No, the marketplace changes all too quickly.** Would this proposal raise any investor protection concerns? **None which do not already seem adequately protected by the regulatory regime which would be in place after adoption of this rule.**

6. Should we, as proposed, amend Rule 506(b) to provide that where an issuer conducts more than one offering under Rule 506(b), the number of non-accredited investors purchasing in all such offerings within 90 calendar days of each other would be limited to 35? **Having seen, since pre-Reg D, the challenges small, unsophisticated businesses have in raising capital, and notwithstanding Investment Crowdfunding, the expansion of general solicitation for accredited investors, Reg A+, and the like, I suggest either shortening**

the time period to 60 days or increasing the number of investors to, say, 50 or 60 from 35. Without the benefit of empirical evidence, my sense of the market (from a variety of data-points over the past number of decades) is that most broker-dealers do not and will not, in this age, permit (directly or indirectly) their clients to invest in private placements unless and until a most costly and lengthy due diligence on the issuer occurs. Doubly—or more—so with non-accredited investors. Investment Advisers not affiliated with (and effectively dictated to by their related) broker-dealers are likewise skittish—for liability reasons not to mention the time and therefore cost to vet, as an adviser, a private placement. Ditto, from a time and cost standpoint, attorneys, and accountants. As to retirement-related accounts, plans, or trusts, those trust companies permitting of such investments are seemingly limited. This reality may have a benefit of limiting questionable or inadvisable investments. I suggest it has a disproportionate effect upon limiting the pool of capital as, in many cases, it is more efficient (and has been since 1974) generally for those not accredited to prefer wealth accumulation in tax-advantaged retirement-related accounts. The laborious process of small businesses trying to secure investments from anyone is daunting. Accredited investors are few and far between for most business owners. Few broker-dealers specializing or focusing on small business capital raising exist. (This, from personal experience, did not seem to be the case in 1981 if my memory serves.) Accredited investors typically target over an inordinately high return which requires, generally, the businesses to be leverage and/or an ability to scale or provide significant tax shelter. Main street, lower middle-market and below businesses face a frequently barren investor landscape regardless of how solid their respective prospects may seem. The Regulation D release, when proposed in 1982, acknowledged, as my memory serves, that it set the 35 person

limit as what it felt comfortable (in light of case law and SEC staff actions since 1933) as not constituting a public offering requiring compliance with the registration regime required of public offerings. The SEC's modifications (under Regulation D and in the proposed regulation) since 2011 have been helpful to better access to capital for businesses while protecting the investing public. Your proposed regulation, if it becomes final in its current form, does likewise. Your economic section has informed your decision-making for the better. Yet the increasing effects of businesses large enough to be considered to have critical mass, the increasing effects of scale resulting from technological sophistication and capital leave the preponderance of main street businesses without a practical equalizer, in fair part based upon regulatory strictures tied to 35 investors coupled with an inability to generally solicit their own networks. While the 90-day period is, of course, more favorable than per year or per 6 month period, the disproportionate effort tied to 35 mitigates, in this commenter's mind, towards an upward adjustment, in this age, as to what constitutes a public offering.

If so, is the proposed timeframe (90 days) and number of purchasers (35) appropriate, or should these be revised? **See immediately preceding comment.** Should we instead, if we consider 35 non-accredited investors over a 90-day period to be an appropriate limitation, set the safe harbor at 90 days to simplify compliance?

Yes, though perhaps either/or as determined by the issuer may be a more flexible approach.

Do the risks of sales to large numbers of non-accredited investors in multiple offerings by the same issuer in reliance on Rule 506(b) warrant such limits on the number of non-accredited investors participating in these offerings? **Generally not, though some upper limit in any 12-month period, beginning at a date set by the issuer (with this commenter in favor of a ceiling in any year based upon a percentage of income or assets).** Should this limitation apply in all cases in which an issuer conducts more than one offering under Rule 506(b), or should we only require such limit on the number of non-accredited investors if the Rule 506(b) offerings are of the same class of securities, or part of the same plan of financing? **None of the three; rather, I would suggest a cumulative annual ceiling which permits, say, a company to continue to grow during the course of any given 12 month period as most offerings (of the nature I contemplate) would likely be of the same class and would likely be argued (if a second offering occurs based upon growth or necessity) part of the same plan of financing.** Should we only require such limit on the number of non-accredited investors if the Rule 506(b) offerings would be integrated if the five-factor test were applied? **No, per above, and noting today's rate of change in the market contrasted with 1933 through 1982 and 1983 through 2019.** Alternatively, instead of amending Rule 506(b), should we include this requirement as a condition to reliance on the proposed 30-day safe harbor when an issuer conducts two or more Rule 506(b) offerings? **No, per above.**

7. Should we, as proposed, condition the availability of the 30-day safe harbor on the requirement that, for an exempt offering for which general solicitation is not permitted, the purchasers in such offering were not solicited through the use of general solicitation or that the purchasers established a substantive relationship with the issuer prior to commencement of the offering for which general solicitation is not permitted? **Yes, for any number in**

excess of investors totaling in excess to say, 35 to 60, within a 12-month period. Put differently, permitting general solicitation (should today's conclusion not require express statutory authorization) to non-accredited investors limited by number of actual investors within a given time period should prove a highly effective additional tool for main street businesses, particularly that large swath of the U.S. demographic which has not a college-networked well-heeled (including many non-accredited persons yet with investible assets) Facebook or linked-in acquaintances or friends. Alternatively, is a provision similar to that in proposed Rule 152(b)(1) more appropriate in Rule 502(c) of Regulation D concerning purchasers in offerings for which general solicitation is not permitted? **See earlier answers.** Should the provision be included in both proposed Rule 152(b)(1), as well as in Rule 502? **See earlier answers.**

8. Should we adopt an integration safe harbor for all offerings made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S, as proposed? **Yes, each, for different reasons, warrants such adoption.**

9. Is it necessary to reference Rule 701 in proposed Rule 152(b)(2), given the integration provision in Rule 701(f)**?** **Yes, even if not essential based upon Rule701(f) case-law interpretations, an abundance of caution through inclusion precludes uncertainty.**

10. Should general solicitation in the United States in connection with an exempt, U.S. offering constitute directed selling efforts under Rule 902(c)(1) of Regulation S for purposes of the offshore transaction? **The answers to all questions with regard to Regulation S should be determined in conjunction with the Departments of Commerce, Treasury, and State (though I assume some coordination currently exists at the highest of levels) to be consistent with what geo-politically would be considered to be a sound architecture**

for the forthcoming decade based upon an over-arching U. S. focused industrial policy. Should we, as proposed, amend the definition of "directed selling efforts" to permit issuers to make concurrent offers under Regulation S and an exemption from registration that permits general solicitation? Should we expand the definition of "directed selling efforts" to also exclude activities that would be "reasonably expected to" condition the U.S. market, regardless of the intent of those activities? Would an issuer be able to demonstrate the intent underlying general solicitation activities under the proposed amendment? Would the proposed amendments provide sufficient clarity to issuers using social media to make concurrent U.S. and non-U.S. offerings? In such situations, would an issuer have difficulty separately complying with Regulation S and other exemptions? Do the proposed amendments to Regulation S raise investor protection concerns for offshore investors? Should we expand the proposed exclusion from "directed selling efforts" to apply not only to concurrent exempt offerings that permit general solicitation, but also to domestic registered offerings?

11. **Same comment as 10.** Should we require the resale restrictions of proposed Rule 906? Will proposed Rule 906 help prevent flowback of securities to the United States? Is the proposed six-month time period appropriate, or should we consider a longer or shorter time period for the resale restriction to apply? Should the time period during which resales are restricted instead correspond to the distribution compliance period for Category 2 or Category 3 offerings under Regulation S, as applicable? Should we permit resales to QIBs and IAIs during this six-month period, as proposed? We expect that issuers would consider implementing measures similar to the "offering restrictions" defined in Rule 902(g) to comply with the proposed Rule 906 resale restriction, but should we specify measures an issuer must take to comply with the proposed resale restrictions? If so, what

type of measures would be appropriate? Are the proposed definition of "directed selling efforts" and new Rule 906 in keeping with the territorial approach taken in Regulation S?

12. Should we adopt the safe harbor in proposed Rule 152(b)(3) that applies to registered offerings subsequent to a terminated or completed offering for which general solicitation was not permitted, as proposed? **Yes.** Should we also, as proposed, include a safe harbor that applies to registered offerings subsequent to a terminated or completed offering limited to QIBs and IAIs? **Yes.** Should we additionally include a safe harbor that applies to registered offerings subsequent to offerings for which general solicitation is permitted that terminated or completed more than 30 days prior? **Yes.** Do the safe harbors, as proposed, sufficiently cover the relief provided by Rule 255(e) of Regulation A, Rule 147(h), and Rule 147A(h) so as to make them no longer necessary? Alternatively, should we omit the provision in this safe harbor concerning Rules 255(e), 147(h), and 147A(h), and retain these integration provisions as currently provided in Rules 255, 147, and 147A? Would this help simplify the safe harbor in proposed Rule 152(b)(3)? Would this make the integration provisions of Rules 255, 147, and 147A less clear? Does the 30-calendar day provision in proposed Rule 152(b)(3)(iii) for registered offerings appropriately coordinate with the more general provisions of proposed Rule 152(b)(1)? **Seemingly so.** In addition to registered offerings, should we revise this safe harbor provision to cover exempt offerings permitting general solicitation, such as Rule 506(c), as well?

Yes.

13. Should we adopt the safe harbor in proposed Rule 152(b)(4) that would apply to any offering in reliance on an exemption for which general solicitation is permitted made subsequent to an offering that has been terminated or completed? **Yes.**

14. Should we include any other safe harbors from integration in Rule 152? For example:

    a. Should we include a safe harbor for all offers or sales to investors with whom the issuer has a pre-existing substantive relationship? **Yes.** Should this safe harbor be available for all such offers or sales, regardless of when they occur in relation to another offering (*i.e.*, whether prior to, concurrent with, or subsequent to another offering) and regardless of whether the other offering is exempt or registered? **Yes.** If we were to adopt such a safe harbor, would that make any of the proposed safe harbors unnecessary?

    b. Should we include a safe harbor from integration for all offerings limited to QIBs and accredited investors? **Why would one exclude non-accredited from such investment opportunities (to the extent otherwise permissible)? (Some consideration, if it is not, should be given to the systemic effects the regulations, current and proposed, have on the ever-increasing wealth and income disparity amongst U.S. citizens given the mission of the SEC.)** Should such a safe harbor include offers or sales preceding or concurrent with a registered offering? Alternatively, should such a safe harbor apply only to QIBs and IAIs, regardless of whether the offer or sale was prior to, concurrent with, or subsequent to other offerings? Do offers and sales to such investors raise concerns with respect to conditioning the market for a subsequent registered offering of the issuer's securities?

    c. Should we include a safe harbor available for offers or sales made in reliance on

Rule 506(c) that are made concurrently with an exempt offering permitting general solicitation, such as in reliance on Regulation A, Regulation Crowdfunding or Rule 147A, provided that, if the general solicitation materials used in connection with the Rule 506(c) offering include the material terms of the other concurrent exempt offering permitting general solicitation, then the Rule 506(c) materials must conform to the legend and other requirements of the other exempt offering permitting general solicitation? In this regard, is our proposed Rule 152(a)(2) more appropriate as a safe harbor or as an integration principle?

15. Instead of our proposed approach to replace the current integration provisions in Securities Act exemptions with a cross-reference to proposed Rule 152, should we revise the current integration provisions to reflect the provisions of proposed Rule 152? No. Alternatively, should we revise the current safe harbor provisions in the Securities Act exemptions to reflect the safe harbor provisions of proposed Rule 152(b) and provide cross-references to Rule 152(a) for guidance on integration when these safe harbors are not applicable?
16. Should we codify in Regulation Crowdfunding the Commission's existing integration guidance providing that offers and sales made in reliance on Regulation Crowdfunding will not be integrated with other exempt offerings made by the issuer, provided that each offering complies with the requirements of the applicable exemption that is being relied upon for the particular offering in Rule 100 of Regulation Crowdfunding, as proposed? **Yes.**
17. Should we define the terms "terminated or completed," as proposed? **Yes.** Should the analysis of whether an offering is "terminated or completed" be predicated on the issuer's entry into a binding commitment, subject only to conditions outside of the investor's control, to sell securities under the offering, as proposed, or should we consider an

alternative such as the closing of the final sale of securities under the offering? As proposed; too many seeming complications otherwise would arise. Are there any administrative or logistical issues that would be raised if the "termination or completion" of an offering were determined based on the closing of the final sale of securities under the offering? Should anything else be considered "terminated or completed" with respect to offerings under Regulation A and Regulation Crowdfunding, and registered offerings?

