June 1, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number S7-05-20

Dear Secretary Countryman:

We greatly appreciate the opportunity to comment on the recently proposed rules on Regulation Crowdfunding and harmonization referenced in File No. S7-05-20 (the "Proposed Rules").

NextSeed Securities LLC is an SEC-registered Broker-Dealer that has extensive experience facilitating Regulation Crowdfunding offerings across the US, and our affiliate NextSeed US LLC has been an SEC-registered Funding Portal since the very first day Regulation Crowdfunding was implemented into law in May 2016. In particular, we have historically focused our efforts working with main street small businesses that support the backbone of our economy and our local communities, with the belief and hope that Regulation Crowdfunding could become an extremely valuable financing tool for the growth of our local businesses and communities everywhere.

Over the course of our firm's history, we directly and continuously witnessed and experienced how difficult the current regulatory regime could be for small businesses as well as investors that sought to utilize. Our responses below are therefore guided by the key insights we have gained through our work, and we have sought to provide feedback on certain topics covered in the Proposed rules.

We respectfully request that the SEC consider our responses to the questions below as it seeks to finalize the Proposed Rules in a manner that will strengthen our private capital markets. Thoughtfully improving and harmonizing the further increase access to capital and opportunities for all hard-working entrepreneurs and investors, regardless of their size or location.

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Section B. General Solicitation and Offering Communications

Questions 19-22 addressed various topics about exemptions for "demo days", general solicitations, relevant definitions such as "pre-existing substantive relationship."

NS Comment: We believe "demo-day" presentations should not be considered general solicitation if made to groups of people that are interested in discovering investment opportunities.

As a matter of principle, we believe the regulators' focus should be on investor protections at the time of sale, rather than at the time of offer, because limiting access to information has become increasingly difficult due to the quick dissemination of information that cannot be completely controlled by issuers. Further, we believe that investment opportunities should be more readily available to the general public, and if they can demonstrate the requisite sophistication to meet the accredited investor definition at the time of sale, they should be allowed to invest as they see fit.

Relatedly, a "pre-existing substantive relationship" should be broadly defined. Present day communications and relationships can be formed and strengthened remotely given the advances in technology. This requirement also focuses heavily on the offer of sale restriction as a basis for investor protection. However, so long as an investor has received all investment materials and disclosures and is clearly capable of making an investment decision, such investor should be permitted to participate.

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?

<u>NS Comment</u>: Yes, underrepresented founders would be able to present to their own communities and raise funds for businesses that serve their communities that may not be as supported by traditional investment groups. Often, underrepresented communities simply do not have the "pre-existing relationships" with accredited investors and do not know how to make those connections independently, but if they were given a platform to pitch and speak about themselves and their businesses they may be able to access capital more efficiently.

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? Should we instead require the generic solicitation materials to be either filed with Form C or Form 1-A, or filed separately on EDGAR? Should we, as proposed, limit the filing requirement to offerings that commence within 30 days of the most recent generic test-the-waters communication? Should we instead impose the filing requirement irrespective of the timing of the subsequent offering or for some alternative timeframe?

<u>NS Comment:</u> Generic solicitation materials should not need to be filed with the Form C (or Form 1-A) because Regulation Crowdfunding provides for a 21-day public offering period once an offering is launched, during which time the investors have enough time to review the actual offering documents and terms. The fundamental purpose of enabling a testing the waters mechanism is to allow issuers to gauge realistic interest in their offering without incurring the substantial costs and efforts of a formal campaign launch. As such, there should not be unnecessary obstacles for this type of process. However, if the major concern is the factual accuracy of a general solicitation effort within a short period of the actual formal offering, then it may be beneficial to require filing of general solicitation materials that occurred immediately prior to actual offering (e.g., 30 day period) to ensure there was consistency in the pre-marketing and formal marketing.

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? Should we impose additional restrictions on the manner or content of such communications? 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?*

<u>NS Comment</u>: Yes, Regulation Crowdfunding should permit testing-the-waters because the cost burden of offerings and the preparation time needed to launch an offering has proven to be quite burdensome for many small local businesses. Being able to test the waters will enable businesses to be able to assess the viability of their campaign before they formally decide to spend significant sums of capital and time to formally launch a campaign.

