September 13th, 2019

Submission via Web Site

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Concept Release on Harmonization of Securities Offering Exemptions; File No. S7-08-19

Dear Ms. Countryman,

We appreciate the opportunity to comment on the Concept Release on Harmonization of Securities Offering Exemptions.

Wefunder is the largest funding portal by investment volume, facilitating 44% of all Regulation Crowdfunding investments in 2019. We are also an exempt reporting investment advisor that forms venture capital funds for accredited investors. Founded in 2011, we helped Senator Brown, Senator Merkley, and Rep. McHenry during the drafting of the JOBS Act. Since then, we've helped issuers raise about $110 million from a pool of 300,000 investors via Regulation D, Regulation A+, and Regulation Crowdfunding.

We are a Public Benefit Corporation with a dual mission:

1) To democratize investing so that every American has the opportunity to invest in the companies that they love.

2) To increase the number of small businesses and startups that get formed, by spreading what works best in Silicon Valley to the rest of America.

As one of the few platforms to raise funds for companies that are competitive among professional investors (as evidenced by over $3 billion in follow-on venture capital backing our Rule 506 portfolio), our comments are focused on improving the regulations so that unaccredited investors can back higher quality issuers. As the rules stand right now, Regulation Crowdfunding is most often a funding option of last resort. Issuers even often choose to raise no money rather than potentially hamstring their future.

Our letter is divided into three parts:

I. How to Make Regulation Crowdfunding Successful
II. Improvements to Accredited Investor Definition & Pooled Funds
III. Comments on Regulation D & Regulation A+

We strongly advocate improving and better harmonizing Regulation Crowdfunding and Regulation A+, so these exemptions will appeal to a wider range of high-quality issuers based on their stage of business. We would like to see a world where it is common for issuers to comply with the disclosure requirements of these exemptions, so that unaccredited investors may invest small amounts of money (Wefunder's median investment is $250).

Based on our experience, with a few improvements – most importantly SPVs – many more issuers would elect to do so.

Given the historical success of Rule 506, we recommend little change to Regulation D, other than broadening the pool of accredited investors to be based on measures of sophistication other than solely wealth. In this way, those investors that choose to educate themselves may participate in the same opportunities that the wealthiest citizens enjoy.

I. How to Make Regulation Crowdfunding Successful

With a few improvements, Regulation Crowdfunding would be a far more viable option for early-stage companies to raise funding successfully.

The crux of the matter is convincing high-quality issuers to use Regulation Crowdfunding. We've read the comment letter authored by Rick Fleming, the investor advocate for the S.E.C., that hypothesizes that there is little demand among retail investors for exempt offerings, quoting some of the statistics on our platform. We would rephrase this hypothesis: *there is little retail demand for poor investments*. Unfortunately, many Regulation Crowdfunding offerings are of inferior quality relative to Rule 506, as measured by potential returns. (We believe a large portion of current Regulation Crowdfunding investment volume is a quasi-donation without a large profit motive: friends supporting their friends with $100.)

However, there is a very high-demand among retail issuers for high-potential investments: our most successful Regulation Crowdfunding issuers (as measured by follow-on financing by professional investors) can raise $1 million in a few days with a median investment of $250.

Regulation Crowdfunding has performed poorly relative to other exemptions because the wisdom of the crowd works. The best way to protect investors is to ensure high-quality issuers – the ones investors also actually want to invest in – take advantage of Regulation Crowdfunding.

The three most important improvements to Regulation Crowdfunding

Many improvements could be made to Regulation Crowdfunding. However, to improve the exemption so that more high-quality issuers make use of it, only three issues truly matter.

1. Special Purpose Vehicles (SPVs)

One lesson learned from Title II of the JOBS Act is the importance of Special Purpose Vehicles to protect investors. Since 2013, accredited investors have invested over a billion in early-stage startups using SPVs. The quality of these issuers is high: on Wefunder alone, these issuers have raised over $3 billion in follow-on venture capital. Our estimated unrealized Internal Rate of Return is above 40%. The unrealized returns for issuers who decide to use Regulation Crowdfunding – where SPVs are not allowed – compare very unfavorably.

SPVs allow small investors to invest alongside a sophisticated lead investor with a fiduciary duty to advocate for their interests. The lead investor may negotiate better terms, defend against unfair dilution by negotiating with venture capitalists during follow-on financing, mentor the company, and represent investors on the board.