18. Should we consider revisions to Regulation Crowdfunding that relate to intermediaries in light of the proposed integration safe harbors? **Yes.** For example, should we revise the portal requirements under Regulation Crowdfunding to permit concurrent Rule 506(c) offerings to be offered and sold via a portal's internet platform? **Yes, this would have a beneficial carry-over effect to the benefit of small businesses while not harming investors.** What other Regulation Crowdfunding rules should be revised to facilitate Rule 506(c) offerings concurrent with Regulation Crowdfunding offerings? Should we provide guidance regarding issues that may arise when an intermediary seeks to host concurrent offerings? Yes. Should we expand any of our rules, for example, the rules under Regulation Crowdfunding, to permit certain entities to act as intermediaries for sales of securities to accredited investors in concurrent Rule 506(c) offerings? **Yes, as noted in your example.**

Request for Comment

19. Should we, as proposed, provide a specific exception for communications in connection with a "demo-day" or similar event so that it would not be considered general solicitation if certain conditions are met? **Yes.** Should we permit organizations other than those listed in proposed Rule 148 to act as sponsors of such events? **Yes. Any combination of one or more of such organizations or at any meeting where such an organization is a sponsor provided that it is made clear (in a form to be prescribed in the regulation) that the**

sponsor of the particular session are solely one or more of such qualified organizations, and all costs associated with, and revenues resulting directly from such sessions (for which there would be a separate charge) are expressly set forth in all related documentation. An instruction to the proposed rule provides that the term "angel investor group" means a group that is composed of accredited investors that holds regular meetings and has written processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is neither associated nor affiliated with brokers, dealers, or investment advisers. Does this definition appropriately cover the types of groups that sponsor such events, or are there changes that should be made to the definition? **I doubt that, in instances in which each member makes a decision as to whether or not to invest, there would be any such individual written procedures. Any policy should apply solely to the group as a whole.** Should we include, as proposed, accelerators and incubators as organizations that may act as sponsors of these events**?** **Not unless other for-profit entities (to the extent for-profit accelerators or incubators are included) are also included.** Should we define the terms "accelerator" and "incubator" for this purpose**?** **It would be unhelpful not to.** Alternatively, should we specify only the types of groups that would be prohibited from acting as sponsors of these events, such as broker-dealers, investment advisers, or others? **That seems both easier and furthering the purpose of investor education, capital formation, without sacrificing investor protection.** Are the proposed conditions to this exception, such as limitations on the sponsor's fees and the types of information an issuer may provide at the event appropriate? **Seemingly so as you have not limited the administrative fee and as long as it is appropriately used, how high or low would not seem to need regulation. Organizations can determine whether to use the type of event and fee charged as a discriminator, a**

limiter, an enticer, or for such other qualitative or quantitative target attendees as may fit their specific purpose. If not, how should those conditions be revised? Are there additional conditions that we should specify with respect to this exception, such as a requirement that certain disclosures be provided to event attendees, or limitations on the characteristics of the entities that may avail themselves of this exception (*i.e.*, entities formed for the purposes of sponsoring events in order to engage in general solicitation)? **Such additional regulatory burden does not seem additive.**

20. Should we provide a definition of "general solicitation" and "general advertising"? If so, how should those terms be defined? **Existing guidance references does not seem to warrant a new definition over which to litigate.** Should we instead eliminate all prohibitions on "general solicitation" and "general advertising" and focus investor protections at the time of sale rather than at the time of offer? **Yes. Having, after being an Army prosecutor, practiced in this area for going on four decades, and having represented investors (as an investment adviser, out of court, under FINRA arbitration rules, and in state and federal court), issuers (as advisor, resolving administrative disputes with states, deal structurer, PPM preparer, etc.), and investment bankers, broker-dealers, and a crowdfunding portal, and having presented on and thought much about the subject, I come down on the side of changing the rules to focus solely on investor protections at time of sale with harsh punishment for those found to have, with specific intent, violated the rules, much less harshly without such specific intent, and, where good faith attempted compliance was had, advocating only a minor administrative short-lived sanction for a first time violation (apart, of course, from civil damages). See, for example: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3548312**

This change, though, would benefit by an advance public education campaign and face opposition from many who, not lacking good reason, support the existing proscriptions. Yet, in balancing the equities and probable effects, I fail, despite the

changes the SEC has implemented since the late 1980s (including the SCOR offering failures as demonstrated by Professor Jim Brau's articles (one of which is: "Micro-IPOs: An Analysis of the Small Corporate Offering Registration (SCOR) Procedure with National Data", Journal of Entrepreneurial Finance, Volume 14, Issue 3, Pages 69-89, 2010 in which a comprehensive statistical analysis was done) through the new proposed rule (assuming implemented), to see how most small and lower middle-market businesses can have a fair shot at accessing investment capital because comparatively few successful offerings could be completed without it or because, as demonstrated by the comments of a recent commenter to this proposed rule aptly noted, it costs too much to successfully solicit the number of needed investors. An issuer, though, who would be permitted to directly solicit to her, his, their, or its own networks of customers, suppliers, friends, neighbors, community, mosque, temple, high school and work and other network contacts, etc. (within the limitations as to non-accredited investors depending upon the applicable exemption from registration) would seem to have far better prospects of having reasonable access to investment capital for growing and sustaining a business, as well as buying or starting one. The hard-capped annual dollar investment limitations provide a safety-bracketed environment which far better serves both relevant SEC missions than any sort of unrealistic risk-based color-coded investment schemes, requiring vetting and labeling by an army of investment advisers or bots, both because of the other Regulation CF protections and that non-accredited investors will choose to get burnt year after year without, as adults, knowingly doing so on a basis informed by experience, warnings, and their own assessments of what is meaningful to them.

Expanding on my comments above, consider the following:

By way of illustration of the existing problem, consider whether the current landscape of, say, the average current or prospective laundromat owner, tech consultant, plastics thermal forming manufacturer, nursing home operator, oil well driller, small trucking company, a clean-air coal scrubbing company, a temporary help company, a small sawmill, a reference book or online publisher, a or most any other small business in most any industry. I have, through the decades, represented each of those business types along with many, many others across many different industries. Forget for a moment the sexy tech start-up in Austin, the Bay area, Boston, NY, DC or elsewhere which has been following fintech opportunities and has a scalable business for which there can be accessed a number of tiers of capital in the various rounds (whether through Angel List or elsewhere) based upon the rosiest of forecasts (as entrepreneurs are want to do) and which has a sufficient investment deck to generate sufficient buzz within the right investor network, with, say, the right lead investor. Also forget the larger companies which have, as Ohio State's Center for the Middle Market's studies show, general access to (debt) capital sufficient for current needs. Also assume that the business owners lack a network of the wealthy or of pedigreed academics or high-profile business or social connections. Maybe it is a single mom in Detroit, an African American laborer who has started his own 3D printing company, a second generation retail owner in a small town, a small immigrant Vietnamese business having survived its first ten years with dreams and executable plans for the future. In each case what each lack is capital---investment capital.

How do they each obtain necessary investment capital? Savings and after-tax earnings retained in the business over time, one might respond, though in each case what they

have is not enough. Sufficient wealthy friends or family? They have none.

Loans? What, have, as the SBA requires, 25% equity (which they do not have for inclusive of their existing net worth) and borrow 75% and risk everything (which would be an unsound personal financial decision for most)? At 25%, their existing investible assets are insufficient---and they do not want to so highly leverage their business, be personally on the hook to the SBA lender and want, instead, to use predominantly investment equity capital and not debt as they know that will increase their probability of survival and ability to better survive tough times.

How about economic development loans or grants? They do not qualify and, even if they did, they are insufficient.

How about an intrastate offering (crowdfunding or otherwise)? Their existing personal network is scattered throughout the country and economics would not work based upon probable returns needed to attract on-line interest from that audience which can be reached, current expectations of accredited investors, and seeming improbability of even getting members of their own network, without direct phone calls or texts or other current forms of general solicitation, to timely, if at all, devote the time and take the steps to seriously review and discuss, and hopefully invest, through the existing framework of just announcing an offer limited to the prescribed format.

Well, how about a general Reg D, 504 or 506 offering, isolated transactions, a Rule 701 plan, or an ESOP? They each are likely unworthy of effort. Maybe because none are a good fit for the business, too expensive, the existing returns are too small or their forecasted returns are insufficient to generate anywhere close to what a private

equity firm, venture capital firm, existing angel network, and/or current and prospective accredited investors are likely to demand based upon the state of the existing market.

So how about the proposed rule—it permits Testing-the-Waters, right? Sure. Yet let me ask: What is the probability that, having tested the waters and determined there is investment interest based upon a certain set of parameters, how many people to whom you've received a response from a test-the-waters to each of your own networks would, upon receiving an email from you announcing a company you are starting or running which contains the solely the information (as changed by the new mandate) will, without direct and follow-up solicitations by you, either take the initiative to go to the crowdfunding portal or, upon receipt of an email from a portal, reach out to ask questions and, within the limitations, make an investment—even if you are permitted to solicit through portal-enabled means or announce the offering in one or more Demo Days? Clearly, based upon an average of currently under 17 successful (measured by ability to raise funds and not based upon performance metrics) crowdfunding per state per year (with over double that amount of failed attempts averaged per state per year), not many. The combined effects of the other pending proposed rule changes (viz., accredited investors, testing-the waters, integration) which, while likely substantially increasing this number, don't expressly or impliedly address their situation—and that of most small and lower middle-market businesses in the U.S.: they are neither unicorns nor highly profitable and/or scalable businesses. Yes, there are many who will neither seek nor could live with the strictures imposed by or for many investors: hassle factor, strings, reporting, cost, disclosure of information are but a few. (I note that a further rule change to permit a confidential information

exhibit which could be accessed by prospective investors once having electronically signed a short and universal NDA form would increase by some significant number issuers who are unwilling, given the size or type or profitability of their business and/or plan, willing to have such information posted for their competitors. A separate discussion board for those having signed the NDA would likely permit of the further vetting essential as testified to by Professor Coffey and others if my memories of the original hearings is correct.)

So where does that leave us? With businesses--hundreds of thousands of them, I'd guess, across this nation—and hundreds of thousands more of capable entrepreneurs in the wings-- which may have a vision, a strategy, an ability to execute and adapt, which lack, without the ability to solicit through their own networks, high school, junior college, religious, interest-based, trade, supplier, community, or other networks spread across this country without the ability to solicit, in person and directly.

Well, won't the new testing-the-waters provision and the demo days by communities and others solve that? No, I would answer, though it will help a fair number, not for the average or above average business owner, most likely. Connections and networks are too dispersed. Consider the average person not in Washington, DC or highly networked with accredited investors. How could such person use his or her own network to provide some capital knowing that if the investment is loss, that his or her own reputation suffers within that same network. Better ways to do things—which add value, are accretive, and advance this economy, take capital, investment capital.

So now let us consider the investor as an equally important SEC mandate is investor

protection.

What about fraud? What about incompetence? What about the fact that 7 out of 10 businesses won't last ten years, and all investors into 30-40% of those, if future numbers are consistent with Mr. Ghosh's eight years or so ago Harvard Business Review reported study, will likely lose most or all of their investment? And what about the lack of financial literacy and questionable financial situation of non-accredited investors, isn't it the role of SEC to protect the investor?

(I would note, as an aside, that most all states allow gambling and most sponsor state-benefitting lotteries, through which any person can gamble away his or her entire wealth or income.)

Yes, I would answer, it is a mission of the SEC to protect the investor—and as a former infantry officer I take missions most seriously. I have represented many an investor and have seen, firsthand, damage which can be done by ill-advised investments. The existing regulatory regime has, though, provided for a hard limit on annual investments. While retaining the existing ban under Regulation CF of the prohibition of general solicitation of non-accredited investors would offer continued protection against too much temptation—by a hard-stop-- based upon solicitations from their own interpersonal connections and otherwise may reduce fraud and total dollars of failed investments, there exist no double-blind placebo based studies to show, under what conditions and with what rates over what time periods the precise probable range and cross-correlated against capital access and correlated to whichever and however insightful metrics can be diced for the purpose of making an informed judgment as to what, precisely, should be the restriction on general solicitation.

The vested interest groups weighing in on SEC changes have been legion.

Yet it is also the mission to facilitate capital formation which should mean provide access to all business to the capital markets. The enlightened proposed rule will not yet permit of such access.

I submit that until general solicitation (outside of portal-enabled means) of non-accredited investors to invest in crowdfunding regulated investments through regulated portals there will not be equal access to investment capital across our nation yet if such was to be the case, I would then likely submit that there would then be equal access to capital for all. At what point should, based upon a landscape and conditions, what has been a governmental edict for decades be neither necessary nor lawful in the fullest sense of the word? Preceding the Securities Act of 1933, the times culminating in the crash of '29 found no safety to be later provided by social security, little by way of regulatory requirements for investments, no ERISA, no internet networks to quickly determine bases for facts and opinions. So, perhaps it could be rationalized that elimination of illusion temptations was warranted.

With a protection tied to a certain percentage of assets or income the remaining regulatory regime, should not adults be left in a position to make their own decisions about how to deal with their own funds. Whether to save for retirement, buy lottery tickets, invest in a timeshare, buy a CD, or make a crowdfunding investment into which their former co-worker, fellow immigrant, community business, or lifelong friend is using best efforts to start, sustain, or grow? If a mandated warning should be had, a simple failure rate of small and lower middle-market businesses based upon

various objective metrics could be mandated.

While Thomas Piketty's last, and new, tomes posit that the increased wealth disparity (and likely those of his Cambridge professor Anthony Adkins with his suggestion for a minimum salary for each) can be remedied through scaled-to-wealth-and-income taxation cures, I submit that such disparity can be materially reduced over time by permitting, under regulation CF, such general solicitation of non-accredited investors. The Commission has now both the opportunity and mission consistent obligation to provide such capital access which begins the long process of equalizing the playing field. Generally, the larger the company the larger the reinforcing network effect. The larger the network effect the more and better access to capital, or so is my conclusion based upon Philip Ball's Critical Mass and network research which I have since reviewed. Would not general solicitation permissions for non-accredited investors yet provide, through annual investment limitations through the existing portal system and with the contemplated conforming filings and processes, be sufficient investor protections?

I don't know that I would go so far as Professor Schwartz in mirroring New Zealand given its likely higher societal trust level and believing, given our regulatory history, a bridge too far, though I will note that, based upon the two business journal articles providing a statistical analysis of the SCOR offerings in the 1990's and early 2000's, if memory serves, that there was a direct statistical correlation between the quantity and quality of information provided to a prospective investor and the success in raising the sought for capital.