We do believe that testing-the-waters should be conducted through registered and verified intermediary platforms so that basic investor protections can still be implemented by platforms. Since non-accredited investors would ultimately be participating in a Regulation Crowdfunding offering, a structured testing-the-waters process by intermediaries would better protect investors in the event a formal offering is ultimately launched.

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?

<u>NS Comment</u>: Yes, if the terms of the offering are the same and the generic solicitation materials are filed with the Form C, then issuers should definitely be able to smoothly transition any indicated interest acquired from testing-the-waters to actual investment communications once they are ready to accept investment commitments. Investors would be formally notified of a legal offering via the intermediary's platform and have the ability to assess whether they want to complete the investment, as well as ability to cancel their investment request at any time until 48 hours prior to the closing date.

31. Should we allow for oral communications about the offering outside of the funding portal's platform channels, as proposed? If so, what would be the benefits of allowing more communications? Should we impose any additional requirements to address investor protection concerns?

<u>NS Comment</u>: Yes, oral communications should be allowed outside of the platform because many small businesses rely on personal contacts in their communities to support them. Local businesses in smaller communities especially rely on more personal communication rather than online digital interactions. So long as the formal offering process adheres to the legal and regulatory requirements and the regulated intermediary is properly monitored and managed, creating additional obligations and requirements on good-faith communications to inform prospective investors about the offering would not be productive.

32. Should we expand the types of information considered to be the terms of the offering for purposes of Rule 204? 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? 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? 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"? Are there other steps we should take to clarify the advertising restrictions in Rule 204?

<u>NS Comment</u>: No, "terms of the offering" should not be broadened because Rule 204 is already too restrictive in its construction, which prohibits discussion of any defined "terms of the offering" when the issuer is trying to introduce and talk about its business in general. If a business has to tell investors that it cannot discuss a particular topic because such topic is considered a "term" of its offering, it actually seems as if the business is trying to hide certain material information from investors instead of promoting transparency, which is the opposite effect desired. In practice when an issuer is having a casual conversation with someone which could turn out to be a prospective investor, he/she should be able to maintain that casual conversation and discuss the offering, rather than being forced to stop the conversation and inform the prospective investor to immediately visit a website to learn more about the offering.

A better way to inform prospective investors is to allow issuers to include written advertising items such as planned use of proceeds, the issuer's progress, and any factual information about the businesses, so long as such information is not misleading. Issuers should be able to freely discuss the closing date and offering goal, rather than restrict these topics from discussion as they are currently defined as a part of the "terms of the offering." Since these are common items that investors inquire about, when issuers are not able to give a straight answer, this may create investor distrust on why issuers are unable to do so.

<u>Section C. Rule 506(c) Verification Requirements</u>

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 exemption176) as compared to other exemptions? If so, why? 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)?

<u>NS Comment</u>: The fact that the SEC requires a higher burden of Accredited Investor verification for a 506(c) offering than a 506(b) offering most definitely impacts issuers' willingness to utilize 506(c). We have received many complaints from investors who submit information to be verified as accredited investors for Rule 506(c) offerings that the process is more onerous than when they participate in higher-minimum investments under 506(b), which they typically consider to be more complex offerings. Many investors refuse to provide their personal information such as income or net worth information in order to invest in a 506(c) offering, since they never have to provide such in 506(b) offerings.

There should not be any difference of verification standard between 506(b) and 506(c) offerings. The SEC has not provided clear guidance on what "reasonable verification" means in a 506(c) offering, relative to a 506(b) offering, and as such issuers and broker-dealers facilitating 506(c) offerings are forced to rely on the narrowly defined safe harbor requirements. In this context, the net worth requirement and amount of documentation required to verify net worth, along with the short validity (3 months), puts excessive burden on the investor because of investors' hesitancy on providing such private information as well as the fact that 506(c) offerings often take far longer than 3 months to complete. The 3-months period means that investors may need to submit information at time of original commitment (where closing has not yet occurred), and then again at time of actual closing of the investment round. The additional confirmation requirement creates even more friction as many sophisticated accredited investors simply do not want to continue to deal with the hassle of providing

their private information simply to prove their accredited status, which they had already provided just 3 months ago.