Retail investors do not enjoy these benefits under Regulation Crowdfunding. Worse, the crowd has no control: almost none of these offerings give voting rights to retail investors. As such, professional investors in follow-on rounds will likely take advantage of a fragmented pool of small investors with no voting rights. *This has already happened*. The most successful issuer in Regulation Crowdfunding (as measured by total dollars of follow-on financing: over $150 million) forcibly repurchased the equity stakes of all of their unaccredited investors within two years of their seed round. These investors were allowed to take all of the risk but share little of the upside.

This situation is not because entrepreneurs are trying to take advantage of the crowd. Rather, founders are scared that collecting thousands of signatures from online strangers will endanger their follow-on financing and cripple the governance of their business. In contrast, there is no such risk when granting voting rights to a single entity where a lead investor acts as a fiduciary for retail investors. From the point of view of a founder, that's similar to dealing with a venture capital partner that has a fiduciary responsibility to their limited partners.

Due to the fear of collecting thousands of signatures needed to sign off on the types of strategic decisions common among pre-IPO companies, higher-quality issuers – particularly those with other financing options – are less likely to crowdfund without an SPV. Over 80% of the companies that were interested in Regulation Crowdfunding dropped out when we informed them a SPV was not an option.

Some think that SPVs may only be important to technology startups. However, this is not true in our experience. Even main street businesses – like a coffee shop – drop out when they learn there is no option for an SPV. Most business advisors tell them not to do it.

2. 12g Threshold

The power of equity crowdfunding is realized when thousands of people invest very small amounts, so no one loses too much money in risky ventures. 30% of our investments are for $100 each. Our median investment is $250. As such, a company that raises $1 million will likely have over 1000 shareholders.

Unfortunately, if a company has more than 500 unaccredited shareholders and $25 million in assets, they are subject to expensive reporting regulations. Based on our on-the-ground experience, it's clear that companies are not willing to be subject to the Exchange Act just to crowdfund a million dollars. All of the issuers raising on Wefunder are either accepting the investments of only the top 480 unaccredited investors and/or only offering securities that allow them to re-purchase investors at their option before the $25 million asset threshold is met.

This harms investors in three ways. First, investors are pressured to invest more than they can afford to lose, in order to "get in on the deal". Second, retail investors will be unable to hold a diversified portfolio, as their annual investment limitation will be hit after one or two investments. Third, the most successful companies will buy out their retail investors as soon as possible: imagine investing in Facebook in 2004, and then venture capitalists forcing the sale of your stake in 2005. Retail investors take the most risk without reaping the reward.

We believe crowdfunded securities should be exempt from 12g, if there is no public float, and conditional on being current with their existing Regulation Crowdfunding reporting obligations. We believe that the Regulation Crowdfunding reporting obligations provide sufficient information to retail investors who invest typically a few hundred dollars.

Failing an unconditional exemption, we recommend harmonizing the threshold with Regulation A+. $50 million in revenues is superior to $25m in assets for measuring the stage of the business (a venture capital

investment could trip the asset threshold). In this case, we'd also recommend matching both Regulation A+ and Regulation Crowdfunding to the smaller reporting company threshold.

3. Testing the Waters

Currently, many issuers are forced to spend over $10,000 on lawyers and accountants to prepare for a Regulation Crowdfunding offering. Over 30% of issuers then fail to raise any funds.

Congress intended Regulation Crowdfunding to help small businesses with limited access to capital. Instead, the current regulations force these early-stage companies to spend capital they cannot afford to lose on accountants or lawyers, before they are even allowed to discover if any investors are actually interested. The current regulations directly harm the issuers Congress intended to help.

We recommend that the Commission fix this injustice by allowing issuers hosted by a registered funding portal to file a partially complete Form C, if it clearly indicates that the issuer is "testing the waters". This change would have no negative impact on investor protections. If the issuer decides to proceed with their fundraise and amends the Form C to be fully complete, all investors must reconfirm their commitment within 5 days or have their investment canceled, as a material change occurred.

If this guidance is offered by the Commission, Wefunder would encourage issuers to complete a draft of all Form C disclosures while including their existing cash-basis financials. Only after sufficient investor interest is proven should an issuer undertake the expense of converting their financials to GAAP, commission a CPA Review, or pay their law firm to carefully review the Form C.