As a business and securities attorney I have, through these last four decades, tried to stay on top of both the small and lower middle-market business landscape and hurdles, hazards, and paths provided by the statutory, regulatory, and case law securities mechanisms, and who cares deeply about the entrepreneurial future of our country, I can but urge due consideration of my comments prior to action.

21. Should we move the existing list of examples provided in Rule 502(c) to a new rule? **In my experience this regulation has been fraught with problems since its inception and for which, I see no regulatory cure better than, if the general solicitation is not removed, current practice without having given thought to better solutions (though if other solutions are considered, if they would permit issuers to have reasonable access to solicit their personal networks not rising to the level of a "substantive relationship", they should be permitted).** Do the current examples in Rule 502(c) pose any particular challenges we should consider in formulating a new rule? Are there different or additional examples that we should provide? For example, should we include any form of direct mail, telephone, e-mail, text messaging, or similar method of communication, if the issuer (or any underwriter, broker, dealer, or agent acting on behalf of the issuer) does not have a pre-existing, substantive relationship with the offerees, or cannot otherwise demonstrate the absence of a general solicitation?
22. Should we define the term "pre-existing substantive relationship" in the rule? **Covered above.** If so, should we define the term consistently with the guidance set forth in this release? If not, how should we define this term?
23. Would the proposed changes positively impact access to capital by counterbalancing social network effects for underrepresented founders, such as women, minorities, and entrepreneurs in rural areas? **Yes.**

24. Should we, as proposed, permit generic solicitations of interest in advance of an exempt offering of securities under any exemption from registration? **Unequivocally, yes.** Are there any investor protection concerns with doing so? **None more than your draft provides.** Should we limit the ability to provide testing-the-waters materials to IAIs and QIBs**? I cannot see why such would be desirable.**

25. Should we, as proposed, require filing of the generic solicitation materials as an exhibit to the Form C in a subsequent Regulation Crowdfunding offering, or with the Form 1-A in a subsequent Regulation A offering? **Yes.** Should we instead require the generic solicitation materials to be either filed with Form C or Form 1-A, or filed separately on EDGAR?

Whichever provides the most flexibility to the issuer, portal, and B/D and provides investor access.

. Should we, as proposed, limit the filing requirement to offerings that commence within 30 days of the most recent generic test-the-waters communication? Yes. Should we instead impose the filing requirement irrespective of the timing of the subsequent offering or for some alternative timeframe? **No.**

26. Should we, as proposed, require an issuer to provide the generic solicitation materials to non-accredited investors in a subsequent Rule 506(b) exempt offering if such Rule 506(b) offering is within 30 days of the generic solicitation? **Yes.** Should we require such materials to be provided to the Commission? **Such additional step does not seem warranted.** Should we require such material to be provided to investors or the Commission even outside of the 30-day period proposed? **No, given the speed with which changes may have occurred.**

27. Should we require an issuer that uses generic solicitation materials and subsequently relies on Rule 506(c), Rule 504, Rule 147, Rule 147A, or an exemption other than Regulation A, Regulation Crowdfunding, or Rule 506(b) within 30 days to provide the generic solicitation materials to such investors? **Yes, as the time-window documents may raise points an investor would construe as, or may otherwise be, material.** Should we require such materials to be provided to the Commission? **No.** Should we require such material to be provided to investors or the Commission even outside of the 30-day period proposed? No.

28. Should we, as proposed, amend Regulation Crowdfunding to permit testing-the-waters for a Regulation Crowdfunding offering, similar to the current testing-the-waters provision of Regulation A? **Unequivocally, yes. The smaller the business the tougher it generally is to obtain investment capital and without having an ability to determine interest wastes far too precious resources. This will measurably help small businesses.** Should we impose additional restrictions on the manner or content of such communications? **No,**

such additional steps, adding layer upon layer of deemed protection after protection add nothing but mazes, hurdles, moats, hazards, and costs to the business owner (though, of course, the armies of sophisticated can navigate for the well-heeled who do not need access to the size and type of capital which the regulation was meant to foster) and provide no meaningful investor protections. Having represented, amongst other types of business clients, hundreds of small business owners and many small investors, and trying throughout to be a thoughtful observer of small and lower middle-market businesses and human behavior over my lifetime, such well-intentioned risk-minimizing regulatory add-ons would be most unhelpful, for the small business owner, average small investor over a lifetime, and for the country.

For example, should we permit testing-the-waters in Regulation Crowdfunding only if any such communications are only conducted through an intermediary's platform, or only if the testing-the-waters materials are required to direct investors to the funding portal (or broker-dealer) for more information on the offering?

Please see my comment above.

29. As proposed, the rules would not preempt state securities law registration and qualification requirements for offers made under the proposed Rule 241 exemption. Should we adopt Rule 241 as proposed? **Yes.** Would the lack of state preemption make it less likely that issuers will use proposed Rule 241? **Yes, in those situations or in those states where 241 would lack its otherwise inherent value.** If so, should we preempt state securities law registration and qualification requirements for offers made under the proposed Rule 241 exemption? **While, bureaucratically and in some cases emotionally, such a proposed step may be met with stiff resistance, today's interconnected interstate commerce and everyday technological tools.** If not, should we limit preemption to materials provided to accredited investors or QIBs and IAIs? **N/A.**

30. Should we permit testing-the-waters communications to continue following the filing of the Form C with the Commission in a Regulation Crowdfunding offering? **Unless general solicitation is to be permitted, not with regard to either the current or any other prospective Regulation Crowdfunding Offer or with regard to any other potential type of offering, until completion or termination of the Regulation CF Offering.**

31. Should we allow for oral communications about the offering outside of the funding portal's platform channels, as proposed? **Yes, without any serious reservations.** If so, what would be the benefits of allowing more communications? **Broader, more meaningful access to investment capital for the business owners (benefitting current and prospective employees and the U.S. economy) and more access to opportunities, include ones in the geographic and/or demographic preferences of investors.**

Advertising in such then-permitted form, proscribed based upon the 2012 well-meaning and thoughtful recommendations from selected academics and selected SEC staff, has likely been a major regulatory choke on a company and CEO's motivation and ability to effectively use crowdfunding to raise any amount of capital. Humans frequently are emotionally drawn to the underdog, to investments to which they have an emotional connection. The now somewhat-distant initial rules were, in part, designed with the intent and probable effects, to attenuate such emotional connections. Yet with the limitations, as proposed with due regard to the extant limitations on investments these past years since the initial regulation, on what non-accredited investors can invest per year, how is it helpful, I would ask myself, to not permit, say, a citizen who emigrated from San Luis Potosi, or Albania, or a member of a given group anywhere in the U.S., who runs a business or is starting a business, to not personally reach out an appeal for an investment (in accord with the proposed 204 addition). Informed by my own experience, observations, and much thought, I conclude, for myself and in support of your revised 204, it would be a significant misstep to not now adopt such change as drafted. Should we impose any additional requirements to address investor protection concerns? **No.**

32. Should we expand the types of information considered to be the terms of the offering for purposes of Rule 204? **Yes, to this and each remaining question in this question 33. An accredited investor can ask business owner issuers questions—and be solicited by and receive answers from such issuers, the Commission having determined such investors have the necessary resources to better fend for themselves. While non-accredited investors (who are not investment-sophisticated, either alone or in conjunction with one who is) may benefit by being insulated from temptations through a complex**

regulatory regime, their opportunity to meaningfully help themselves, their families, their friends, those in their own networks and the state of small business suffers. Requiring solicitation intermediation through sole-source investment crowdfunding portals is a most successful cordon. The process of filing a complaint Form C, the steps required of registered crowdfunding portals, the annual limitations (based upon income or assets) should, today, be concluded to be sufficient statutorily-compliant protections to be the right mix of investor protections and access to capital. Covid-19 effects will be wide, deep, and long-lasting, and particularly brutal to small and lower middle-market businesses across a broad spectrum of the U.S. economy. Locales across this nation, having experienced, since ERISA's passing and accelerating throughout silicon wafer development and manufacturing off-shoring, have their governments' and schools' defined benefit plans providing 75% or so of the funding for the thousands of U.S. private equity firms whose decades-old modus operandi, while having contributed to a more efficient worldwide allocation of production and supply, a betterment of the world's average standard of living, an accelerated reduction of goods and many services in the U.S., and an increase in the internal rate of return for public pension funds, has come at very high cost of those same locales evolving into places and peoples without a sustainable commercial and/or retail tax base (which in the time—and after—of Corvid, these tax-base losses shall have accelerated). Non-P.E. medium and large firms, which, like well-funded P.E. firms, have ready and affordable-access-to-them capital market, amplify, such effects. While recognition of this trend seemed a cause of 2012's statute and resulting regulations, the comparative, in numbers of companies benefitting and investors investing and total capital raised, beneficial effects upon small and lower middle-market businesses have

been paltry-to-me at best as your economic section's fine work seems to show.

The foregoing effects have been but a part of the world-wide macro-economic effects of scale: the bigness of big expands at a rate greater than an arithmetic progression as does the increasing ease, regardless of Dodd-Frank like effects, of capital raising for those companies having obtained a critical mass.

Yet should not a result of these trends be to have the SEC making it even easier for smaller companies to raise investment capital than for large ones. Over the more than 40-year arc of my professional career, the trend has been otherwise. 2012's statute seemed a begrudging (by many in the SEC's then leadership) willingness to either release steam or begin an exploration. Your proposed rule is, by its proposed rule changes, by its tone, by its questions, the most enlightened recognition that to fulfill the SEC's missions requires a facilitation for people of modest or no means to test the waters and determine from their own initiatives and non-sophisticated networks what might work. Yet it should go further: it should permit them the realistic opportunity, as opposed to simply a likely still-ineffective regulatory permission through a portal, to convince others of modest means to invest in them, in their ideas, plans, and business entities. While most businesses ultimately fail, your already-in-place annual monetary investment limitations on non-accredited investors should permit of a sufficient throttle on likely effects of both fraud and loss of all monies invested into such investments.

Historically, a fair portion of this country was built by various immigrant groups helping, in the form of investment, first one then other members of their respective families, communities, and other networks build small businesses. While those of modest means and no or little sophistication need protections from and remedies

against the hair-brained dreamers without a plan and competency to execute through the fraudsters, the remaining regulatory regime does that. (I will note that a significant inhibitor remains the inability for small businesses to maintain certain confidentiality, through NDA's, which could have been and still could be implemented through a sensible regulatory and filing process. Requiring the smallest of businesses to publicly disclose and file all information should be modified to permit, upon execution by a prospective investor of an NDA, disclosure of confidential information to the investor who can then choose to invest or not, yet regardless still be bound to confidentiality pursuant to the NDA. The Form C could have a confidential filing separate exhibit if felt needed by the SEC and the portal could be permitted to have separate Form C filing company specific chatrooms for use by those having signed an NDA for purposes of discussion related to the confidential disclosures if it felt necessary for a more thorough of vetting of the confidential information in advance of investments by those considering investing. As it is, many small business owners, who have a difficult enough time competing are fearful, and rightly so based upon my decades of experience, of larger and other potential competitors, of using all information which would be publicly disclosed through a Form C to the competitive disadvantage of the company and therefore discouraging any business who would otherwise benefit greatly from regulation CF from ever obtaining outside investment capital. For example, should we amend the definition of "terms of the offering" to include information about the planned use of proceeds of the offering or about the issuer's progress toward meeting its funding target? Yes. Should we amend Rule 204 to allow for oral communications pertaining to any disclosure required by Rule 201 that is included in the filed Form C? Yes. Alternatively, should an issuer that uses advertising that includes the terms of the offering

be permitted to include additional information, such as information about the planned use of proceeds of the offering or the issuer's progress toward meeting its funding target, even if such information is not included within the definition of the "terms of the offering"? Yes. Are there other steps we should take to clarify the advertising restrictions in Rule 204?

33. In light of proposed Rule 152(a)(2), which concerns the integration of concurrent exempt offerings permitting general solicitation, should we amend Rule 204 of Regulation Crowdfunding to permit an issuer to disclose the material terms of a concurrent offering made in reliance on Regulation Crowdfunding in a Regulation A offering statement or a Securities Act registration statement filed with the Commission? Are any revisions needed to Regulation A to permit such disclosures?