In addition, many third-party verifiers such as CPAs and private attorneys often do not respond to requests for accredited investor verification as they themselves do not want to take on the perceived liability of "verifying" their clients' information, and often advise their clients to not invest in a 506(c) offering due to their perception that 506(b) offerings are generally "higher quality" because it allows investors to self-verify their accredited investor status. Investors who remain concerned with the security of providing sensitive tax and other documentation then often decide not to participate in 506(c) offerings. All these unfortunate dynamics then often lead the issuer to simply pursue 506(b) offerings if possible, simply so they do not have to deal with the additional requirements of 506(c) offerings and risk upsetting their potential investors.

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? If so, should we impose a time limit on this method of verification, and if so, how long should that time limit be?

<u>NS Comment</u>: Yes, if an issuer has previously verified an investor, the issuer should be able to rely on written representation that the investor is still accredited, and no time limit on the ability to provide representation should be imposed unless an extended period of time has passed since the verification (e.g., over 5 years). If the SEC accepts additional definitions of Accredited Investor in the future, investors should be able to represent their Accredited Investor status as long as they qualify under any of such definitions, and not limited to continue to qualify under income or net worth.

36. Is additional guidance for reasonable steps needed? Would further guidance provide more clarity? Should we eliminate the requirement to take reasonable steps to verify accredited investor status in specified circumstances? If so, which circumstances? Should the verification requirements be eliminated altogether, as suggested by some commenters? Would legislative changes be necessary or helpful?

<u>NS Comment</u>: If SEC would like to create a different standard of investor verification and fundraising dynamics for 506(c) and 506(b) offerings, there is absolutely additional guidance necessary on what actions would constitute "reasonable steps," as without such the issuer will always fear the liability and consequences of not having taken such steps if/when there is a review post-closing. If the SEC does not want to make 506(c) offerings substantively more difficult for issuers to navigate than 506(b) offerings, it must absolutely institute the exact same standards. In addition, there should be clear verification steps for when an investor is utilizing a Trust. Many high net-worth accredited investors invest through various Trusts (whether revocable or irrevocable, and often with different combinations of Grantor, Trustee, and Beneficiaries that sometimes also overlap), and it can be quite difficult and uncertain to verify a Trust as an accredited investor in the context of a 506(c) offering.

37. Should we consider rescinding the non-exclusive list of reasonable verification methods? Should we consider mandating the items on the list as the exclusive methods for verification?

<u>NS Comment</u>: When dealing with securities offerings, issuers and regulated intermediaries would always prefer legal certainty so that unexpected issues do not arise at a later point in time. Therefore,

a list of verification method serves a good purpose; however, mandating such would create unnecessary burdens and costs. Rather, the list could be expanded to include much more practical items for verification (for instance, income can be verified by paystubs as well) and the validity of the verification could be confirmed via sensible method of representations or acknowledgments.

38. Are there additional or alternative verification methods that we should include in the nonexclusive list of reasonable verification methods that would make issuers more willing to use Rule 506(c) or would better address investor protection? 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? 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? If so, what minimum investment amount would be appropriate for natural persons or for IAIs?

<u>NS Comment</u>: Our view is that there should not be a different verification standard for accredited investors between 506(b) and 506(c) offerings. However, if the SEC still believes the verification burden should be higher for 506(c) offerings, then the non-exclusive list for verification should include any document that legitimately conveys the relevant information (e.g., paystubs). In addition, investors should be able to provide their own asset/liability summary that provide sufficient detail of their personal finances, which the Investor represents is accurate, should be acceptable as net worth verification rather than copies of outside brokerage statements which include sensitive information or the issuer having to try to separately understand the investors' credit quality.

If the SEC would like to include a minimum investment level above which additional verification will be necessary, such amount should be sufficiently high that would objectively cause the lowest-level of accredited investor (e.g., someone with barely $1m net worth or $200-300k annual income) significant harm if they were to lose the entire investment. Such investment level likely would be an amount greater than $200-300k in most circumstances.

Most importantly, if SEC's ultimate concern is investor protection, this same level of verification should apply for both 506(b) and 506(c). If only investors participating in 506(c) offering are subject to these verification checks and the resulting liability imposed on issuers conducting 506(c) offerings, the market participants will almost always prefer to operate via 506(b) to avoid the extra work and liability.

<u>Section D. Harmonization of Disclosure Requirements</u>

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?