Unlike Regulation A+, Regulation Crowdfunding issuers are required to use a regulated funding portal or broker/dealer. As such, we believe these investors should be allowed to transfer funds to an escrow account even if the issuer is testing the waters, so the issuer can be certain the investor interest is real. These funds would be refunded within 5 days should the investor not reconfirm their investment after a material change.

Other Regulation Crowdfunding Issues

81. Are there any data available that show fraudulent activity in connection with offerings under Regulation Crowdfunding? If so, what are the causes or explanations and what should we do to address them?

Wefunder is the largest funding portal. Over three years, we are not aware of a single successful fraudulent offering. The regulations are working as intended.

82. Should we increase the $1.07 million offering limit? If so, what limit is appropriate? … Should additional investor protections and/or disclosure requirements depend on the size of the offering? If the individual investment limits are preserved as they currently exist, will there be adequate investor demand to justify an increase in the offering limit, or would an increase in the individual investment limits also be required?

We recommend a $5 million offering limit, as recommended by the 2017 Small Business Forum and the 2017 Treasury Report.

When a high-quality company decides to use Regulation Crowdfunding, there is very clearly enough investor demand on Wefunder under current investment limits to raise $5M. We've had companies raise $1.07M in 24 hours with a median investment of $250.

83. If we were to increase the offering limit, would Regulation Crowdfunding overlap with Rule 504 of Regulation D or with Regulation A?

With a $5M offering limit, Regulation Crowdfunding would not overlap significantly with Regulation A+, which has a much heavier disclosure burden to raise up to $50M. Regulation Crowdfunding is also meaningfully different than Rule 504, given the restriction of 35 unaccredited investors.

84. Should we modify the eligibility requirements for issuers or securities offered under Regulation Crowdfunding? Should we extend the eligibility for Regulation Crowdfunding to Canadian issuers or all foreign issuers? ... Should we amend the types of securities eligible under Regulation Crowdfunding? ..

Extending to foreign issuers – particularly Canada – would be beneficial. However, we strongly recommend not restricting Regulation Crowdfunding to any type of security, given the wide range of companies who take advantage of the exemption. Our issuers range from coffee shops to technology startups, from those at the idea-stage to ones with over $30 million in revenues.

Retail investors should invest under the same exact terms as professional investors. Professional investors use a variety of securities depending on the ambition, risk/reward profile, and stage of the issuer. For technology startups at the seed-stage, they typically use convertible notes and SAFEs. SAFEs in particular offer the best realized and unrealized returns on Wefunder of all securities. For lifestyle companies, investors typically use a revenue share or preferred stock with dividends. We don't believe regulations issued by the SEC that mandate specific securities could accurately reflect all of the complexity that professional investors consider with such a diverse array of issuers.

85. Should we, as recommended by prior Small Business Forums, permit issuers to offer securities through SPVs under Regulation Crowdfunding? If so, are there additional requirements that would be appropriate to ensure investor protection? Would legislative changes be necessary or beneficial to make such changes? Are there other ways we should modify our regulations to allow investors to invest in pooled crowdfunding vehicles that are advised by a registered investment adviser?

Allowing SPVs under Regulation Crowdfunding is the single most important way to encourage many more high-quality companies to use the exemption.

The ideal would be using the exempt reporting investment advisor framework that allows the formation of venture capital SPVs (as practiced by AngelList, Wefunder, and FundersClub), but allowing for unlimited unaccredited investors in Regulation Crowdfunding offerings.

Failing that, if SPVs are only allowed to be formed by registered investment advisors (as in the proposed JOBS Act 3.0 that passed the house 406-4), we recommend streamlining the custody rule to be more affordable given the use case of a venture capital investment. Unlike the public markets, Regulation Crowdfunding securities are illiquid and most often can't be resold. Different regulations should apply.

86. Should we revise the rules that require issuers to provide reviewed or audited financial statements? If so, how? At what level should issuers be required to provide reviewed or audited financial statements? For example, if we were to increase the offering limit, should reviewed financial statements only be required for offerings over $1 million and audited financial statements only be required for offerings over another higher limit, such as the Regulation A Tier 1 limit?

We know from three years of experience that the accounting requirements are the single most burdensome disclosure requirement (arguably, the only burdensome disclosure requirement) of Regulation Crowdfunding. We can help the issuer complete the rest of the Form C in a few days. However, the accounting often takes up to a month or longer and can cost many thousands of dollars.

