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September 24, 2019

VIA E-mail
Jay Clayton, Chairman Securities & Exchange Commission (seccomments@sec.gov)

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

RE: Concept Release on Harmonization of Securities Offering Exemptions

Dear Chair Clayton –

The principals of Crowdfund Capital Advisors created the Startup Exemption framework which became the basis of Title III of the JOBS Act. Mr. Best and Mr. Neiss both testified at US House and Senate panel hearings about the risks and opportunities with Regulation Crowdfunding. We were pleased to attend the bill signing ceremony at the White House. Since the passage of the JOBS Act we have worked in 43 countries on creating frameworks to enable startups and small businesses to access capital from friends, family and followers. We wrote a book on how to raise money using crowdfunding as well as the World Bank report Crowdfunding's Potential for the Developing World. We also created the CCLEAR Regulation Crowdfunding database that collects over 150 data points from each offering and publishes market research. Some of this research has been used by the SEC in their reporting.

I believe we can start to see powerful trends coming out of the online investment arena. Three things jump out immediately:

1. The fears of rampant fraud and boiler room schemes have not materialized (and are not even on the radar of NASAA)
2. The system is working. Local entrepreneurs are raising money from investors closest to them. This capital is being used by businesses to scale or expand operations and create jobs. This is powering local economies as both businesses and employees pour capital back into their communities by buying goods and services, paying rent or mortgages, eating out, buying gas, sending kids to school, etc. And
3. Companies are raising substantial capital in a fraction of time compared to alternatives.

Below is a snapshot of the Regulation Crowdfunding industry from the CCLEAR Dashboard as of September 12, 2019. As you can see from the chart below, since Regulation Crowdfunding launched on May 16, 2016 almost $270 million has been committed to almost 1,900 campaigns from over 300,000 individuals. The average raise is currently at $236,000 and these firms are

currently employing over 10,000 people. The success rate currently stands at 59% which is much greater than other forms of financing. These firms are raising this capital within 90 days on average which is much less time than the alternatives. Annual reports filed with the Commission as well as interviews we have performed with successful firms show that within 90 days of closing, firms are creating about 3 additional jobs. Most of the investors come from a 1st or 2nd degree relation to the company and once investors they become brand ambassadors for these firms that have precious little marketing and advertising dollars. We are very pleased with the progression and growth of Regulation Crowdfunding to date but we see its potential as much greater.