<u>NS Comment</u>: We support the increase in the offering limit for Regulation Crowdfunding to $5 million, because much of the significant costs and time associated with a Reg CF offering would be more feasible and justifiable for many companies if they could raise a larger amount. In addition, as a practical matter, the capital needs or high quality startups and small businesses looking to raise a growth capital round or establish a larger volume business require more than $1m financing, and as such only being able to raise a part of their capital need via Reg CF is not an attractive proposition.

In general, NextSeed is in favor of simplifying and harmonizing disclosure requirements to ensure consistency across all offering exemptions. For example, any specific disclosures or qualification requirements associated with either non-accredited investors or accredited investors should be substantively the same regardless of what offering exemption an issuer chooses so that there is no confusion on what the issuer needs to do vis-à-vis disclosures.

62. Should we remove investment limits for accredited investors in Regulation Crowdfunding offerings as proposed? If so, should we require verification of accredited investor status, as suggested by several commenters? Should the limits be modified in some other way?

NS Comment: Yes, accredited investor limits should be removed in Regulation Crowdfunding offerings to be consistent with how the other offering exemptions operate. The manner in which the original investment limits were structured created unintended consequences for both issuers and investors that made no practice sense. For instance, if an accredited investor has retired and has a net worth of over $10 million and income of $50,000, they could invest an unlimited amount under Reg D, but in Reg CF they could only invest $2,200. Even if such accredited investor knew an issuer personally and was eager to invest in the Reg CF offering he/she would be limited, and the issuer would need to launch a Reg D offering in order to accommodate this investor.

Whatever the verification process is, it should be consistent with the verification process for accredited investors in both 506(b) and 506(c) offerings (including how long the issuer can rely on such verification). We believe that the consistency and certainty of how this issue of investor verification is treated across all securities offering exemptions is critical for the long-term success and sustainable growth of the private offering exemptions.

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? 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?

NS Comment: Yes, investment limits for non-accredited investors should be the greater of annual income or net worth, which is already the standard in Regulation A. Furthermore, the entire investment limitation threshold should be consistent with Regulation A Tier 2 which applies the investment limit on a per-company basis, not across entire Reg A regime. Limiting the aggregate investment limitation in Reg CF across all offerings in this category makes little sense given the wide diversity of companies and offerings that can be offered in Reg CF, especially considering that investors are not subject to such limitation in Regulation A. The current investment limitations are extremely confusing to both investors and the issuers seeking to educate investors on the process.

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? If so, should that micro-offering exemption be limited to offerings of debt securities conducted through an intermediary, but with no specific disclosure requirements? Would an aggregate offering limit be appropriate, such as $250,000, as recommended by the 2017 and 2018 Small Business Forums? Should such a micro-offering be available to non-accredited investors? If so, should there be a limit on the number of non-accredited investors that may participate? 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?*

<u>NS Comment</u>: Yes, a "micro-offering" tier of Reg CF that allowed companies to raise funds up to $250,000 with less burdensome reporting and financial statement requirements, would be very helpful to small businesses that in fact do not need to raise larger amounts. Currently, the cost of a Reg CF offering is essentially the same whether one is seeking to raise $10,000 or $500,000 or $1 million. The fixed costs of a Reg CF offering as it stands makes it virtually cost-prohibitive for any issuer to raise a smaller amount under Reg CF, if done properly.

As with the temporary relief issued by the Commission during the COVID-19 pandemic, setting the $250,000 threshold without a reviewed financials requirement, and allowing businesses to close on funds after 48 hours of the last investment commitment, will be very beneficial for small businesses in the new economic state post-COVID-19. This type of "micro-offering" should be available to non-accredited investors with appropriate disclosures.

There should also be no limit on the number of non-accredited investors that a business can accept for such an offering, or on the actual investment limit for each investor for such micro-offerings. Specifically, there should not be an assumption that a smaller offering size means greater risk, notwithstanding the fact that the SEC should not be in the business of trying to set rules that somehow would only allow "low risk" investments to the public. Not only would such rules be impossible to establish, but actively discourage businesses who just have a smaller capital requirement that they want to (and are able to) raise from their community.

<u>Section F. Regulation Crowdfunding and Regulation A Eligibility</u>

66. Should we permit crowdfunding issuers to use crowdfunding vehicles as proposed? Would this approach encourage crowdfunding issuers to offer voting rights or other advantageous terms to investors?