We advocate setting the threshold for reviewed financials at $1 million and audited financials at $5 million. We also recommend for offerings of less than $250,000 that cash accounting be allowed, instead of only GAAP. Almost all early-stage companies do not use GAAP, and the conversion can also take a few weeks and cost thousands. We don't believe GAAP offers much useful information for most early-stage companies.

With these changes, in combination with testing the waters, the disclosure requirements of Regulation Crowdfunding would no longer be burdensome.

87. As generally recommended by the 2015, 2017, and 2018 Small Business Forums and the 2017 Treasury Report, 465 should we eliminate, increase, or otherwise amend the individual investment limits? If we should change the investment limits, what limits are appropriate and why? Should we require verification of income or net worth for larger investments, such as $25,000 and higher? Should certain investors be subject to higher limits or exempt from the limits altogether? For example, should accredited investors be exempt from the investment limits or should accredited investors be subject to higher limits? If accredited investors are subject to higher investment limits or exempt from investment limits, should we require verification of accredited investor status? Should we make changes to rationalize the investment limits for entities by entity type, not income? If investment limits are raised to allow an offering to be successful with fewer investors, would such a change have an effect on the use of the exemption?

We believe that raising investments limits with the intended purpose of raising more money for issuers is a <u>bad</u> idea. Wefunder can easily raising funding for high-quality issuers with a median investment of $250. We actively encourage the investors on our platform to invest <u>less</u> – certainly no more than they feel comfortable losing. What makes Regulation Crowdfunding less useful is that the exemption currently does not appeal to many high-quality companies (i.e., no SPVs). It is not the investment limits.

However, we recommend fixing the limits to be rational and coherent with other exemptions. Investors on Wefunder are confused why Reg D, Reg A+, and Reg CF all have different investment limits. We believe it would be far simpler to allow accredited investors to invest an unlimited amount, while unaccredited investors follow the same limit as in Reg A+ Tier II.

We don't think it's useful for accredited investors to verify their status if they decide to invest $500. However, Wefunder already requires investors to provide documentation that they are accredited if they seek to make investments totaling $25,000 over the last 12 months. Even for Regulation Crowdfunding offerings, we voluntarily follow the same standard for verification as in Rule 506(c). We believe the Commission should mandate that all platforms comply with a similar policy. The platform should take on the liability for this task, so the issuer can safely rely on the representation of the portal. We believe it is important that accredited investors be able to use the existing infrastructure around 506(c) verifications and not burden them with an entirely separate process for a different exemption.

The current calculation of investment limits for Regulation Crowdfunding can lead to nonsensical outcomes: for instance, if a 506(c) verified accredited investor with $30 million in cash had a bad enough year in the stock market, they may legally invest only $2,400 that year in Regulation CF offerings. We believe the "lessor of" standard reduces the likelihood of compliance and weakens the rule of law. Further, we believe that retail investors are better protected when accredited investors invest side by side on the same terms, under the same exemption. With the "lessor of" standard, accredited investors are often forced to directly contact the issuer and negotiate a separate Rule 506(c) deal.

88. As generally recommended by the 2016 and 2017 Small Business Forums, should we allow issuers to test the waters or engage in general solicitation and advertising prior to filing a Form C? If so, should we impose any limitations on such communications to ensure adequate investor protection?

We strongly believe that allowing an issuer to "test the waters" by filing an incomplete Form C filing would help potential issuers not waste their limited capital on a failed offering, without any cost to investor protection.

We believe imposing any additional limitations on communications – beyond what an issuer is already allowed to do once they file a Form C - will confuse issuers while not protecting investors. A registered intermediary will perform due diligence on the Form C (and the communications) before funds are transferred from an escrow account and the investment executed. This is sufficient to protect investors.

89. As recommended by the 2018 Small Business Forum, should we allow for more communication about the offering outside of the funding portal's platform channels? If so, what would be the benefits of allowing more communications? Would there be investor protection concerns? Are there limitations we should impose on those communications?

Due to legal ambiguity, some lawyers recommend that issuers do not speak with potential investors face-to-face, and instead only direct them to an online funding portal for all information. This leads to an absurd outcome that is terrible for investors: potential investors lack the opportunity to look a business owner in the eye and ask the hard questions. Instead, retail investors are making a decision based solely on an online web page presentation. Rather than investors having the opportunity to talk to owners face-to-face, only the funding portal can. Wefunder does not want this role.

We believe the intent of Congress was for neighbors to fund their local businesses. Wefunder also has data that up to 60% of the funding volume for some main street businesses comes from customers who frequent that store. These investors deserve in-person answers.