34. We note that the vast majority of Regulation D issuers continue to raise capital through Rule 506(b) offerings. Are issuers hesitant to rely on Rule 506(c) (as suggested by the data on amounts raised under that exemption[176]) as compared to other exemptions? Yes. If so, why? **I speculate it is because of the costs examples submitted in the comments by another commenters.** Is the requirement to take reasonable steps to verify accredited investor status having an impact on the willingness of issuers to use Rule 506(c)? **Yes, it is a hurdle in the form of a too-much-of-a-hassle factor, for the prospective investor, for the broker-dealer, for the issuer, for the cost-and-process-structure of the verifier service provider. Attempts, in the name of fail-safe engineering, to protect do so at a cost exemplified by the results your data shows.**

35. Should we provide an additional method of verification, as proposed, that would allow an issuer to establish that an investor that the issuer has previously verified remains an accredited investor as of the time of sale, so long as the investor provides a written

representation to that effect to the issuer and the issuer is not aware of information to the contrary? **Yes.** If so, should we impose a time limit on this method of verification, and if so, how long should that time limit be? **Three to five years if third-party verification is to be retained.**

36. Is additional guidance for reasonable steps needed? **Perhaps.** Would further guidance provide more clarity? **A pro-forma short form attesting to meeting minimal standards based upon limited review by the respective service provider which provides for no liability on such provider (e.g. bank, tax preparer, etc.) would likely be helpful.** Should we eliminate the requirement to take reasonable steps to verify accredited investor status in specified circumstances? **Yes.** If so, which circumstances? **Those upon which a single point of data may be used, viz. net worth on balance sheet provided to any financial institution in the past x years, investment or bank accounts totaling more than the minimum at any point within the past x years, etc.** Should the verification requirements be eliminated altogether, as suggested by some commenters? **Yes though, perhaps, with cautionary language (required to be contained in bold in the subscription agreement) that if the investor willfully misrepresented accredited investor status, such investor would conclusively be deemed to have knowingly participated in fraud on the issuer though it would be presumed, with a rebuttable presumption, that the accredited investor status was made in good faith.** Would legislative changes be necessary or helpful? **As may be needed in furtherance of my and others' beneficial comments.**

37. Should we consider rescinding the non-exclusive list of reasonable verification methods? **Not unless you are going to rescind the requirement for such verification.**

Should we consider mandating the items on the list as the exclusive methods for verification? **No.**

38. Are there additional or alternative verification methods that we should include in the non-exclusive list of reasonable verification methods that would make issuers more willing to use Rule 506(c) or would better address investor protection? **To the extent to which others which may have been suggested are deemed reasonably reliable, yes.** For example, should we provide a non-exclusive list of reasonable verification methods that would apply to the verification of an entity's accredited investor status? **Yes, if it does not add to the regulatory burden for issuers, registered intermediaries, or investors.** Should we add as a specific verification method for either natural persons or entities with investments of a large minimum amount, accompanied by written confirmation that investment is not financed by a third party? **No; one cannot protect, and the SEC is recommended not to, over-engineer for as many safety-enhancing permutations as may come to mind: for each additional feature, the additional complexity kills-off an unknowable amount of otherwise probable additional investment capital. If the SEC is going to gone down such a route, it would be better advised to take a regulatory approach focusing upon the amount of leverage. (Senior lenders, as an example, oft require a debt service coverage ratio of, say, 1.25 to 1. The SBA requires, if memory serves, equity of at least 25%. While business schools may, for companies of sufficient mass, speculate returns may be optimized at a 40/60 ratio, this commenter is a proponent of debt generally limited to cyclicality, seasonality, and selected capital investment and working capital needs, particularly having witnessed, directly and indirectly, the effects of debt over time.) Investor protections would be, if needed, be better enhanced by a regulatory focus on the relative risk of the investment than the**

verification of what portion, if any, of the subscription ante is debt financed. If so, what minimum investment amount would be appropriate for natural persons or for IAIs? **Assuming that any investor's investible assets should be diversified, with the need for such diversification increasing by age of the investor (and by the factors affecting the Commission's decision making in the process establishing the annual Regulation CF permitted investments), it becomes simply too complex to try to both establish a mathematical formula to determine, or set a useful hard and fast rule, capable of being easily understood and enforced that would not be outweighed by all the negatives against it.**

39. The Commission has proposed to amend the definition of accredited investor to include new categories of natural persons and institutions.[177] Are there additional verification methods that we should include in the non-exclusive list of reasonable verification methods in light of these proposed changes**?** **The proposed amended is very much welcomed by this commenter; any reasonable methods advocated by others I would support.**

40. Are the current financial statement information requirements in Rule 506(b) appropriate or should they be modified to align the information requirements contained in Rule 502(b) applicable to non-reporting companies with those of Regulation A, as proposed? **Limiting my comments in this area to concepts, though noting I was amongst those using the former Rule 505 with its requirements, it is systemically most challenging for issuers to include non-accredited investors into any otherwise-accredited-investor offering given the heightened processes, manner of distribution, risks, and costs. A concern with smaller companies has always been the fact that most smaller companies handle their finances and financial reporting on a cash not accrual basis and it is most**

difficult for the non-accredited, including various advisers, to try to get a picture on the business prospects without a re-casting. It is also of benefit to permit companies raising capital to permit, beyond what is permitted, various insiders and others who are not accredited investors to invest. Your revisions to the accredited investor definition are of assistance and partially addresses various challenges. Your proposed changes to unify reporting will have some likely effect of reducing participation by non-accredited investors, yet, for those doing concurrent or other permitted offerings, will likely ease their process. As a matter of principle, I encourage regulatory flexibility which permits non-accredited investors to invest along-side accredited investors. How would aligning such requirements affect capital raising under Rule 506(b)? Would there be investor protection concerns regarding any reduction in information required to be provided to non-accredited investors? Should we retain the current Rule 502(b) provisions that permit an issuer, other than a limited partnership, that cannot obtain audited financial statements without unreasonable effort or expense, to provide only the issuer's audited balance sheet? **Retaining should be permitted though benefits may be then had by requiring a relatively current forecast for the succeeding twelve months and made on an accrual basis.**

41. Should we allow the use of financial statements consistent with Regulation A in offerings by non-reporting foreign private issuers and in business combinations and exchanges by non-reporting issuers, as proposed? Are there any unique considerations in these circumstances that would warrant a different approach?

42. Regulation Crowdfunding permits issuers to raise up to a maximum aggregate amount of $1,070,000 through crowdfunding offerings in any 12-month period, with financial statement requirements that vary based on the size of the offering. Should we consider

aligning the Rule 502(b) financial information requirements for non-reporting issuers with those of Regulation Crowdfunding, or some combination of the requirements in Regulation A and Regulation Crowdfunding? **Absolutely not. Small companies rarely or ever are in accord with GAAP. That does not mean they are bad, badly run, or unworthy of being an issuer. And, as noted above, they rarely internally or externally use the accrual basis. Through the decades what I have found most useful for investors and for issuers is to try to get a handle on what I view as the real profitability (regardless of particular metric used [viz. free cash flow Ebit, Ebitda, net profits after owner add-backs) and then adjust for the particular setting. So, what I view as most useful is the company's existing reporting schema, with management's good faith forecasted earnings and assumptions for some couple of years (which then needs to be adjusted to an accrual basis). I would urge, without mandating heightened standards, is any changes requiring management's good faith efforts which, in turn, minimize outside accounting fees and outside accountants' liability.**

43. As proposed, non-reporting issuers conducting an offering of up to $20 million would be subject to the Regulation A Tier 1 financial information requirements, and issuers conducting an offering above that amount would be subject to the Regulation A Tier 2 financial information requirements. As an alternative, should we consider requiring issuers conducting offerings above $50 million or $75 million to comply with the financial information requirements applicable to smaller reporting companies under Article 8 of Regulation S-X**?** **No, the current Reg A Tier 2 approach to financial statement disclosure requirements is an understandable and straightforward framework, providing developmental stage companies with a predictable path and timeline to beginning their selling efforts. The $50 million to $75 million and greater offering**

limits (if adopted) will be most practically usable under the current financial disclosure framework. This framework is working well, allowing audits to be completed more expeditiously while requiring two full fiscal years in compliance with US GAAP for financial statement preparation and US GAAS for auditing standards. A third tier (in effect) of financial disclosure requirements will not provide a commensurate benefit or protection to investors however will likely serve to discourage nascent companies from utilizing the upper tier.

44. Should we modify the Rule 502(b) financial information requirement in some other way? If so, how should it be amended?

45. Should we also amend the non-financial disclosure requirements in Rule 502(b)?

46. Should we, as proposed, retain the current Rule 502(b) disclosure requirements for Exchange Act reporting companies? If not, what should those requirements be?

47. Should the fact that Regulation A limits the amount of proceeds to be raised in a 12-month period before the start of and during an ongoing offering, while Regulation D does not include any such lookback period, impact the financial information requirements?

48. We are proposing to amend our rules and forms to replace the competitive harm standard with new language based on the Supreme Court's definition of "confidential." Are there other changes we should make to our rules and forms in light of the Supreme Court decision?

49. Should we amend the Regulation A exhibit filing requirements as proposed? Is there any reason not to extend this simplified confidential treatment application process to Regulation A issuers? Do our proposed amendments raise any investor protection concerns? ***The simplified confidential treatment request procedures should apply***

equally to Reg A filers who are generally quite limited in their resources and lack additional time to spend with the experienced corporate counsel to draft the confidential treatment requests for them. Many Regulation A filers are in even greater need of confidential treatment at the development stage of their business when the exposure of proprietary information, business trade secrets, and pricing information to competitors may lead to significant harm to both the business and investors at a time when the business is more financially tenuous and unstable than its much larger competitors and it has comparatively few or no resources to stave off larger competitors whose resources, strategies, and tactics can overwhelm the issuer without such confidential treatment.

50. Should we, as proposed, amend Form 1-A to allow non-public draft offering statements, amendments and related non-public correspondence to be made publicly available through the use of the EDGAR system, rather than requiring issuers to file such documents as exhibits to a publicly filed offering statement?

Yes, after the publicly filed Form 1-A is Qualified.

51. Should we amend Form 1-A to allow incorporation by reference of an issuer's previously filed financial statements, as proposed? How would such an amendment affect investors? Would this cause any increase in costs for issuers, such as in connection with consent fees from auditors? ***Yes, because issuers may currently believe that an Issuer's periodic reports are in fact incorporated by reference into an offering circular which may appear to contain older or stale financial statements. On the other hand, there is some uncertainty in the industry about Incorporation by reference of an Issuer's periodic reports and a clarification in the form instructions are needed (The instructions are currently silent).***

52. Should the ability to incorporate financial statements into an offering circular by reference to previously filed documents be conditioned on eligibility requirements, similar to those currently applicable to issuers using Form S-1, as proposed?

Are there other eligibility requirements we should consider? Should the ability to incorporate by

reference financial statements into an offering circular be limited to previously filed financial statements as proposed or extended to include forward incorporation by reference to future financial statements under Regulation A?

53. Should we allow forward incorporation by reference in Regulation A offerings? **Yes, and in doing so such incorporation will encourage Regulation A Issuers' compliance with periodic reporting requirements by reserving eligibility for forward incorporation by reference to those issuers current in their periodic reporting.** In order to forward incorporate Exchange Act reports into a registration statement on Form S-1, a smaller reporting company must be current in its reporting obligations by having filed an annual report for its most recently completed fiscal year and all required Exchange Act reports and materials during the 12 months immediately preceding the Form S-1 filing (or such shorter period that the smaller reporting company was required to file such reports and materials). The smaller reporting company must also make its incorporated Exchange Act reports and other materials readily available and accessible on a website maintained by or for the issuer, and disclose in the prospectus that such materials will be provided upon request. If we were to permit forward incorporation by reference in Regulation A offerings, should issuers be required to meet similar requirements? Should issuers using forward incorporation by reference still be required to file an annual post-qualification amendment to their Form 1-A to include updated financial statements as well as to reflect a fundamental change in the information set forth in the offering statement**?** **Forward incorporation by reference process under Regulation A (Tier 2 only) should eliminate the need for an annual post-qualification amendment to update financial statements, however in the interest of investor protection, a post-qualification amendment should be required for a review period by the staff in those cases where in which the issuer's offering statement reflects**

a fundamental change in the offering or business. (It would be helpful for the Staff to provide guidance regarding events, circumstances, or the criteria from which an issuer can determine what constitutes a "Fundamental Change".)

54. Should we, as proposed, amend Rule 259(b) to permit the Commission to declare a post-qualification amendment to an offering statement, abandoned, consistent with the rule applicable to registered offerings? Should we also provide notice to the issuer and a waiting period prior to declaring a post-qualification amendment abandoned, as is specified in Rule 479?

55. Should we, as proposed, increase the Regulation A Tier 2 offering limit from $50 million to $75 million? Is another limit more appropriate, such as $100 million? ***Yes, and further, it would be appropriate to further amend, in the Final Rule, to an amount greater than $75 million to encourage development of the smaller IPO market, for issuers and investors alike, including without limitation institutional investors and broader and more competitive broker-dealer intermediary involvement.*** What are the appropriate considerations in determining a maximum offering size? In connection with an increase, should we consider additional investor protections, such as aligning standards for when an amendment to an offering statement is required with those in registered offerings? Should we instead simply adjust the offering limit for inflation?

56. Should we increase the Regulation A Tier 1 offering limit? Alternatively, we note that there is significant overlap between Rule 504 and Regulation A Tier 1 offerings. Should the threshold for Rule 504 be raised to $20 million such that Rule 504 might serve as a replacement for Regulation A Tier 1 offerings? If so, should we eliminate Tier 1 of Regulation A?

57. Would increasing the maximum offering size encourage more issuers to undertake

Regulation A offerings? ***Yes. More issuers and larger investors will utilize Regulation A+ tier two if the limits are higher;*** **issuers and banking intermediaries** ***would like to believe, and have it be, that the Regulation A, Tier 2 is perceived as a legitimate IPO; Regulation A issuers do not want to be perceived as sitting at the children's table.***

Would it attract more institutional investors to the market? **Assuredly, yes.**

58. Would increasing the maximum offering size increase the risk to investors? Is there any data available that shows an increase or decrease in fraudulent activity in the Regulation A market as a result of the 2015 or 2018 amendments?

59. Should we, as proposed, increase the Rule 504 offering limit from $5 million to $10 million? Is another limit more appropriate? Would the increased offering limit encourage more regional multistate offerings and state coordinated review programs? Are there additional investor protections we should consider in connection with an increase?

60. Should we, as proposed, increase the Regulation Crowdfunding offering limit from $1.07 million to $5 million? Is another limit more appropriate? Would increasing the limit encourage more issuers to use Regulation Crowdfunding? Are there additional investor protections we should consider in connection with the increase?