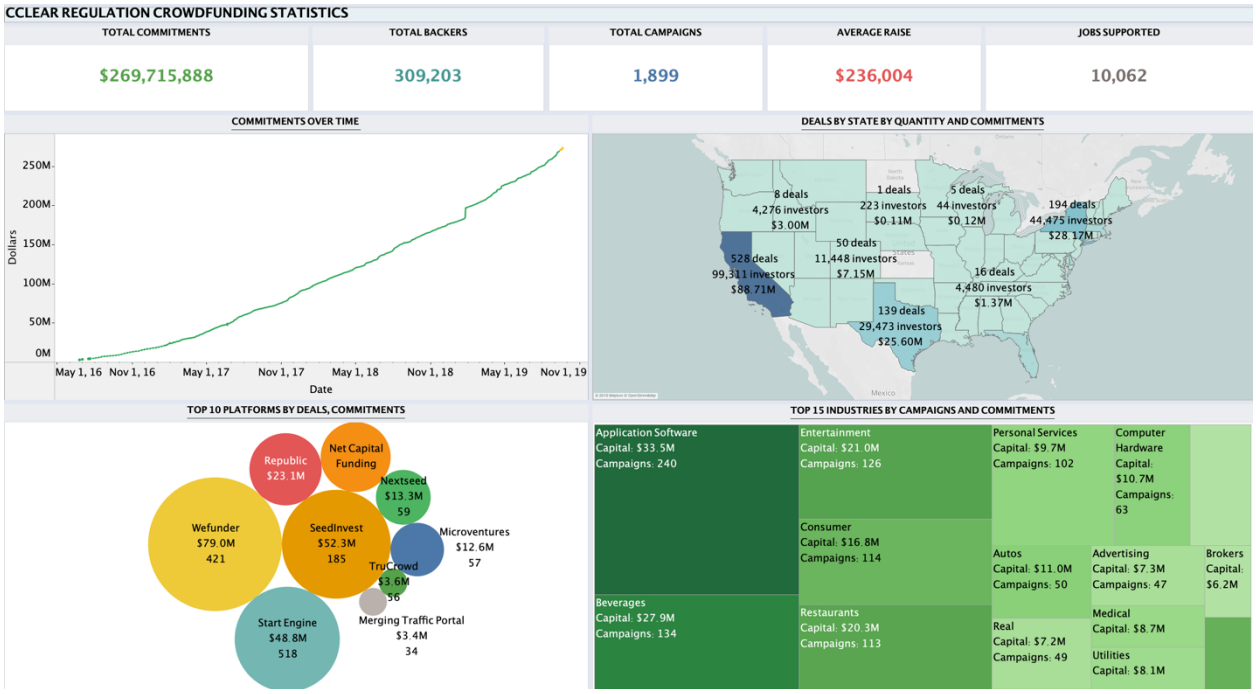


Figure 1: Current State of Regulation Crowdfunding – Source CCLEAR – Crowdfund Capital Advisors, LLC

We applaud the SEC for looking at ways in which to harmonize the current exemptions. It is our belief that the goal of any harmonization should be to make the pathway very clear for a company to decide which exemption is right for them based on how much they need, who their investors may be, what the disclosure regime consists of and what it would cost. We are also sensitive to the need for liquidity of non-reporting exempt unregistered securities in a secondary market and would encourage modification that would foster such a market to evolve (but require ongoing disclosure for companies wishing to be part of that marketplace). We are firm believers that investors need continual and accurate information in order to make an informed decision. Mandating ongoing disclosures and stipulating what a minimum standard set of disclosures is would go far to protecting investors (both accredited and non) wishing to partake in secondary markets.

Given our focus on Regulation Crowdfunding we provide the following input to these questions here and general thoughts on other parts of the concept release below.

79. Do the requirements of Regulation Crowdfunding appropriately address capital formation and investor protection considerations? Yes, and more so than pretty much any other exempt

offering given the framework, investor protections, structure of the offering, disclosures required and ongoing reporting mandated.

Do the costs associated with conducting a Regulation Crowdfunding offering dissuade issuers from relying on the exemption? We do not believe so. We heard many unsubstantiated claims that Regulation Crowdfunding was expensive. So we researched the issue, published this VentureBeat piece "How much does a regulation crowdfunding campaign actually cost?" and debunked that theory. Our research and analysis found that the cost to put together a Regulation Crowdfunding campaign amounts to about 5.3% of the offering amount. This amount is much less than a typical Regulation D offering or a Regulation A offering that typically costs around $100,000.

Should we simplify any of the disclosure requirements for issuers in small offerings under Regulation Crowdfunding? We believe the disclosure requirements are fine. In addition, since the legislation came into effect, financial technologies have emerged to facilitate disclosures and compliance. The best way to "simplify any of the disclosure requirements" is to encourage issuers to use technology solutions like iDisclose that can help them put their offerings together and KoreConX that can help an organization manage their investors once on board.

Should we limit the ongoing reporting obligations to actual investors (rather than the general public) and scale the disclosure requirements to reduce costs? We are generally not opposed to this idea. Investors must be informed, however if securities are going to be available on a secondary market, ongoing disclosures must be available such that the general public can make an informed investment decision. The SEC must be clear in what the *exact disclosure requirements are* in order to avoid any market confusion.

Should we allow issuers to provide reviewed rather than audited financial statements in subsequent offerings unless audited financial statements are available? Yes, as long as the review is by a registered CPA. We also believe that above certain company revenue amounts like $10 million an audit might provide some oversight and transparency that investors would find comforting.

How would such changes affect capital formation and investor protection? Any changes might reduce some of the accounting costs however our suggested change to "reviewed financials for follow on offerings" shouldn't impact investor protection as long as the review is by a registered CPA.

How would changes to the requirements affect issuer interest in the exemption and investor demand for securities offered under Regulation Crowdfunding? I doubt these changes would have too significant impact on bringing more issuers/investors into or deterring issuers/investors from joining the marketplace. An issuer will use whatever means they must in order to raise capital. If that requires CPA review or audit they will do so. Realistically, if they are small issuers with basic financials an audit will be quick and relatively inexpensive.

Would legislative changes be necessary or beneficial to make such changes? No. We believe these changes can all be made by the SEC under its exemptive authority under section 3(b) of the Securities Act.