We recommend that the Commission offer guidance that allows a business owner to hold a public investor information session, provided that terms are not mentioned, all investors are directed to the portal to make their investment, and any new material information conveyed is included on the Form C.

Currently, if the issuer holds a public session, Wefunder recommends that issuers live-stream it on the Wefunder portal in real-time. We display the video on their profile, and transcribe it and upload to EDGAR before closing. We believe this is the best balance between allowing investors to get face-to-face answers while ensuring all investors get equal access to information so the "wisdom of the crowd" may work. We would like the S.E.C. to offer clear guidance that this is permissible.

90. Should the Section 12(g) exemption for securities issued in reliance on Regulation Crowdfunding be modified? For example, should it be revised to follow the Section 12(g) exemption for Regulation A Tier 2 securities?

In the initial proposed rules for Regulation Crowdfunding, shareholders were exempted unconditionally from 12g. We believe this is the best approach. However, failing that, matching the threshold to Regulation A+ or the smaller reporting company threshold would be superior.

91. Should we modify any of the requirements regarding crowdfunding intermediaries to better meet the needs of issuers and investors? If so, which ones and how? For example, as recommended by the 2017 and 2018 Small Business Forums, should we allow intermediaries: to receive as compensation securities of the issuer having different terms than the securities of the issuer received by investors in the offering; or • to co-invest in the offerings they facilitate? In addition, as recommended by the 2018 Small Business Forum, should we clarify the ability of funding portals to participate in Regulation A and Rule 506 offerings?

We believe a funding portal should be allowed to participate in Regulation A+ and Rule 506 offerings, subject to the same requirements as Regulation Crowdfunding. For instance, we believe a funding portal offers investors more protection, compared to an issuer hosting an offering directly on their web site.

Wefunder never intends to become a broker/dealer. We never want to recommend investments; we don't believe that should be the role of a neutral platform. We also have no need to hold client funds. Therefore, the additional compliance costs of being a broker/dealer (that would be passed on to issuers and/or investors) are not needed. However, we would like to be compensated for hosting Reg A+ or Reg D offerings, given the value we provide.

If an intermediary is allowed to be compensated on different terms than the crowd, then Wefunder would have the opportunity to charge more equity instead of cash – such as a quarter point advisor agreement. Wefunder could then share this equity with mentors and advisors on our platform who commit to helping that startup succeed. We believe this would help protect investors by making it slightly less likely their investments will go bankrupt due to the youth or inexperience of a founder.

92. To the extent not already addressed in the questions above, would legislative changes be necessary or beneficial to address any recommended changes to Regulation Crowdfunding? Alternatively, should we consider using our exemptive authority under Section 28467 of the Securities Act to adopt an alternative exemption for crowdfunding offerings to complement Section 4(a)(6)? If so, how should we structure the exemption to facilitate capital formation while still ensuring adequate investor protection? Is there anything else we should do to reduce the accounting, legal, and other inelastic costs associated with Regulation Crowdfunding?

With the improvements mentioned in this letter, we believe Regulation Crowdfunding – or an equivalent replacement to 4(a)(6) – would facilitate billions into worthy small businesses and startups, while still protecting investors.

If legislative changes are needed to modify 4(a)(6), then we recommend using exemptive authority under Section 28467. We would recommend using nearly the same framework as Regulation Crowdfunding, but modified with the improvements in this letter.

We believe Regulation Crowdfunding, with a few improvements, strikes the best balance between capital formation and investor protection. Regulation Crowdfunding would be very successful if modified with SPVs, a

12g fix, testing the waters, a $5M offering limit, sensible accounting requirements, and rational and consistent investment limits compared to other exemptions.

II. Improvements to Accredited Investor Definition & Pooled Funds

Rule 506 is – by far – the most popular exemption for high-quality startups, given the reduced disclosure requirements. As such, accredited investors have a near-monopoly on the highest quality issuers – the ones that offer superior returns.

This is reflected in our own data. Wefunder's realized and unrealized returns for Rule 506 offerings are a magnitude higher than Regulation Crowdfunding or Regulation A+. We've helped accredited investors make millions of dollars, investing in the seed rounds of startups now worth billions of dollars. These opportunities are not available to unaccredited investors.

With improvements to the definition of an accredited investor, educated investors who can prove their sophistication would have access to these sorts of opportunities.