<u>NS Comment</u>: Yes, crowdfunding vehicles should be allowed to facilitate smoother and better administration of an investment offering. However, there must also be appropriate ancillary and related provisions that will enable the effective management of an investment vehicle in the context of Regulation CF and ensure proper alignment of interest between the vehicle manager and the investors. There also needs to be a reasonable and legal mechanism in which the manager of an investment vehicle can be properly compensated and incentivized for the setup and the administration of such vehicles, which can otherwise be costly and difficult to manage.

Questions 67- 77 covered topics relating to various issues relating to the potential for allowing crowdfunding vehicles.

<u>NS Comment</u>: While we believe that enabling Regulation Crowdfunding to be utilized to raise capital for investment vehicles for the purposes of investing in a particular company will be very helpful for the

professionalization of this industry and increase further adoption, we believe it is best to not try to develop new, untested rules about investment vehicles. Rather, we believe SEC should and could simply adopt the existing framework of how special fund vehicles are currently raised and managed in the broader investment industry, with minor tweaks made to account for the unique circumstances of a Regulation Crowdfunding offering (e.g., non-accredited investor participation).

As a practical matter, it is neither cheap or easy to properly set up and manage an investment vehicle, whether it is used for a single investment or multiple investments. For any proper investment, there almost always is a trusted and competent sponsor or manager of an investment vehicle who can execute on the underlying investment transaction, as well as ensure all the legal, regulatory and tax requirements of operating an investment vehicle on a day-to-day basis are properly conducted. The primary reason why typical private equity or venture capital managers often go through extraordinary effort to set up quality investment vehicles is because they believe they can return outsized investment return for their investors, and by doing so they will be able to significantly share in the ultimate profits (i.e. carried interests that typically entitles sponsors to 20% or more of all profits).

Under current regulations, a fund sponsor or manager is unable to charge carried interests or incentive fees unless the underlying investors are "qualified clients", which is an even higher threshold than accredited investors. This means that any sponsor or manager will not be able to receive incentive fees for the work it completes to set up an investment vehicle, and to execute properly in identifying and structuring the right investment on behalf of non-accredited investors that participate in a Regulation CF offering. Without such incentive, quality managers would not have any real incentive to get involved in managing investment vehicles for Regulation CF offerings.

In short, we believe it would be completely fine to require the sponsors and managers of an investment vehicle used for a Regulation Crowdfunding offering to adhere to the exact same requirements for vehicles used in Reg D offerings – e.g., all entity managers must be RIAs or Exempt Reporting Advisers. However, such managers should then be allowed to charge a similar type of fees and carried interests for facilitating a Regulation Crowdfunding offering from non-accredited investors, as they would be charging accredited investors in a traditional Reg D fund offering.

Unless there is such consistency in the permitted framework of investment vehicles, we strongly believe that any arbitrary rules about how an investment entity should be used for Regulation Crowdfunding offerings would not be workable in practice. Most importantly, it would not create sufficient incentives for highly qualified managers and sponsors to get involved with Regulation Crowdfunding, and the resulting complexity and costs may lead to an unintended adverse outcome for inexperienced managers and investors that participate in Regulation Crowdfunding offerings via investment vehicles.

78. Should we harmonize the limitations on the types of eligible securities issuable under Regulation Crowdfunding with Regulation A as proposed? If so, what would be the effect on issuers, investors, and the market of limiting these categories of securities? In the alternative, should we modify Regulation Crowdfunding only to exclude particular security types, such as SAFEs?

NS Comment: Early stage companies that may raise funds via Regulation Crowdfunding may choose to utilize SAFEs for ease of documentation and avoiding an unwieldy cap table that may hinder future raises. Allowing companies flexibility in the type of security to offer, based on the appropriate stage and needs of the company, would be most beneficial to the utilization of Regulation Crowdfunding. We

do not believe it would be wise for the SEC to dictate what type of financing structure and investment terms would be best suited for the myriad of startups and small businesses in the US. If SEC is concerned about specific investor protection issues, such can be highlighted and required to be addressed, regardless of the security being utilized in an offering process.

In general, the companies that are looking to utilize Regulation Crowdfunding, especially if a micro-offering exemption was to be able created, are fundamentally different than the companies that are looking to raise significant amounts of capital via Regulation A.

Section G. Bad Actor Disqualification Provisions

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?