80. Should we retain Regulation Crowdfunding as it is? The framework as enacted should not be fundamentally changed. It follows the principles of crowdfunding: allow individuals to post information about why they need money and what they will do with it. Give backers the opportunity to pick it apart online and decide if they want to back it. And it layers on investor protections that are not available to donation/rewards crowdfunding like ongoing disclosures, reviewed financials, caps and limits. Regulation Crowdfunding is structured to allow, for the first time in history, any American to invest in a private offering while providing him with required disclosures necessary to make an informed decision without risking too much. We do advocate though for changes to the total amount that can be raised from $1 million to $20 million and erasing any investment caps for accredited investors.

81. Are there any data available that show fraudulent activity in connection with offerings under Regulation Crowdfunding? We have been collecting data and performing interviews since Regulation Crowdfunding began. We have encountered no instances of fraud nor heard about any from the Commission nor state regulators.

82. Should we increase the $1.07 million offering limit? If so, what limit is appropriate? We have been called by several companies with revenues between $10 million and $40 million. They all wanted to do a Regulation Crowdfunding offering due to the appeal of both accredited and non-accredited investors but needed to raise in excess of $1.07 million. They wanted to know why the Commission has only done one adjustment to the offering limit hasn't increased it to match our European counterparts? None of them wanted to deal with the onerous state oversight of a Regulation A, Tier 1 filing, nor incur the expense of a Regulation A, Tier 2 filing. Since Tier 1 of Regulation A isn't practical because of the individual state registrations/reviews, we suggest replacing that with a $20 million cap in Regulation Crowdfunding. You could then remove Tier 1 without reducing any of the investor protections while providing issuers the ability to raise significantly more capital.

    What are the appropriate considerations for a maximum offering size? The maximum offering size should cap out where there are more robust investor protections needed. Hence, if you want to do a non-intrastate offering with non-accredited investors your options would be either Regulation Crowdfunding or Regulation A (or Regulation D but that has the 35 non-accredited cap). Regulation Crowdfunding should go from $0 to $20 million and cap out where something more than an audit is required. Then Regulation A could be the next option, go up to $50+ million however you would need to have a prospectus that is reviewed by the Commission. There should be no more Tier 1 or Tier 2. It should just be Tier 2 up to $50+ million and Regulation Crowdfunding should replace Tier 1.

    Should additional investor protections and/or disclosure requirements depend on the size of the offering? Given the already robust disclosure requirements in Regulation Crowdfunding and no fraud, we don't believe there should be additional investor protections and/or disclosure requirements.

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? This depends. If you remove the investment cap on accredited investors then yes there will be adequate investor demand to justify an increase in the offering limit. If you do not, given the investor caps, it might be hard for an issuer to hit the $20 million cap. We'd advocate for both increasing investor caps and offering limits.

Would legislative changes be necessary or beneficial to increase the offering limit? We believe the SEC has the ability to make these changes under Section 3(b) of the Securities Act that allows for the SEC to define a "small issuance" class with limits of $5 million or $50 million. Our suggested increase in the offering limit up to $20 million would fit as a change under this definition of small issuance.

83. If we were to increase the offering limit, would Regulation Crowdfunding overlap with Rule 504 of Regulation D or with Regulation A? It would overlap with Rule 504 however we believe there is more structure, guardrails and investor protections in Regulation Crowdfunding than in 504. Hence the offering limit for Regulation Crowdfunding should be raised higher than 504. As mentioned above we believe Tier 1 of Regulation A should be replaced with a $20 million offering limit in Regulation Crowdfunding.

    If there is overlap, should we still retain the overlapping exemptions? Depending on how you adjust the investment limits you can either keep or do away with 504. If you make it such that accredited investors have no limit then 504 may not be needed. However, if you keep the investment limits then you need to keep 504 for those accredited investors that wish to invest above the limits set in Regulation Crowdfunding. We believe you should, however, remove Tier 1 of Regulation A.

    How could we rationalize and streamline these offering exemptions? You need to start the discussion among potential issuers with 2 questions: Can you rely on investors from within your state of incorporation? And can you rely solely on accredited investors? This would move people to the intrastate options or the federal ones. At the federal level, depending on the type of investors the issuer has access to, this would determine which exemptions they could pursue.

84. Should we modify the eligibility requirements for issuers or securities offered under Regulation Crowdfunding? We don't believe the eligibility requirements for issuers or securities needs to be modified.

    Should we extend the eligibility for Regulation Crowdfunding to Canadian issuers or all foreign issuers? We believe one of the fundamental principles of Regulation Crowdfunding is to use this method to raise money from people that are close to the issuer in terms of connectivity (1st degree, 2nd degree or 3rd degree). Since our data shows that 80% of the capital comes from people within a 1st or 2nd degree of an issuer and those people are usually close in terms of proximity, it wouldn't make sense to allow Canadian or foreign issuers to be eligible since the investors for those issuers would most likely be in Canada or the foreign jurisdiction.