21. Should we revise the financial thresholds requirements for natural persons to qualify as accredited investors and the list-based approach for entities to qualify as accredited investors?...

We would recommend indexing all financial thresholds for inflation on a going-forward basis, but not otherwise changing the financial thresholds or imposing any investment limits. Narrowing the accredited investor pool or complicating how much accredited investors are allowed to invest could have a negative ramification on capital formation, decreasing the number of startups that get funded each year.

22. As recommended by the Advisory Committee on Small and Emerging Companies in 2016, the 2016, 2017, and 2018 Small Business Forums, and the 2017 Treasury Report, should we revise the accredited investor definition to allow individuals to qualify as accredited investors based on other measures of sophistication?

We strongly believe that wealth should not be the only criteria to be able to participate in these offerings. This seems un-American and guaranteed to accelerate the disparity of wealth between socioeconomic classes. Investors who can meet certain objective measures of sophistication should be able to become accredited investors.

Such measures could include:

- Allow specific graduate degrees in business, finance, or economics to automatically qualify as an accredited investor
- Allow any individual who passed a FINRA examination - such as a Series 65 or Series 7 – to automatically qualify as an accredited investor.
- Direct FINRA to create an accredited investor examination, so individuals who pass it could qualify as accredited investors.

- Allow registered intermediaries to create their own accredited investor tests tailored to the needs of their own user-base, subject to approval by the S.E.C. This would provide much more useful educational material geared exactly to the types of investments that the intermediary offers.

- Allow an individual to be considered accredited if they are advised by a registered investment professional or an exempt reporting advisor.

23. Under the current definition, a natural person just above the income or net worth thresholds would be able to invest without any limits, but a person just below the thresholds cannot invest at all as an accredited investor. Should we revise this aspect of the definition? If so, how?

We believe this would be overly complicated for both startup founders and investors, increasing legal expenses and administrative overhead.

It would be simpler to harmonize the investment limits for unaccredited investors and increase the appeal of Regulations Crowdfunding and A+ for issuers by allowing SPVs. In the ideal world, concurrent Regulation D and Regulation Crowdfunding offerings would become commonplace, for those issuers that wish to also allow unaccredited investors.

24. What are the advantages and disadvantages to issuers and investors of changing — by either narrowing or expanding — the accredited investor definition?

Narrowing the accredited investor definition could have potentially disastrous consequences on the innovation ecosystem, particularly in Silicon Valley, where it is most common for tens of thousands of angel investors to back each new generation of up-and-coming startups.

Expanding the accredited definition – by including measures other than wealth – could reduce wealth inequality, by reducing the power of the near-monopoly the wealthy have on the highest performing investments. It is also a matter of fundamental fairness that those who seek to educate themselves should be treated equally to those with inherited wealth. America was built on that belief.

28. If we were to permit an investor advised by a registered financial professional to be considered an accredited investor, should we specify or limit the types or amounts of investments that such an investor can make in exempt offerings? For example, should we allow investors that are not accredited investors under the current definition to invest in pooled investment funds, such as private funds under Section 3(c)(1) under the Investment Company Act,173 if these investors are: (1) subject to limits on the amounts of investments in such pooled investment funds, such as a dollar amount or percentage of investments; and/or (2) limited to making the investment out of retirement or other similarly federally-regulated accounts (i.e., accounts that are more likely to be invested for the long term)? ….

If an investor is to be considered accredited because they are advised by a financial professional, we don't believe there should be any limits on types or amounts of securities. The complexity of having multiple types of accredited investors – with different rights and limits - would be confusing for both investors and issuers.

When it comes to investing in pooled investment funds, we would recommend that investors can be deemed accredited if:

- They are investing in a venture capital fund,

- That is advised by an exempt reporting advisor or other registered finance professional, and
- a lead investor approved by the exempt reporting advisor or finance professional is investing $25,000 or more on the same terms.

Alternatively, if unaccredited investors are allowed to invest in such funds, an investment limitation harmonious with Reg A+ Tier II, while ensuring at least 50% of the value of the fund is contributed by accredited investors, would be a balanced approach is likely to protect retail investors.

Since our median investment in crowdfunded offerings is $250, we don't believe it necessary to restrict these investments solely to retirement accounts. It is often not economical to invest such small amounts of money through an independent IRA.

29. If an investment limit is implemented for investors considered to be accredited investors because they are advised by registered financial professionals, what should we take into consideration in setting the amount of the limit? Should the limit vary depending on the particular exemption relied on for the offering or be consistent for all exempt offerings? ...