61. In conducting our review and analysis of exempt offerings, we and our staff relied on data collected from filings with the Commission and third party data sources.[308] In order to better analyze the exempt offering markets, should we consider ways to enhance compliance with Form D filing requirements?

62. Should we remove investment limits for accredited investors in Regulation Crowdfunding offerings as proposed? **Yes.** If so, should we require verification of accredited investor status, as suggested by several commenters? **No, unless it felt needed to not have a**

disparity between Reg D and Reg CF. Should the limits be modified in some other way? **No, removing the limit seems most appropriate.**

63. Should we amend the method for calculating the investment limits for non-accredited investors in Regulation Crowdfunding to allow those investors to rely on the greater of their annual income or net worth as proposed? **Yes.** Is there any evidence to suggest that a more restrictive approach to investment limits is warranted for Regulation Crowdfunding offerings? . Should we align the non-accredited investor limits in Regulation Crowdfunding with those in Regulation A Tier 2? **Yes.**

64. The 2017 and 2018 Small Business Forums recommended that the Commission amend Regulation Crowdfunding requirements for debt offerings and small offerings under $250,000, such as by limiting the ongoing reporting obligations to actual investors instead of the general public, and scaling the requirements to reduce accounting, legal and other costs of the offering. Further, the 2019 Small Business Forum recommended that the Commission should provide an exemption for investments of less than $25,000 for up to 35 non-accredited investors, where all investors have access to the same disclosures about the issuer. Should we consider creating a "micro-offering" tier of Regulation Crowdfunding consistent with these recommendations? **Yes.** If so, should that micro-offering exemption be limited to offerings of debt securities conducted through an intermediary, but with no specific disclosure requirements? **No as to such limit unless, in addition to a general $250,000 provision, a sub-category permitting debt on such basis would be added (and, with which I would concur).** Would an aggregate offering limit be appropriate, such as

$250,000, as recommended by the 2017 and 2018 Small Business Forums? **Yes.** Should such a micro-offering be available to non-accredited investors? **Yes.** If so, should there be a

limit on the number of non-accredited investors that may participate? **If, and taking into account my conclusion that most lower middle-market companies are about the size of an infantry company, say 125-150, one which would permit, particularly in these times (and discounting a Rule 701 plan for this purpose), one which would permit all employees and some others, including friends, family, customers, suppliers, and others in one or more networks. 35 is way too small and accredited investors typically demand rates of return which the bulk of businesses cannot afford and should not agree to pay.** Should there be any limit on how much a person can invest in any one offering or in all such offerings during a specified time period? **Same recommendation as above: Accredited should be unlimited and non-accredited tied to the greater of set limits on assets or income.**

65. Should we extend federal preemption to secondary sales of Regulation A or Regulation Crowdfunding securities, for example, by expanding the definition of "qualified purchaser"? **Yes.** Several Small Business Forums, as well as the Commission's Advisory Committee on Small and Emerging Companies, have recommended that the Commission provide blue sky preemption for secondary trading of securities issued under Tier 2 of Regulation A.[309]

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Should we preempt state securities registration or other requirements applicable to secondary sales of all securities initially issued in a Tier 2 Regulation A offering? Should we preempt state securities registration or other requirements applicable to secondary trading of securities only of Regulation A Tier 2 issuers that are current in their ongoing reports? Should we similarly preempt state securities registration or other requirements applicable to secondary trading of securities of initially issued in a Regulation Crowdfunding offering? Should such preemption only apply if the Regulation Crowdfunding issuer is current in its ongoing reports? **Yes.** What other steps should we consider to improve secondary trading liquidity of securities exempt from registration under Regulation A or Regulation Crowdfunding? **Consider permitting an approach such as what Amazon offers online by its own sellers and third parties selling used goods. Cannot regulatorily compliant easy to use systems (with requisite verifiability) be adopted.**

66. Should we permit crowdfunding issuers to use crowdfunding vehicles as proposed? **Yes.** Would this approach encourage crowdfunding issuers to offer voting rights or other advantageous terms to investors**? In some cases, it depends. In small companies, unity of command being paramount, non-voting stock and LLC interests are frequently prevalent. Sometimes voting is permitted on major actions. There are too many variables to predict when, and under what circumstances, voting rights will be provided. Tax status matters. S corporation rules preclude multiple classes of stock; voting and non-voting corporate shares or LLC interests can each be, and frequently are, issued, though each is a different type of the same class.**

67. Should we require registered investment advisers to manage crowdfunding vehicles? **You have made the right decision in proposing no investment adviser be required.**

Would there be a role for a registered investment adviser in light of the limited activities in which a crowdfunding vehicle could engage? **I can see none warranting the cost and hassle.** Would registered investment advisers find it practical to serve a role with respect to a crowdfunding vehicle? **Generally, no unless as a separate income source or loss-leader for other business.** Should we require an exempt reporting adviser to manage crowdfunding vehicles? No. Should we allow investment advisers to form funds for non-accredited investors that invest in multiple crowdfunding issuers? **Yes—diversification in such an alternative asset class is warranted yet need it be that only investment advisers be so permitted provided an investment adviser is employed to make the specific investment decision? Over more than 2.5 years (ending at the end of last year) there was a yearly average of 17 successful crowdfunding offerings per state out of 2.6 times that offered. A failure rate of about 60% just on fundraising, not to mention all those which considered yet did not get to the stage of filing a Form C. I haven't compared with the 2 law review articles on the historical failed SCOR attempts at helping small businesses, but it is clear that further regulatory adaptations, if small business equity funding is to be effective, permitting such an aggregation of funds would be a good start.**

68. The proposed rule includes several conditions designed to require that the crowdfunding vehicle serve the sole purpose of acting as a conduit for investors to invest in the crowdfunding issuer. Are these conditions appropriate? **Seemingly, yes.** Should a crowdfunding vehicle be permitted to engage in a broader range of activities? **Perhaps, yet this could evolve over time due to the complexity.** For example, should the rule provide that a crowdfunding vehicle must redeem or offer to repurchase its securities if there is a liquidity event at the crowdfunding issuer? **Yes, although, as implied, it could provide an**

option to be redeemed, yet this would require a determination of permitted alternatives and, if so, the then rights between the securities held by the vehicle and those held by the investor may need to vary. If so, how should the rule accommodate these activities? **In effect, by making it into a type of mutual fund focused on capital for small businesses and which, if costs can be minimized, a worthwhile endeavor.** Are there other purposes for which the crowdfunding vehicle should be permitted to receive compensation or use offering proceeds**?** **If other uses are permitted, compensation for those managing need obtain and conflicts, and fiduciary obligations, will need be addressed** Should a crowdfunding issuer be required to pay the expenses associated with the formation, operation, or winding up of the crowdfunding vehicle? **Yes, though there could, and perhaps should, be reimbursement permitted. If the issuer files a chapter 11 or chapter 7 action, investment vehicle mechanics will likely be of secondary concern.** Should anyone else bear these costs? Should any compensation paid to any person operating the crowdfunding vehicle be paid solely by the crowdfunding issuer? **Yes, though provision should be made for reimbursement from funds recovered (reimbursable to the issuer if funds are available) for any receiver or person who steps in to manage such vehicle.** Should we include any additional restrictions? **Probably.** Are there any other issues that could arise if we allow the use of crowdfunding vehicles in Regulation Crowdfunding offerings, as proposed? **Probably and suggesting, after analyzing and discussing the comments amongst yourselves, adopting an initial rule upon which you can build.** Would legislative changes be necessary or beneficial to permit crowdfunding vehicles to engage in a broader range of activities, pay compensation to any person operating the crowdfunding vehicle, or include any additional restrictions on the operations of the crowdfunding vehicle? **Probably, yet these could be had over time.**

69. The proposed rule includes several conditions designed to provide investors in the crowdfunding vehicle the same economic exposure, voting power, and Regulation Crowdfunding disclosures as if the investors had invested directly in the crowdfunding issuers. Are these conditions appropriate? **While limiting, they are a start. But yes, crowdfunding vehicles which can invest in crowdfunding offerings should, in the near future, be permitted under the Regulation Crowdfunding regime.** Should a crowdfunding vehicle be allowed to issue multiple classes of securities in the event that the crowdfunding issuer has multiple classes of securities? **Yes.** Would legislative changes be necessary or beneficial to permit a crowdfunding vehicle to issue multiple classes of securities? **As you have outlined, seemingly not.** Should the crowdfunding vehicle and the crowdfunding issuer be deemed co-issuers for purposes of the Securities Act, including that Act's antifraud and liability provisions? **Probably, as long as there is no differentiation in securities though it raises the question illustrated by this example: If 1 investor in the vehicle claims fraud, files suit against both the vehicle and the issuer, and gets a judgment a judgment against both, does that mean that, upon, say, a sale of the issuer, that prior to any distribution to the other vehicle investors, that the judgment need be satisfied in full? What about appeals and costs of appeal? Delaware law, requiring retaining sufficient assets to satisfy claims prior to liquidating and distributing its assets, would result in a distribution to the vehicle having taken into account the funds withheld by the issuer. Yet would the vehicle need retain a like amount before it can distribute funds? What other costs would need be incurred, by whom, at what points, and with what effects?**

70. Would the proposed requirement that the crowdfunding vehicle maintain a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer

securities it owns and the number, denomination, type and rights of crowdfunding vehicle securities outstanding provide an investor in the crowdfunding vehicle the same economic exposure as if he or she had invested directly in the crowdfunding issuer? **My earlier example of non-voting securities poses this problem for your resolution: If all securities for the investment vehicle are to have the same voting, and it is non-voting, does your existing regime adequately cover the entity law requirements for actions needed to be taken by the entity?** Are there any changes we should make to achieve this objective more effectively or to address the manner in which a crowdfunding vehicle may hold crowdfunding issuer securities? **Yes, both by way of your following example and in any way needed to ensure there is a structure which can handle the vehicle managerial needs (to the extent it does not) in the case of non-voting stock or interests.** For example, in the case of a stock-split by a crowdfunding issuer, should we permit a crowdfunding vehicle to maintain its current capitalization structure on the condition that it otherwise maintain the same economic exposure for its beneficial owners to the stock-split securities of the crowdfunding issuer? **Yes.**

71. The crowdfunding vehicle would be required to seek instructions from its investors with regard to two matters: (i) the voting of the crowdfunding issuer securities it holds; and (ii) participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer. The crowdfunding vehicle would be required to vote the crowdfunding issuer securities, and participate in tender or exchange offers or similar

transactions, only in accordance with instructions from the investors in the crowdfunding vehicle. Would these requirements effectively pass-through any voting rights associated with securities issued by crowdfunding issuers and the ability to participate in tender or exchange offers or similar transactions? **Without research, seemingly**. Should the rule refer to additional types of transactions? **Yes, appraisal rights.** Would these requirements impact an issuer's willingness to use a crowdfunding vehicle, as the issuer would still indirectly be required to obtain consent or approval from numerous investors? **Maybe, yet it appears the trade-off need for the investment vehicle-related benefits.** Operationally, how would crowdfunding vehicles comply with this condition? **Differing entity level documents which incorporate the required structures yet, based upon a cursory analysis, they would still need entity specific governance provisions generally, not to mention the non-voting scenario in the one class yet voting and non-voting scenario.** Should the rule provide that a crowdfunding issuer may obtain proxies or investors' pre-approval with respect to certain (or all) matters? **Yes, yet that then imposes various non-ministerial actions unless narrowly tailored.** Should the rule provide more flexibility? Yes. For example, should the rule permit a crowdfunding vehicle to disclose to its investor at the time of its initial offering that the vehicle will cast all of its votes in accordance with the instructions of a majority of its security holders, rather than using pass-through voting as proposed? **Yes, though the same liability concerns remain.** Would legislative changes be necessary or beneficial to provide the crowdfunding vehicles additional flexibility with respect to voting rights and the distribution of information? **Concerns relative to federal preemption insofar as state entity law presumably have been addressed.**

72. Upon receiving all of the disclosures and other information required under Regulation Crowdfunding from the crowdfunding issuer, the crowdfunding vehicle would then be

required promptly to provide such disclosures and information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary. Would these requirements address any concerns about investors and potential investors in a crowdfunding vehicle receiving regular information from the crowdfunding issuers? **Yes, to the extent state fiduciary law, information provided, and any other requirements do not dovetail.**

73. The crowdfunding vehicle would be required to provide to each investor (i) the right to direct the crowdfunding vehicle to assert the rights under state and federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and (ii) any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer. Would this effectively preserve state and federal law rights for shareholders and provide shareholders with the necessary information to determine whether to direct the crowdfunding vehicle to assert such rights? **Seemingly, not without a conclusive presumption, tolling, and such other presumptions or actions which might be built into the rule to address needed state law rights of each investor in each issuer and vehicle in a way which preserves the intended pass-through rights regardless of the action and inaction of those responsible for management of each of the respective entities.** Is this condition appropriate for crowdfunding vehicles which, unlike collective investment vehicles generally, would serve the specific and limited purpose of functioning solely as conduits to invest in businesses raising capital through the vehicle under Regulation Crowdfunding? **Because of the increased crowdfunding amounts, and a vehicle—the proposed one--through which such investments might be made for promising entities, those who likely see value are just as likely to develop a form, and one or more states of choice, to design compliant organizational templates.** Operationally, how would crowdfunding vehicles comply with this condition in practice? **As per my comments above, if understood correctly, through entity organizational templates incorporating mandated features (though I remain concerned about a seeming rub in the ways mentioned).** In lieu of this condition, would a crowdfunding vehicle's disclosure to investors in writing of any differences that its investors would experience by investing indirectly in the crowdfunding issuer through the crowdfunding vehicle sufficiently address any concerns about a crowdfunding vehicle affecting an investor's rights under state or federal law? **Probably, yet the mechanics and funding for vehicle**

operations will likely require, from an operational standpoint, a separate vehicle account with funds deemed sufficient for such purposes.