Should the eligibility requirements for Regulation Crowdfunding mirror the Regulation A eligibility requirements? We don't believe it is necessary to make any changes to the eligibility requirements for Regulation Crowdfunding.

85. Should we, as recommended by prior Small Business Forums, permit issuers to offer securities through SPVs under Regulation Crowdfunding? Absolutely. If the goal of some of these issuers is to be acquired, then having a shareholder table that is easy to manage would facilitate some of these acquisitions. A SPV would be beneficial and have no downside since investors still retain their voting rights.

    If so, are there additional requirements that would be appropriate to ensure investor protection? We are in agreement with many of the suggestions in the concept release for the SPV structure.

    Would legislative changes be necessary or beneficial to make such changes? We don't believe so. We believe Congress gave the SEC much flexibility in its rule making process and such a change could be addressed within a rule.

86. Should we revise the rules that require issuers to provide reviewed or audited financial statements? If so, how? The cost of an audit increases based on the size and complexity of an organization. Clearly the more complex an organization the more beneficial an audit will be for investors. That being said, the Commission needs to understand that there is no need for an audit for an organization that recently incorporated or has revenues of less than $10 million. These organizations, based on age and size, are not complicated and an audit wouldn't prove beneficial. As an example, I had my prior company's financials audited for a round of financing we did when our firm had $5 million in revenues. The audit took 3 weeks and cost about $27,000. It uncovered nothing. We could have used that $27,000 to put into the salary for a full time employee over the course of half a year.

    Audit requirements should be based on age, size and capital sought. If a firm is new, no audit should be required as there is nothing to audit. Also if a firm has less than $5 million in revenues investors would doubtfully benefit from a full audit and a review should be fine. A firm that has only $5 million in revenues yet seeks to raise in excess of $5 million, the more beneficial an audit might be just to have a 3rd party diligence the need for an offering greater than the firm's revenues.

    Would legislative changes be necessary or beneficial to make such changes? Again, we do not believe so as this could be a rule adjustment.

87. Should we eliminate, increase, or otherwise amend the individual investment limits? We believe the investment cap for accredited investors should be removed. The rule also needs to be adjusted so investors can invest the greater of the net income or net worth thresholds and not the lesser of. This way investors that have a greater net worth (meaning more assets without the risk of losing it all) than income won't be limited to investing the income threshold.

    Should we require verification of income or net worth for larger investments, such as $25,000 and higher? No

Should certain investors be subject to higher limits or exempt from the limits altogether? Yes, accredited investors should be exempt from investment limits.

If accredited investors are subject to higher investment limits or exempt from investment limits, should we require verification of accredited investor status? No. If accredited investors self-disclose that they are accredited and lie, they should be responsible for their actions. The self-disclosure is a date/time signature document. If they lie, this can always be provided back to them.

Should we make changes to rationalize the investment limits for entities by entity type, not income? We believe adding this would be beneficial, particularly if the offering limit is raised to $20 million.

Would legislative changes be necessary or beneficial to make such changes? No, we believe this is all in the purview of rule changes.

88. Should we allow issuers to test the waters or engage in general solicitation and advertising prior to filing a Form C? Absolutely. This has several benefits. 1) It allows issuers to see what kind of appetite there is among their crowd to determine if a campaign even makes sense. 2) It allows an issuer to save on all the costs if there isn't sufficient interest. And 3) It will act as a filter for the portals/brokers so that they aren't wasting their time on deals that go nowhere.

If so, should we impose any limitations on such communications to ensure adequate investor protection? The only limitation should be potential investors should be directed to the portal or broker dealer for more information. We would prefer potential issuers still go to the portals/brokers for the first review. If the portal/broker thinks the offering could have merit but isn't sure they want to list then they could have the issuer test the waters via their communication channels. This will control the flow of input and ensure everyone is getting the same information.

Would legislative changes be necessary or beneficial to make such changes? No, we believe this is all in the purview of rule changes.

89. Should we allow for more communication about the offering outside of the funding portal's platform channels? We like the communication channel being limited to the funding portal's platform channels. Issuers should be able to use all social media outlets to promote their offering however all communication must take place on the funding portal or else we lose one of the principles of crowdfunding (crowd vetting).

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?