We recommend harmonizing one unaccredited investor limit across all exemptions, preferably the Reg A+ Tier II standard. It is incredibly confusing for investors on Wefunder to have different investment limits depending on the exemption the issuer decides to utilize.

111. To what extent do issuers view pooled investment funds as an important source of capital for exempt offerings? Do certain types of pooled investment funds facilitate capital formation more efficiently than others? For example, do private equity and venture capital funds provide more capital to issuers than registered investment companies and BDCs? From an issuer's perspective, are there benefits to raising capital from a pooled investment fund rather than from individual investors?

AngelList alone manages over $1 billion in pooled venture capital funds, invested in high-growth high-tech startups in mostly San Francisco & New York City. The syndicate model that AngelList pioneered for accredited investors investing in venture capital fund SPVs is the best-in-class model for capital formation and investor protection.

With the involvement of unaccredited investors, we believe this same model could be applied to a broader range of businesses across America, dramatically increasing the number of worthy companies funded.

Pooled investment funds – in particular venture capital fund SPVs – better protect unaccredited investors by aggregating their voting rights into one fiduciary who fights for their interests, while being dramatically superior for issuers, who then only have one entry on their cap table. For this reason, we expect far more capital to be formed while increasing investor protection.

112. For small issuers, particularly those that seek to raise capital in micro-offerings, to what extent are angel funds an important source of capital?

The sheer number of angel funds is the reason why Silicon Valley is – by far – the best ecosystem in the world for startup formation and wealth creation. Angel funds are the most important force to generate new startups – their concentration in Silicon Valley is unmatched. Often, that first $25,000 check is enough for a founder to quit their job and take their shot at building an impactful company.

15. Should the availability of any exemptions be conditioned on particular characteristics of the issuer or lead investor(s)? For example, in an offering to non-accredited investors where there is one or more lead investors, should we require that the lead investor(s) hold a minimum amount of the same security type (or a junior security) sold to the nonaccredited investors?

We believe pooled funds with unaccredited investors should require a lead investor.

If there is a lead investor, they should be investing under the same economic terms as unaccredited investors.

III. Comments on Regulation D & Regulation A+

14. Should the availability of any exemptions be conditioned on the involvement of a registered intermediary, such as the registered funding portal or broker-dealer in crowdfunding offerings, particularly where the offering is open to retail investors who may not currently qualify as accredited investors?

We believe it should be mandated that unaccredited investors – across all exemptions – invest via a registered intermediary, such as a registered funding portal or broker-dealer.

The due diligence performed by Wefunder has played an important role in stopping potential fraud in Regulation Crowdfunding. The investor protections that can be offered by an intermediary will be important as Regulation A+ increases in scale, or if it becomes permissible to accept more than 35 unaccredited investors via Rule 506.

35. Is it important to continue to allow non-accredited investors to participate in Rule 506(b) offerings? Are the information requirements having an impact on the willingness of issuers to allow non-accredited investors to participate?

The 35 unaccredited investors allowed in Rule 506b is most often useful for close friends and family. The generic/conventional legal advice that startup founders receive from many lawyers is that taking unaccredited investors in a Rule 506b offering effectively risks a rescission right in the future.

36. Are the current information requirements in Rule 506(b) appropriate or should they be modified? Should we revise the information requirements contained in Rule 502(b) to align those requirements with those of another type of exempt offering, such as Regulation Crowdfunding, Tier 1 of Regulation A, Tier 2 of Regulation A, or Rule 701? 271 How would such changes affect capital raising under Rule 506(b)? Should we consider eliminating or scaling the information requirements depending on the characteristics of the non-accredited investors participating in the offering, such as if all non-accredited investors are advised by a financial professional or a purchaser representative? Should the information requirements vary if the non-accredited investors can only invest a limited amount or if they invest alongside a lead accredited investor on the same terms as the lead investor? Would there be investor protection concerns regarding any reduction in information required to be provided to non-accredited investors?

We believe it would be a better idea to improve Regulation Crowdfunding and the accredited investor definition than modify Rule 506. Issuers that wish to take more than 35 unaccredited investors can opt to do a concurrent round by complying with the disclosures required by Regulation Crowdfunding.

38. If we reduce the information requirements in Rule 506(b), should we include investment limits for non-accredited investors? If so, what limits are appropriate and why? Should accredited investors be subject to investment limits?