74. Should we, as proposed, require crowdfunding issuers and crowdfunding vehicles to jointly file a Form C? **Seemingly the most efficient, so yes.** Alternatively, should we require that each file a separate Form C or only require the crowdfunding vehicle to file a Form C? **No, though any differences between the two (by way of narrative to address concerns above) will have to be clearly set out as part of the filing.** What would be the advantages and disadvantages of requiring separate Forms C to be filed? **Limiting my comment, the cost, likelihood of confusion, and hassle warrant a single filing.** Should the application of the Regulation Crowdfunding offering limit be revised in light of the requirement to jointly file a Form C? **If needed to address separate administrative and entity level concerns and processes of the crowdfunding vehicle.**

75. The proposed rule would require a crowdfunding issuer that is offering securities through a crowdfunding vehicle to file a separate Form C if it wanted to also directly offer its securities to investors. Should we instead permit such a crowdfunding issuer to offer its securities directly to investors on the same Form C the crowdfunding vehicle uses to offer its securities? **Not unless it can be both designed and implemented in a manner highly unlikely to cause confusion.** If so, are there any restrictions or disclosure obligations we should implement to avoid investor confusion? What issues could arise if crowdfunding issuers were allowed to simultaneously offer on Form C in this way?

76. A crowdfunding vehicle may constitute a single record holder for purposes of Section 12(g), rather than treating each of the crowdfunding vehicle's investors as record holders as would be the case if they had invested in the crowdfunding issuer directly. Is this treatment appropriate? **Yes, it eases record-keeping, capital structures, and entity development in**

a seemingly permissible manner. Should each investor in the crowdfunding vehicle be treated as a separate record holder for purposes of Section 12(g)? **No.** Would legislative changes be necessary or beneficial to address the treatment of the crowdfunding vehicle under Section 12(g)? **Legislative codification of the proposed rule treatment would address potential class and other actions.**

77. Should the Commission further address the status of a crowdfunding vehicle complying with the proposed rule for purposes of the definition of broker under Section 3(a)(4) of the Exchange Act or dealer under Section 3(a)(5) of the Exchange Act, and persons operating such crowdfunding vehicle**?** **A regulatorily conclusive presumption at some point statutorily codified may be helpful.**

78. Should we harmonize the limitations on the types of eligible securities issuable under Regulation Crowdfunding with Regulation A as proposed? **While simplifying the marketplace, I am not in favor. It assuredly destroys the ability to quickly adapt based upon the marketplace.** If so, what would be the effect on issuers, investors, and the market of limiting these categories of securities? **Likely reduction in capital to be raised compared against what it otherwise would likely to be and increasing ability of large companies to employ and allocate people without regard to various other stakeholders who likely would better benefit otherwise. In short, decreased competition, limited access to capital, robotic ever-increasingly correlated investments.** In the alternative, should we modify Regulation Crowdfunding only to exclude particular security types, such as SAFEs? **Yes, absolutely and a good riddance. Having studied SAFEs, from their apparent Y Combinator origins onward, I have, since then, seen but a solitary one about which I thought rose to a level of fairness, not**

to mention otherwise compliant with securities laws notwithstanding their apparent de facto use throughout the country. Additional proscriptions can be added if and when a type, in the way drafted and utilized, has or is likely to become problematic.

79. If the popularity of SAFEs is in part due to a desire by issuers to avoid a complicated capitalization table, would our proposed amendments permitting crowdfunding vehicles to use Regulation Crowdfunding appropriately alleviate that concern? **Seemingly in part, from the cap table itself,** Are there other reasons why issuers issue SAFEs or other security types in Regulation Crowdfunding offerings that we should be aware of when considering whether to exclude particular security types? **While you most likely are aware elimination or minimization of, pending issuance of equity in the form of shares or LLC or other interests: voting rights, access to information, limitations on management compensation, limitations on restrictions on other major and minor entity actions, appraisal rights and the like, and the ability to create a perception that the enterprise value, and its equity value, is and is likely to be much, much in excess of what any sophisticated purchaser is likely, but for a likely gamble, to ever see (plus the emotional appeal of a short-form document from a selling standpoint).**

80. Should we amend Regulation A as proposed to include an eligibility requirement that requires Exchange Act reporting companies to be current in their Exchange Act reporting for the two years before filing an offering statement?

81. Should we revise the bad actor look-back provisions in Rule 262(a) of Regulation A and Rule 503(a) of Regulation Crowdfunding as proposed? **Yes.**

82. Should we keep any of the current bad actor look-back provisions centered on the time of filing rather than the time of sale as we are proposing to do for 20 percent beneficial

owners? Should we do the same for any covered persons other than 20 percent beneficial owners?

83. Instead of disqualifying Regulation A or Regulation Crowdfunding issuers affected by disqualifying events that first arise or occur during an ongoing offering, should we allow such issuers to continue the offering but require them to disclose the disqualifying event, and provide investors with the option to cancel their investment commitments and obtain a refund of invested funds? Yes. Would such an option be difficult for issuers to administer? **Perhaps, yet it insulates the entity as a whole while providing affected investors reasonable protection and remedy.**

84. Should we, as proposed, revise the language in Rule 503(a) to more closely track the requirement in Rule 262(a) of Regulation A by including "any promoter connected with the issuer in any capacity at the time of filing, any offer after filing, or such sale"?

85. Are there any anticipated additional costs of verifying the bad actor status of covered persons under Rule 262(a) and Rule 503(a) with a look-back period based on the time of sale instead of the time of filing? If so, would those costs be significant to the average issuer in Regulation A and Regulation Crowdfunding offerings? **I defer to those at CrowdCheck or others with regard to additional costs.**

86. Would the proposed amendments facilitate issuer compliance and enhance their ability to access capital markets and meet their financing needs?
87. Would an alternative integration approach achieve greater capital formation benefits? If so, which one? Would it impose additional costs?
88. Would the proposed approach to integration allow issuers to reduce their compliance costs or other costs of raising capital? Would the proposed approach to integration facilitate transition to a registered offering for issuers that previously relied on offering exemptions? Would the proposed approach to integration allow issuers to transition more easily among offering exemptions?
89. Which categories of issuers would benefit the most from the proposed approach to integration? Would the proposed approach to integration benefit smaller and younger issuers and promote competition?
90. Would there be costs to investors as a result of the proposed approach to integration? What would those costs be? What categories of investors would be most affected? What factors could mitigate such costs? Would an alternative integration safe harbor or guideline reduce costs to investors? If so, which one?

91. What would be the costs and benefits of shortening the period in the integration safe harbor to 30 days, as proposed? What would be the economic effects of an alternative time period, such as 15, 45, 60, or 90 days? What would be the economic effects of eliminating the waiting period entirely?

Request for Comment

92. What are the economic effects of the proposed "demo day" amendments? **Over time, likely substantial as networks, including, perhaps most significantly, city and county based.** Would the proposed amendments encourage greater reliance on "demo days"? **Yes, particularly remotely.** Would the proposed amendment benefit issuers and investors? **Yes, by permitting issuers and investors alike to economically leverage their respective interests and networks.**

93. Should we prescribe a definition of general solicitation that either narrows or broadens the scope of that term? **As indicated elsewhere, carve out general solicitation from proscriptions for Regulation CF issuers.** If so, how should we define the term, and what would be the economic effects of adopting such a definition? **Not knowable other than the probable correlation between size of the universe of restrictions and the total number of investments made.**

94. Would extending the option to test-the-waters about a contemplated Regulation Crowdfunding offering, as proposed, benefit issuers? If so, how? Would it impose costs on investors? If so, which costs? How could such costs be mitigated?

95. Would extending the option to test-the-waters about a contemplated exempt offering, as proposed, for issuers still determining the offering exemption they plan to rely on, benefit issuers? Which issuers would benefit the most from such an extension? Would it impose costs on investors? If so, which costs? How could such costs be mitigated?

96. Which factors might increase the utility of the proposed amendments to issuers?
97. What would be the economic effects of the alternative of permitting test-the-waters communications for Regulation Crowdfunding issuers without a filing requirement? Would it result in costs to investors?
98. Would issuers benefit from the proposed amendments specifying that oral communications are permitted in Regulation Crowdfunding offerings once the Form C is filed? What would be the costs and benefits of the alternative of expanding the scope of permissible advertising or not limiting the scope of permissible advertising?
99. What are the economic effects of the alternative of rescinding the non-exclusive list of verification methods?
100. What are the economic effects of the alternative of allowing issuers to establish that a previously verified purchaser remains an accredited investor, provided that an investor makes a written representation to that effect, on a time-limited, rather than indefinite, basis?

101. What would be the benefits of scaling disclosure requirements for sales to non-accredited purchasers in Rule 506(b) offerings by non-reporting issuers, as proposed? Would the proposed amendments encourage additional non-reporting issuers to sell securities to non-accredited investors in Rule 506(b) offerings? Would sophisticated non-accredited investors participating in such offerings incur costs as a result of the amendments waiving the audit requirements in offerings up to $20 million?
102. What would be the costs and benefits of the alternative of extending scaled disclosure requirements to non-reporting issuers in Rule 506(b) offerings up to $75 million that involve sales to non-accredited investors?
103. What would be the costs and benefits of alternative approaches to reducing the costs of

disclosures to non-accredited purchases in Rule 506(b) offerings, such as conditioning the disclosure requirement on the number or amount of sales to non-accredited investors rather than aggregate offering size or waiving the audit requirement irrespective of offering size? Would such alternative approaches result in additional investment opportunities for sophisticated non-accredited investors? Would such alternative approaches result in a decrease in investor protection? What additional investor protections (such as investment limits) would effectively mitigate potential costs to investors in this scenario?

104. Would Regulation A issuers benefit from the proposed option to redact certain information from material contracts and similar agreements? What would be the costs to investors and other market participants, if any?

105. Would Regulation A issuers benefit from the proposed option to incorporate previously filed financial statements by reference? What would be the costs to investors and other market participants, if any?

106. What would be the costs and benefits of the alternative of allowing Regulation A issuers to rely on forward incorporation by reference, subject to the conditions imposed on SRC issuers that rely on forward incorporation by reference in Form S-1?

107. What are the economic effects of the proposed increases to the offering limits under Regulation A, Regulation Crowdfunding, and Rule 504? What are the likely effects of the

proposed changes on issuers, investors, and other market participants? Which categories of issuers are most likely to benefit from the proposed changes? Are the proposed changes likely to change the pool of issuers drawn to these offering exemptions? Are the proposed changes likely to affect intermediaries in these markets?

108. Are the proposed changes to Regulation A, Regulation Crowdfunding, and Rule 504 offering limits likely to promote capital formation? **Yes, though they would be enhanced through the suggestions I proffer.** Would the proposed changes improve access to capital for new issuers that are presently unable to access securities markets, or would the proposed changes mainly result in switching of issuers between offering methods? **Yes, in each case they will improve access.** Should we, as proposed, amend Form 1-A to allow non-public draft offering statements, amendments and related non-public correspondence to be made publicly available through the use of the EDGAR system, rather than requiring issuers to file such documents as exhibits to a publicly filed offering statement? **Yes.**

109. Would the proposed changes be likely to allow issuers to decrease their cost of raising capital under these exemptions? **Yes, for the reasons you discuss.**

110. What alternative offering limits should we consider for Regulation A Tier 2, Regulation Crowdfunding, and Rule 504, relative to the proposed limits of $75 million, $5 million, and $10 million, respectively? For example, should we instead consider adjusting those limits for inflation? What would be the economic effects of such a change on issuers, investors, and other market participants?

111. Should we consider the alternative of also amending the Regulation A Tier 1 offering limits? If so, what would be the economic effects of such a change on issuers, investors, and other market participants?

112. Would the offering limits as proposed to be revised introduce redundancies (for instance, between Rule 504 and Regulation A Tier 1)? If so, how should we address those redundancies? For example, should we eliminate any of the existing exemptions to promote greater harmonization? What would be the economic effects of such changes on issuers, investors, and other market participants?

113. What would be the costs and benefits of the alternative of scaling up financial statement thresholds in Regulation Crowdfunding in proportion to the proposed change in the offering limit (from $107,000, $535,000, and $1.07 million to $500,000, $2.5 million, and $5 million, respectively)?

114. What would be the costs and benefits of the alternative of waiving certain disclosure requirements (*e.g.*, review and/or audit of financial statements, progress updates, and periodic reports) for issuers in the smallest Regulation Crowdfunding offerings (*e.g.*, up to $1 million)?

115. What would be the economic effects of the proposed changes to the Regulation Crowdfunding investment limits? Would the proposed changes to remove the limits on accredited investors benefit issuers and investors? Would the proposed changes to use the greater of, rather than the lesser of, standard with respect to a non-accredited investor's net worth or annual income benefit issuers and investors? Are the proposed changes likely to promote capital formation? Would the proposed changes impose costs on issuers, investors, and other market participants?

116. What would be the economic effects of the alternative amendments to Regulation Crowdfunding investment limits, such as adjusting the investment limit thresholds in proportion to the adjustment in the offering limit; using different (lower or higher) numerical thresholds for non-accredited investor investment limits; or aligning non-accredited investor investment limits with those in Regulation A Tier 2? Would such

alternatives benefit issuers, investors, and other market participants? Would such alternatives impose costs on issuers, investors, and other market participants? What alternative investment limit amendments should we consider, and what would be the economic effects of those alternatives?