It is our belief that portals should be allowed to receive securities as compensation as long as they are on the same terms as the investors. We also believe they should be able to co-invest in the offerings they facilitate as long as their investment isn't being used to pump up an offering. (Perhaps the portal can come in with the last 10% or $x dollars such that the power of the crowd is driving the initial traction). Since portals aren't allowed to promote one deal over another, having the securities as compensation doesn't guarantee any more that the offering will be successful, and it only stands as a long-term potential for the intermediary. Plus, this provides incentives to future portals that wish to enter the marketplace.

Should we clarify the ability of funding portals to participate in Regulation A and Rule 506 offerings? This is an interesting concept. We think there is benefit to this as the Regulation Crowdfunding industry has clearly established itself as one of structure, transparency and investor protection. This could benefit the Regulation A and Rule 506 offerings industries by letting funding portals participate.

92. Should we consider using our exemptive authority under Section 28 of the Securities Act to adopt an alternative exemption for crowdfunding offerings to complement Section 4(a)(6)? If you cannot make the changes necessary above on your own, then we would encourage you to use your exemptive authority to take the suggested changes above and "redo" Regulation Crowdfunding with them included.

In addition we have reviewed the entire concept release and have the following thoughts on the definition of accredited investor, role of non-accredited investors in the 506 marketplace, data as the sunlight on market evolution, the need for the SEC to recognize and promote technologies to facilitate important investor protections and how to enable the secondary markets by requiring companies to list securities with registered ATSs and provide links to ongoing disclosures.

Accredited Investor

We believe in many of the other arguments, if you have an advanced degree and understand finance but don't meet the income/net worth thresholds, you should not be precluded from investing in startups and small businesses. The income/net worth test should be self-disclosure so as to not burden either investors with sharing too much personal information or issuers with digging into too much into the personal lives of investors.

Non-accredited participation

We are in favor of non-accredited investors participating in all exempt offerings. We would encourage the SEC follow a similar framework used for Regulation Crowdfunding when allowing non-accredited investors to invest. a) The investors have to acknowledge the risks involved, there are no guarantees and no timeline under which money will be returned. b) Investors should be warned to review company disclosures, any update to those disclosures, risk factors and potential for dilution. And c) investors should be capped at a maximum they can invest based on a self-disclosed percent of income or net worth. Following this process will allow more non-accredited investors into the marketplace, provide them ample warning, and protect them at the same time by capping their potential losses.

We believe it is important to continue to allow non-accredited investors in 506(b) offerings. One of our principals was able to include close friends and family in a startup he ran and without the 35 non-accredited exemption, they would have not been able to invest nor would have enjoyed the exit when the company sold. As mentioned earlier, if investor caps are removed from Regulation Crowdfunding, 506(b) offerings might no longer be necessary.

Technology, Disclosures, Investor Protection – SEC FinTech Sandbox

New Financial Technologies are enabling startups and small business to tackle challenges that were too overwhelming before. We motioned iDisclose above which helps a company with its disclosures. iDisclose is part of LawCloud which is a series of smart online legal documents that assist a company from formation to dissolution. These documents are now readily used and affordable. Another new FinTech is GUARDD. GUARDD helps companies publish secondary disclosures to be in compliance with or exempt from state blue sky laws. GUARDD is focused on helping private companies with non-reporting, exempt unregistered securities. This online tool standardizes the disclosure regime for companies that wish to provide liquidity to their investors on Alternative Trading Systems (ATS). A GUARDD report might be the only disclosure tool available for private companies that wish to publish their company and financial information so that investors in a secondary market have the most accurate and current information. These are just two but these types of technologies should be embraced by the SEC because they standardize the fundraising process, provide critical market data to investors and regulators and reduce the time and cost of performing the actions. Where there is a bottleneck in the rules that make it unclear if such technologies can/should be used, the SEC should have a FinTech sandbox, so issuers know which technologies they have reviewed and how they can be used in compliance with exempt offerings.

Secondary Markets/Covered Securities/Blue Sky Challenges/Solution

Given the movement both Congress and the SEC are making in regards to Venture Exchanges and ATS something needs to be done to address the challenges with blue sky laws. Private companies with non-reporting exempt, unregistered securities cannot provide liquidity for their investors because state blue sky laws afford limited exemptions from state registration. The predominant exemption called the "manual exemption," is not available in all states, varies from state to state and leaves companies confused as to what they need to do to be in compliance with or exempt from state registration. In addition, since Mergent is the only National Securities Manual recognized in the manual exemption and Mergent only works with public companies there is NO exemption alternative for non-reporting exempt unregistered securities (which most securities trading on secondary exchanges would be). Without SEC or legislative interjection that updates the definition of a covered security to pre-empt state registration, secondary markets will either never fully take off or issuers will inadvertently break the law. **This MUST be addressed in the harmonization**.