NS Comment: In our standard operation process, NextSeed has instituted legal due diligence calls and a closing questionnaire at the time of such sale of securities. While we agree additional diligence is required at time of sale, the cost burden of additional checks must be considered as well against the marginal benefits such additional checks may bring. In our experiences, the additional cost of repeated additional bad actor checks for Regulation Crowdfunding issuers would unfortunately prevent many issuers from utilizing Reg CF for smaller raises. For example, third-party BAC services often quoted over $100 per check per covered person (e.g., if an issuer has 2 covered persons and a related entity to the primary entity raising capital (which is very common), then BAC would cost around $800 to complete a BAC check prior to filing and another one at the time of sale).

We have found that the most obvious example of scenarios which would prevent release of funds to issuers from a campaign are lawsuits that were not disclosed by issuers and unable to be easily checked, and/or which commenced after the Form C filing, rather than one of the enumerated bad actor disqualifications. We believe that a full diligence check should happen prior to filing so that all necessary disclosures are presented to investors at the beginning of an offering, and that at the time of sale, intermediaries should be able to rely on company representations with respect to bad actor disqualifications, and the onus should be on the issuer to be truthful and transparent in their disclosures.

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? Would such an option be difficult for issuers to administer?

NS Comment: Yes, issuers should be able to continue the offering with a disclosure to investors, if there is no final judgment yet on the disqualifying event that first arises or occurs during an ongoing offering. Investors should be able to cancel their investment commitments, which is not difficult for issuers and intermediaries to administer because the option to cancel is already built in for Reg CF offerings up until 48 hours prior to closing.

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?

<u>NS Comments</u>: Yes, there are significant costs to the average issuer for Regulation Crowdfunding offerings if they need to perform, essentially, two Bad Actor checks per offering. We respectfully suggest that Issuers be required to perform only one Bad Actor check at the time of sale, which would mean 1) Issuers and intermediaries are able to rely on representations at time of filing that no control person is disqualified, 2) Initial costs of the offering are lessened, 3) the look-back period at time of sale is more comprehensive and provides better investor protection, 4) costs of the Bad Actor check are borne only when the Issuer knows that a sale of securities will be made, and 5) no sale of securities will occur without proper disclosures/providing investors with a chance to cancel their investment.

Section IV. Economic Analysis

Questions 94- 98 covered questions relating to extending the option for issuers to test-the-waters about a contemplated Regulation Crowdfunding offering and the related benefits, costs, and economic effects.

<u>NS Comment</u>: We believe issuers contemplating an offering via Regulation Crowdfunding should be allowed to "test the waters" for all the reasons listed above. We do not believe such test-the-waters option would impose any materials costs on investors; in fact, investors would benefit because they would be able to provide feedback about the structure of the deal itself and what they're willing to accept. In any event, at the time of the actual Form C filing for a formal offering launch, all required and current materials would need to be presented to investors.

Typically, an issuer that is considering Regulation Crowdfunding would not be also considering a Regulation A raise, and vice versa. Investors will need to make sure to read the actual offering materials, because if an Issuer is this early on in its fundraising to not know which exemption it is pursuing, then the actual offering may often have very different terms. Not having a filing requirement for simple test-the-waters conversations would allow issuers to quickly gauge investor interest and be more nimble in figuring out their capital sources rather than spending a lot of time and money pursuing an offering that may not be successful.

In this context, we also believe oral communications should be permitted in Reg CF offerings. Many community-based issuers will need to raise from their community, and many such places rely on personal communication and interactions to conduct business.

114. 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?

<u>NS Comment</u>: We believe that the proposed changes to remove limits on accredited investors would benefit both issuers and investors. We have had many accredited investors complain that they are unable to invest the amount they want under Regulation Crowdfunding and that it does not make sense

they are limited. The use of the greater of standard would also benefit both investors and issuers – for instance, we encounter older investors who may have high net worth but lower income due to being retired, and they may even be accredited investors, but are artificially capped to a lower investment amount and find it frustrating that they are being limited for this reason. The proposed changes are likely to promote capital formation.

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Thank you again for all your efforts in developing the Proposed Rules. We are grateful to be able to share our thoughts, and please do not hesitate to contact us if you have any questions.

Regards,

Youngro Lee, CEO
[redacted]

Vivian Kim, Counsel
[redacted]