Request for Comment

117. What would be the costs and benefits of extending eligibility under Regulation Crowdfunding to crowdfunding vehicles as proposed?

118. What would be the costs and benefits of the alternative of imposing additional conditions on crowdfunding vehicles? What would be the costs and benefits of the alternative of eliminating or revising some of the proposed conditions?

119. How would the proposed amendments to eligible security types affect Regulation Crowdfunding issuers, investors, and other market participants?

120. What would be the costs and benefits of a different set of eligible security types?

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121. What would be the costs and benefits of excluding reporting companies that are not current in Exchange Act reporting obligations from eligibility under Regulation A, as proposed?

122. What would be the costs and benefits of imposing additional Regulation A eligibility conditions on issuers that are subject to Exchange Act periodic reporting obligations, such as timeliness in periodic reporting?

123. What would be the costs and benefits of extending the disqualification lookback to the time of sale in Regulation A and Regulation Crowdfunding offerings as proposed?

124. What would be the costs and benefits of the alternative of extending the disqualification lookback to the time of sale for all covered persons, including beneficial owners, in Regulation A and Regulation Crowdfunding offerings?

RESOURCES

In no particular order, a portion of recent and selected other resources and related comments affecting, mirroring, or illustrating portions of, and/or bases for, some of my comments:

Concerning General Solicitation:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3548312

Effects of Interconnected Systems: The work of the Santa Fe Institute including, https://www.complexityexplorer.org/explore/resources/668-a-crude-look-at-the-whole; http://emk-complexity.org/guide/links.html

Affecting the Need for Innovative Small Businesses to Fair Access Capital:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3562983

Deliberation, including within any governmental agency, enhances confirmation bias:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3602417

Exhibiting the Benefit Of Trials (such as through regulatory experimentation even if randomized controlled trials cannot be had): https://voxeu.org/article/alleviating-poverty-experimental-research-2019-nobel-laureates

Recent Studies illustrative of conditions, or owners' perceptions of conditions:
https://www.middlemarketcenter.org/middle-market-research-reports-full-research/coronavirus-pandemic-and-middle-market-companies;
https://www.nfib.com/assets/SBET-April-2020.pdf;

Pepperdine 2020 Capital Markets survey: (This can be obtained through https://bschool.pepperdine.edu/institutes-centers/centers/applied-research/research/pcmsurvey/form/)
I note that while, "access to capital" was third highest concern (at 15%), my belief (the survey not stating how it defined, if at all, the definition of "capital") is that most small business owners picture access to capital as the availability of commercial bank loans and not investment equity capital (or the sort of debt [e.g. second lien, mezzanine, convertible, etc.] available to middle-market and above companies; they have, in their thinking, eliminated the thought of viable investment capital from others). Further, not being able to envision (based upon their own historical views of the realistic availability of investment capital for businesses of their respective size and type) any sort of universe which could be different—and therefore no appreciation of the systemic changes which could be available to them based upon an expansion of community and networks based crowdfunding which permits of general solicitation or, as proposed though likely far less effective for the purpose investment capital access. While, of course, the spam effect, behaviors of all of

us resulting from family, friends, distant acquaintances, and strangers asking for our time, attention, and dollars for pet investments, the opportunity for financially unsophisticated investors to make many more ill-advised investments, the financial literacy of the general population would likely improve over time through such systemic changes, the opportunity for investors to meaningfully support their communities (with, what I would submit, would be a higher probability of not losing most or all of their investment based upon network and local effects, even though the investment may not achieve any forecast provided), the protections extant in the Form C fundraising process, the annual dollar investment ceiling under Regulation CF for each non-accredited investor, and the seeming probability that the same investor will not make the same investing mistake, year in and year out, over the remainder of his or her life (and even if she or her does, will not the SEC have accomplished its mission through adoption and an acceptable level of enforcement, or does the SEC's mission require that all such investors be ostensibly protected against their own potential investment decisions?). Having, at the outset of permitted investment crowdfunding some years back, reviewed each of the first hundred or so Form C filings in detail, concluding, of course, that they made, respectively, either no, some, or very good sense, most fell into the categories of other than very good sense as I viewed it. One community-based filing which sticks in my mind, which seemed to make good sense, did not seem unfair to the investor providing a forecasted (and promised) a modest return and was geared towards improving a local community: an optic fiber cable laying company in South Dakota offering a debt security bearing at a set interest rate and terms, which company had a respectable track record. While this particular company was successful in using Regulation CF (as have the small number of others in the aggregate over these past several years), in my judgment most ordinary businesses with similar prospects and track record, without the appeal of a then new community technology, fiber optic cable, even with the proposed Demo Days (which will provide further access) will lack reasonable investment capital access without the ability to generally solicit both accredited and non-accredited investors. (Should a short trial, of sorts, be needed and regulatory flexibility permit, each portal could be allocated a set, though increasing each month, number of Regulation CF filings for which such general solicitation would be permitted. Allocations for such slots, for which no or slight additional portal charge would be permitted with the allocation utilization by each portal made on such basis as a given portal may determine in turn permitting experimentation.)

Generally, as the following work shows, intelligently designed complex systems are more **sustainable. A paper which illustrates a number of complexity and network relevant-to-**
the-proposed-rule principles follows. When one further considers the data from the Brau SCOR analyses (showing that more complete and coherent offerings [scaled to the business realities and investor audience] have both a higher probability of successful fundraising and are presented as having more complex and complete realistically perceived business plans) more complete investment proposals, if containing simplified

distilled summaries and good back-up data, seem more likely to have a higher probability of both successful capital-raising results, better business success and investor returns, a lower failure rate (and therefore better investor protection) and, given that (while I have not seen Regulation CF results using the same metrics as the Brau studies though would assume a high correlation if one was made) such non-accredited investors were able to differentiate amongst various offerings in deciding whether, if at all, to invest. https://www.researchgate.net/publication/11398218_Carlson_J_M_Doyle_J_Highly_optimized_tolerance_a_mechanism_for_power_laws_in_designed_systems_Phys_Rev_E_Stat_Phys_Plasmas_Fluids_Relat_Interdiscip_Topics_60_1412-1427

Based upon the results of this 2017 St. Louis Federal Reserve related study, would a similar increase in allocation of investment funds to Reg A+ and CF investments likely have a significant effect over time on U.S. annual GDP growth? https://research.stlouisfed.org/wp/more/2017-035

As a business attorney to small and lower middle-market companies for going on 40 years, I have concluded that no business is or can be, regardless of assets which could be made available for such purpose, in compliance with all laws and regulations, including the securities laws, affecting it. As a formal criminal prosecutor, and an attorney who enjoys dealing with complexity, it seems to me highly improbable that any prosecutor, or securities regulator, could not find grounds to prosecute and/or seek other remedial action from any company regardless of size or legal representation. It thus seemingly becomes mission essential for the SEC, as recognized, to take into account when adopting rules which are part of a system, to develop a sustainable complex design structure, though provide for the simplicity in execution needed for the average small business (akin to the average driver with regard to the operation of a motor vehicle) and small (non-financially sophisticated non-accredited) investors. The proposed rule seems to employ this principle except insofar apart from the simplicity which could be improved by focusing on investor protections at time of sale (which exist) instead of requiring (through non-general solicitation) a throttling of practical utility. While we all are aware of regulatory burdens, sometimes reviewing a reminder of real-world economic and other effects from systemic regulatory effects is helpful. https://www.mercatus.org/publications/regulation

See also, https://www.mercatus.org/system/files/mclaughlin-myths-regulation-mercatus-special-study-v1.pdf

The following 2019 paper has utility in showing certain benefits to business owners of well thought-out plans and seeking, through their sources and uses of funds, more rather than less funds—provided of course that it is sensible and there is a realistic opportunity to solicit https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3454376

This paper, when coupled with the St. Louis Fed paper referenced above, illustrates the probable effects of the proposed rule changes (particularly if able to be coupled with elimination of the general solicitation proscription for Regulation CF) to further accelerate sustainable macroeconomic GDP growth. What I suggest should also be extrapolated (as both a partial cause and effect) from more capital access to small and lower middle-market businesses, is the potential for emerging small-world scale free business networks, a lower expected VC return on an investment, and a higher success and sustainability rate for

small and lower middle-market businesses (than, say, as was illustrated by Ghosh's work on the subject), to, over time and amongst but a few, the benefit of the small investor, small company, local communities, and the fabric of the nation and in a manner consistent with the SEC's mission. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3512638

Dovetailing with my comments relative to non-voting equity is this study from Germany in 2020 highlighting potential price effects relative to various investment rights. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3474190

The concept of critical mass and networks underlies systems and sustainability—and seemingly ties directly to much of the work of the SEC does including the Proposed Rule. An excellent foundational work discussing each is Critical Mass: How One Thing Leads to Another, Philip Ball, Heinemann (2006). One can extrapolate the need for a clear and achievable path for the smallest of businesses to have viable access to investment capital over time, size, and relative success to permit a reasonable opportunity for a path to achieve and maintain a sufficiently large critical mass. Examples from each of fintech and lawtech illustrate, indirectly, the need for small and lower middle-market businesses to have a realistic probability to access their own networks (such as community, industry, religious, and the like non-accredited investors contrasted with generally highly networked financially and tech sophisticated fintech and lawtech entrepreneurial companies). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3520533 While, as a December 2020 announced Routledge paper by Ryan Clements (accessible on SSRN) shows and which compares Canadian and US Crowdfunding, current literature tends to focus on fintech, rapidly scalable, and blockchain based offerings, the more significant benefits (to investors and small businesses as a whole), as I later note, likely lies unseen—to prosaic average small businesses, small investors, and communities.

While well-financed companies typically have the resources to optimize their respective capital structures (as this paper reflects: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3354975) most all small businesses with products or services for which there will be sufficient demand to support their growth require investment capital to propel such growth, perhaps warranting no debt over time whatsoever and which, for many small businesses, Regulation CF, with the benefit of the Proposed Rule, would better permit of, particularly with the additional changes I have suggested. (See, for example, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2151156 .)

While there is available generally relevant data from which to extrapolate reasoned conclusions to many of your questions for which you seek comment, for many others, regardless of some or mixed potentially relevant evidence and studies, including from a number I have referenced, there can be little assuredly reliable highly correlated data to convincingly assure that the conclusions are sound; the variables and conditions over time are too many and relevant historical data is too limited. So it is tough, indeed, for each member of the staff and the Commission to do other than make reasoned conclusions, go forward, take actions, and then periodically adjust (as you are doing) the regulations to adapt to real world conditions and experiences. As the following paper points out, realistic

modeling of the alternative and proposed rule changes is most problematic. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3542299 While I took not the time to locate supporting evidence, speed of adaptions through beneficial and somewhat experimental rule changes, based upon applying reasoned judgments from what existing data does exist, broad experience, and judgment is frequently most useful to investors and businesses alike.

Of course, as noted, biases and human judgment need be considered with regard to both investor protection and the need for issuer-related rules. See, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3565949 and also https://ssrn.com/abstract=3608536 .

A feature of VC firms is that they historically have been able to secure far more investor friendly terms than would likely be available with a regulatory structural design (fostered by the proposed rule change) which permits a more robust small business investment capital availability. https://www.nber.org/papers/w26115 How do businesses develop an entrepreneurial ecosystem (other than fintechs and lawtech start-ups in NY, SF, Austin and such other highly networked hubs) if they are structurally prohibited from effectively tapping into the only existing networks to which they have reasonable access: community, business, etc.? Without word-of-mouth effects which would be permitted by Regulation CF permitted general solicitation, I fail to see how there can be achievable capital access for small and lower middle-market businesses. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1129351

While there will be local bias in equity crowdfunding, I submit that the balancing effects illustrated by the SCOR related research, coupled, both initially and over time, with the issuers' knowledge that there will be adverse effects upon both of each issuers' reputations and their own social and other network individual relationships if such issuers do not prepare a seemingly sound offering, do not use best or commercially reasonable efforts to make the business successful, and does not use the same efforts to attempt to ensure that each investor's reasonable expectations are met, is more than sufficient to counterbalance the findings of unwarranted investor local bias. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555581

If increased access to capital for smaller businesses is desired, then the network effect (general solicitation and word of mouth) is likely more important than many other avenues which might otherwise be available under the existing and the proposed rule. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985690

Coupled with the benefits of network sharing (e.g. existing portal structures, linked-in, Facebook, etc.) and effects of scale, capital access and investor protect are each likely to benefit. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3604002

While current research from the Center for the Middle Market—Covid-19 does not reflect a current high need for investment capital does not, I suggest, akin to the Pepperdine

study, that the knowledge base of the survey participants as to what investment capital might be available through a Reg A+ or Crowdfunding offering, under the proposed rules (including such additional changes, such as general solicitation permissions, increased amounts, or otherwise). https://www.middlemarketcenter.org/middle-market-research-reports-full-research/coronavirus-pandemic-and-middle-market-companies It should also be kept in mind the non-validity of various surveys, including those as illustrated by the following paper: https://s3.amazonaws.com/real.stlouisfed.org/wp/2019/2019-021.pdf and, while balancing against the need for an acceptable level of investor protection, the need to take into account the realities of small business ownership and growth. https://www.mercatus.org/system/files/mclaughlin-small-business-covid-mercatus-v1.pdf . In this regard, many (otherwise sustainable) small and lower middle-market businesses, notwithstanding existing and prospective government aid, will, barring a speedy adoption of the Proposed Rule (perhaps inclusive of a further change permitting of general solicitation under Regulation CF to both accredited and non-accredited potential investors) will be needed by many businesses as they need investment capital for which no lender, given lack of collateral, will be willing to underwrite. (In no cases, whether with regard to this comment or any other, am I suggesting there will not be failed businesses, that there will not be bad offerings, or that the majority of businesses will not fail over time. I am saying that the Proposed Rule, and those further changes I suggest, provides a more appropriate balancing of the investor protection and access to capital.)