As the 35 unaccredited investors allowed in Rule 506(b) are primarily used for close friends and family, we don't believe investment limits are appropriate in this case.

Subjecting accredited investors to investment limits could be very disruptive to innovation and capital formation.

40. Are issuers hesitant to rely on Rule 506(c), as suggested by the data on amounts raised under that exemption as compared to other exemptions? If so, why? Has the adoption of Rule 506(c) enabled issuers to reach a greater number of potential investors and/or increased their access to sources of capital? Are there changes we should consider to encourage capital formation under Rule 506(c), consistent with the protection of investors?

42. 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)? Are there additional or alternative verification methods that we should include in the non-exclusive list of 85 reasonable verification methods that would make issuers more willing to use Rule 506(c) or would better address investor protections?

From September 2013 through the end of 2014, Wefunder primarily used Rule 506(c) for every offering on our platform (we formed SPVs for accredited investors). From 2015 through 2016, we switched back to Rule 506(b).

We discovered that general solicitation for accredited investors was not very useful: advertising did not help us reach a significantly larger pool of accredited investors - it was hard to target outreach to only those who were wealthy. Further, the few additional investors brought to our platform were more than offset by the additional administrative workload required to process those investments. Further, about 10% of accredited investors "dropped off" as they didn't want the hassle of uploading documents for a small $5,000 investment (even if they had previously verified themselves the year before).

One small improvement would be including explicit criteria where new verifications are not required every year if one has a reasonable belief that the status has not changed. For instance, if a person had uploaded verification documents one year ago, and the investor is still representing themselves as accredited, one should be able to reasonably assume they are still an accredited investor, if there is no information available to the contrary.

44. Should we consider rule changes to allow non-accredited investors to purchase securities in an offering that involves general solicitation? If so, what types of investor protection conditions should apply? For example, should we allow non-accredited investors to participate in such an offering only if: (1) such non-accredited investors had a preexisting substantive relationship with the issuer or were not made aware of the offering through the general solicitation; (2) the offering is done through a registered intermediary; or (3) a minimum percentage of the offering is sold to institutional accredited investors that have experience in exempt offerings and the terms of the securities are the same as those sold to the non-accredited investors? How would such changes affect capital formation and investor protection? Would legislative changes be necessary or beneficial to make such changes?

We advocate improving Regulation Crowdfunding (with SPVs) so that issuers who wish to accept unaccredited investors would do a concurrent offering with Regulation D.

Otherwise, we agree that unaccredited investors should be able to invest in Reg D 506(c) offerings, provided that:

1) The investment is executed though a registered intermediary.

2) There is a lead investor in a venture capital fund advised by an exempt reporting advisor or registered advisor.

3) Over 50% of the funds are provided by accredited investors.

4) Unaccredited and accredited investors invest under the same economic terms.

62. Should the conditional Section 12(g) exemption for Regulation A Tier 2 securities be modified? If so, in what way? For example, should we increase the thresholds in Exchange Act Rule 12g5-1(a)(7)? Should we, as recommended by one commenter, amend Rule 12g5-1 to tie the thresholds to those in the smaller reporting company definition? If we were to broaden the Section 12(g) exemption or make it permanent, would potential issuers be more likely to use Regulation A? What investor protection concerns could arise from such a change?

We would advocate that the 12g threshold – for both Reg A+ and Regulation Crowdfunding offerings – be matched to the smaller reporting company definition. This would make it far more likely that that high-quality issuers will use these offerings. We believe the best way to protect retail investors is for them to have access to higher-quality companies.

63. Should we, as recommended by the 2017 and 2018 Small Business Forums, require any intermediary that is in the business of facilitating Regulation A offerings to register as a broker-dealer and comply with requirements similar to the requirements for intermediaries under Regulation Crowdfunding, such as required disclosure of compensation and the amount thereof?

In addition to a broker/dealer, we also believe a registered funding portal should be able to facilitate Regulation A+ offerings, subject to the same requirements as Regulation Crowdfunding.

Wefunder does not intend to ever become a broker/dealer. We do not ever want to recommend an investment or hold client funds. However, a funding portal can provide a valuable service to investors by screening for fraud, as well as help issuers process tens of thousands of investments into their company fast and efficiently. A funding portal should be able to be compensated for this service.

Thank you again for this opportunity. We are happy to respond to any questions or provide further information.

Sincerely,

Nicholas Tommarello
Chief Executive Officer, Wefunder