Since the states have been absent in the discussion of how to protect investor by mandating ongoing disclosures for private companies that wish to provide liquidity for their investors on ATS, we think the SEC should take charge and make the following changes:

a) Update the definition of a covered security under NSMIA

In order to enable secondary trading, the SEC should update the definition of a covered security for the purposes of trading on an ATS to include "non-reporting exempt unregistered securities."

b) Mandate ongoing disclosures for secondary trading and what disclosures should include

To ensure that investors have the most information to make an informed decision and regulators (SEC and States) have data to review, reporting should include:

- Business summary, location, telephone number, website, and email
- Tax id, auditors, legal counsel, transfer agent, shareholder relations and telephone number
- 2 most recent periods of
    - Consolidated Income Statement
    - Consolidated Balance Sheet
    - Any material notes/changes to either
- Auditors report, opinion and emphasis
- Summary of the company's capital stock, total number of investors and beneficial owners in excess of 5%
- Information on the 2 most recent offerings including Type of offering, amount raised, use of proceeds and contingency to closing
- If a company issued tokens, data that identifies the token, describe its characteristics and lists where it is trading should be included
- And finally, the name, email and telephone for the person completing the form. This is the person who has verified the authenticity of the disclosed information in the report.

Just by clarifying a minimum set of disclosures would bring much transparency and investor protection to the marketplace.

c) Mandate that all trading take place on registered ATS

The SEC should require that any company that wishes to provide liquidity for their investors on a secondary market do so on an ATS that is registered with the SEC and overseen by FINRA. This would establish a clear set of registration and ongoing compliance requirements necessary to facilitate an efficient marketplace.

d) Require the ATS to perform reasonable diligence following FINRA's rules/guidance for private placements

FINRA already has published a series of rules/guidance for broker dealers when performing diligence on private placements. A similar level of diligence should be required of ATS that are listing these non-reporting exempt unregistered securities. This would answer the question "who is reviewing the information disclosed to investors?" Initially, only companies with audits should be allowed to list. This would also verify the integrity of the financials. Finally, any company that wishes to have their securities listed should ensure that there are no bad actors among i) the person(s) completing the disclosures, ii) officers and iii) directors. This will prevent bad actors from getting into the marketplace.

e) Require that ongoing disclosure be made available to investors via the ATS

In order to allow a security to maintain its listing status on an ATS a company must provide ongoing disclosures. This must be performed on an annual basis. Companies should have to report any material changes within 10 days. Technology, like GUARDD, can facilitate the transfer of such material changes on a real-time basis to the ATS and regulators (state and SEC) such that the system is running efficiently. By giving ATSs live feeds to GUARDD reports, the ATS can also perform their diligence on the annual/updated reports as they are received. Again, answering the question, "who is reviewing the disclosed information."

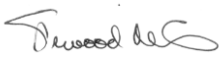
f) Require disclosures and trading information to be available to the SEC and the States
Since it is often heard from NASAA, the SEC and people testifying at Congressional hearing that there is "insufficient data to determine," require disclosures and ATS activity be summarized and provided to both the SEC and the States. This would allow the regulators to understand the size of the market, capital flows and who the main drivers are. Having access to the ongoing disclosures and secondary reporting would provide regulators invaluable data that they haven't had to date. Particularly if any cases of fraud were to appear.

g) Investor caps
It might be beneficial to include similar caps on non-accredited investors in the secondary market like they appear in Regulation Crowdfunding. Such caps and limits will both allow non-accredited investors to participate in this opportunity while limiting their losses. Since KYC would be a normal onboarding process of the ATSs, having them integrate caps would be a simple technological 'if then' statement at the point of purchase of the securities. If a non-accredited investor is trying to buy more than either income or net worth cap allows, they will not be allowed to proceed.

Communication
We believe the SEC can be doing a better job promoting the alternatives to capital formation. While we understand investor protection has taken up the bulk of its duties. Access to capital is still one of its two pillars. Hence, we believe the SEC should establish the "Office of Capital Formation" whose job and duties are to discuss, promote and answer any questions companies or individuals have on the different exemptions.

We welcome the opportunity to engage in further dialog with the SEC on this concept release.

Sincerely,



Sherwood Neiss
Principal, Crowdfund Capital Advisors, LLC