Adverse systemic effects argued by some commenters, by way of diversion of assets to smaller companies and networks, are most unlikely to materialize over time. The more likely effects would seem, with increasing capital invested over time under the Proposed Rule (as expanded), to be in the form of new networks supporting smaller companies (which, in turn, are connected to larger hubs) which would tend to have. over time, a very positive and robust result such that it will have been found to work in favor of small investor, small and medium businesses, participating accredited investors and the U.S. economy in general, and, in turn, result in most positive systemic effects. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3524299## It is unlikely that ever-precious water would continue to be consciously poured into a bucket with a hole in it if the size of the hole keeps expanding over time faster than the water availability and preciousness increases.

Dual class structures can have significant positive effects on the firm and, therefore, its investors in many situations.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3561716

While sovereign wealth funds have proliferated to further the availability of capital to VC backed investments, does not this also mitigate in favor of broadening access to the bulk of both companies and investors to permit early access to both those companies, albeit a minority, which later may be VC candidates for backing (due to profitability and scalability) as well as other promising companies regardless of their respective economic performance over time?
https://papers.ssrn.cohttps://papers.ssrn.com/sol3/papers.cfm?abstract_id=3566039m/sol3/papers.cfm?abstract_id=3572826

A current papers supporting investment crowdfunding:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3594496

This paper referenced below supports a conclusion that focusing on point of sale, and not proscriptions against general solicitation, better optimize the SEC's mission of investor protection and capital access. Investor behavior, pre-sale, such as by education, warnings on subscription documentation, or a short cooling or rescission period, to the extent current modes are insufficient, would each be better outcomes than a blanket prohibition.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606264

As fraud remains a concern, this recent paper tends to show that focusing resources to detect and prevent fraud on certain select metrics or factors more highly influencing probability of fraud, should tend to provide better systemic results for both investor protection and access to capital than simply a blanket prohibition of general solicitation.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3529662

Pre-Covid-19, very small businesses, by way of over-generalization for illustration, tended to sell for 2-4 times EBITDA (in each case adding back in money and benefits to the owner-operator above what the market would be to hire a person to perform her or his job), small businesses approaching or in the lower middle-market, 3 to 6 times EBITDA, lower middle-market to middle-market 4 to 8-10 times EBITDA. It always depends on the fractal—the company—involved, its landscape, and the hundreds or more variables involved and how a buyer sees it. This, of course, is meant to account for a risk-based return. Yet, if viewed by business sellers, who invariably believe, as sellers do, that they should get more for their business because at 4 times EBITDA that would provide the buyer an annual 25% return when the seller, after selling, could only invest the proceeds and expect, say, a 7% return. Without belaboring the process of seller-buyer negotiation, potential earn-outs, and the like, the business owner who wants to exit or achieve a level of financial liquidity, who may or may not have a second generation or trusted employees in the wings (who, in turn, may have visions for growth of the company), usually simply ends up, when confronted with the only viable current course of selling the company, then wants to maximize the price, as any sell or buy side intermediary would likely attest. (This is not to say that business owners do not have heartfelt empathy for employees, they usually do. However, it usually ends up either not a good fit due to size or business specific economics or too costly to establish and fund an ESOP or to, instead, fund a management employee buy-out, but rather sells to a third party.) Regulation CF Investment Crowdfunding (and to a lesser by number of companies, though higher in dollar investments, over time, Regulation A+) main benefit over time is likely to be other than the new start-up or the new fintech company, but rather for the then existing owners of the company who, under the existing Regulation CF and, though to a lesser degree, Reg A+, and existing transactional exemptions do not and would not have a viable path forward to exit and/ or fund future growth of a business because the availability of capital simply does not exist. As but an illustration highlighting how the existing VC, angel, PE and the like structures work in practice, no business owner I have ever represented in 40 years, unless she or he needs capital for growth which can warrant the current premiums

required for VC, angel, private equity or other such investor, is going to be willing to cut-a-deal, as would be the vernacular used, providing such returns on such basis except out of greed, fear, or concluding it is the best of other bad various options. That is because the only way for the particular investor to achieve such returns is to carve it up and sell pieces, off-shore jobs to cut costs, roll it into its own operations to increase sales and profitability through its systems, processes, and or markets, or other actions with similar, and disruptive, effects. This frequently results in borg-like results; the existing company, in only needed parts, will be assimilated into a new network, the rest jettisoned. While those advocating that such Schumpeter-advocated destruction betters investor protection and capital access, and while but in part agreeing (only to the extent that it can further successful adaptation), it ignores effects on other stakeholders (significant numbers of employees, suppliers, customers, their respective families, local communities and their retail and service tax bases and all those community or other network stakeholders who depend upon them). While these may have an effect on actions, judgments, and regulatory actions, an opportunity which is still missing and will continue (though be it somewhat better if you adopt the existing proposed rule) is still a viable market for which business owner direct solicitation is, I suggest, a prime, if not the only, remaining condition precedent.

Yes, minority deals do exist and are frequently seen, yet most owners bristle at the thought of the extractive terms, and time investment, usually accompanying such deals. The current marketplace in the small and lower middle-market niches, without regard to real risk premiums I would argue, almost always skews the terms in favor of those with capital (to the disadvantage of the owners and with the result usually adversely affecting the employees and adding to the wealth disparity index increases seen over the last 50 years). So, in the end, the owners choose not to grow or invest into their companies because the capital is not available. Or the owners choose to sell (whether to a PE firm or non-PE strategic acquirer) which, through cost cutting, oft decimates a segment of a local workforce and a community.

Even with adoption of the proposed rule changes, such changes are not likely to have a meaningful impact on most existing businesses or other than the most promising or sexy of the start-ups because a, if not the, remaining condition for a robust capital access landscape for such businesses will not have been created: a viable opportunity to access capital through their respective existing networks. This, in turn, requires more than what is and is proposed to be permitted, namely the ability to generally solicit such networks. In the life cycles of small businesses, events frequently happen for which currently unavailable investment capital is needed. No reasonable access to such capital will likely ever exist without the ability to solicit non-accredited investors directly. Such situations may be: i) existing owners not being willing to further risk, or not having, their own personal capital; ii) owners' unwillingness to sign personally for more loans; iii) owners' decisions to maintain a given lifestyle; iv) owners' whole or partial financial exits whether for personal reasons (health, age, security) through a liquidity event requiring third party investment capital; v) a temporary curable downturn in the market; v) over-leverage; vi) a material supplier or customer defaulting on obligations which can only be cured through investment capital; vii) a business event occurred or decision was made which caused a

one time (or resultant) loss to the company; and viii) too numerous of others to cover here. Many historical, current, and prospective business failures have, do, or will result from many of the foregoing examples in businesses which businesses, with reasonable access to investment capital, likely can and would not only survive but have a reasonably high probability of providing, over time, reasonable returns to those who would provide such investment capital, whether through dividends, future sale of such companies, or new investors which permit of redemptions of existing investors. While no highly correlated statistical data strongly supports my conclusion, I am aware of no such data supporting the opposite conclusion. Assuming such data simply does not exist, I should think it because no such market from which to draw such data currently exists. My judgement is this: should you see your way to permitting general solicitation of non-accredited investor permission, you are likely to have created the further needed regulatory condition required to permit warranted access-to-capital market most needed by the spectrum of affected business sizes. The remaining Regulation CF protections should satisfactorily provide for a reasonable and acceptable level of investor protections. Consider these questions: Has not our nation become fragmented and seemingly siloed? While technological advancements have resulted in longer life-spans, better and more effective medical care, a higher standard of living and so much more, has this not come at an expense of the fabric and human bonds of the bulk of our communities and social, work, school, religious and non-religious human networks? Isn't that what the well-researched data has shown? If so, how much of that might have to do with the factors noted, and more, resulting from 87 years of systemic well intentioned, with frequent beneficial effects, SEC actions to protect the financially naïve and the person of average or below means? And while the SEC and Congress, with Regulation D, with The Jobs Act, with the Proposed Rule has and continues to try to strike the right balance between investor protection and access to capital, is not it time to permit a most needed condition for the average person, the average investor, the average business owner, the opportunity to solicit, and be solicited by, the small and lower middle-market aspiring or existing business owner needing investment capital? Having set annual investment limits for non-accredited investors into Regulation CF investments, and set in motion a regulatory scheme with now more than modest operational experience involving registered portals, should not the non-accredited investor, regardless of naivete, have the opportunity, up to the set limit, to be directly solicited by anyone and make her or his own decision about whether to unfriend, hang-up, block, avoid, or just say no or, instead, to consider providing hard-earned resources to help, with some expectation of profit regardless of how reasonable, her friend, his employer, a community-based business, a church or non-church or military-related connection?

(Those who posit that the SEC is better advised to continue to take restrictive actions in the names of investor protection and systemic protection and growth counsel action which are in this commenter's mind likely to have unintended effects of accelerating the big getting bigger, the wealthy getting wealthier, the above average, average, and below the Piketty class of Super Managers, having less and less ability to foster their own lifetime well-being through economic networks within their range of potential achievement with there being fewer and fewer non-strategic or PE owned middle-market firms and

decreasing numbers of non-oligarchic family firms behaving, through family offices, in the same manner as PE and strategic acquirers, though likely somewhat more paternalistic. The poor will, until a guaranteed income and beyond, continue to get poorer. Entrepreneurship, except for unicorns and highly profitable scalable start-ups, will decline as local communities, apart from those located in those niche geographical hubs which can support, or be made able to support, the ever mass-increasing critical mass hubs fitting into the networks of big businesses, PE, and Family Office owned firms getting bigger.

While permitting general solicitation through Regulation CF will not, in itself, change the trend through permitting the creation of new alternatives, networks, and hubs. As the historical discussion involving the CBO and dynamic scoring, your changes will affect behaviors over time, with the probable results of such behaviors being the creation of new and building upon such existing small world networks, e.g. food supply business cooperatives, the Spanish Basque region founded Mondragon entities. It likely is a, if not the, critical 1st step, and not just what some might perceive as an equalizer or more leveling of a very unlevel playing field. It need not be a single, or a few, highly centralized hubs, Amazon, for example, that, while decreasing cost of goods to the small investor, hold such power that the cumulative effects of the combined growth of all such super-hubs is to leave, in the processes of an ever-more centralized creation and destruction, a hubris comprised of the lower socio-economic half or more of our small and lower middle-market population and small investors. Instead, I suggest that, though permitting general solicitation under Regulation CF will see small investor losses in its wake, the aggregate of these combined economic and investment losses over time are likely to be far less, over the same period, than their total gains resulting from both their direct individual investments and indirectly from the collective gains resulting from all such investments as measured by over-all standard of living, employment opportunities and employment security, total wellness, happiness, and longevity [i.e. over time, affecting non-accredited investors by increasing their total wealth and income and individual economic opportunities, decreasing the U.S.'s Gini ranking, increasing the various wellness indices for the U.S., increasing community and the stability of locales throughout the U.S. and the like, all of which should be considered in the totality of balancing competing SEC missions when considering regulatory changes with the potential for material systemic change effects]. While not part of my thinking as it has evolved over these past fifty years, there may be an added benefit to implementing such change now through permitting networks of employees or former employees, friends, family, communities, and other networks to, in the Regulated CF permitted increments generate sufficient momentum to provide funds, on a company by company basis, to be able to create the momentum and the dollar mass needed to keep a company in business and permit the small investors who invest to retain their jobs, materially help their communities and networks, permit a new company to start and small investors take such risks as they each may feel warranted, and, for those businesses where bankruptcy is assured, permit the existing company leadership to use such change to raise sufficient Regulation CF capital to buy the business from bankruptcy [with many of the likely investors potentially being its employees and their networks, customers, and those within the affected communities].)

For these, and much more than articulated in these pages, permitted general solicitation under
Regulation CF (with protections focused on the time of sale, warnings, non-accredited investor annual investment ceilings and access to information) is more than warranted. In this manner existing companies small and lower middle-market companies with , not just buyer entities acquiring technology, a few key people, licenses, those familiar with Reg A+ financing, a PE 50 or 60% leverage entity scraping a 20+ % targeted annual return for its governmental pension funds largest owners, but also to provide the real opportunity to provide more prosaic opportunities with, in many cases, lower risks to the average person. Low risk investments, such as those discussed in the following low-risk focused investments would not be limited to sophisticated players and really can be effectively designed, as I elsewhere mention, a modest low risk investment using Regulation CF https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3539452

Regulation CF investments, I suggest, should not be limited to just debt and equity, though, as I note, SAFE's, unless all material aspects of an investment are addressed, should be prohibited. (For example, in many SAFEs, no information is provided as to the following: What happens and when if there is no follow-on targeted amount or any amount raised? What limits are there on management compensation?) That said structured products, if made simple and complete, should be permitted in the landscape. Retail investors tend to like structured products.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544120 Say, for example, license fees or royalty streams. While each of those may have bankruptcy, creditor, or other business, legal or issues, those are capable of being addressed without blanket prohibitions. Like SAFEs, they could be better handled over time by banning, or encapsulating them with certain restrictions, as the regulatory need may be shown to be an abuse requiring specific investor protection.

A broadening of access to the crowdfunding asset class and a diversification of risk should mitigate in favor of permitting crowdfunding funds to themselves crowdfund (and while perhaps not intended, seem to fit in the remutualization concept advocated in the following paper: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552225).

Other resources:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559885
https://ssrn.com/abstract=3510134