February 3, 2014

Ms. Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Comments on Proposed Rules on Crowdfunding (File Number S7-09-13)

Dear Ms. Murphy:

Thank you for the opportunity to provide comments to the Securities and Exchange Commission (the "SEC") on its proposed amendments to Proposed Rules to implement Title III of the JOBS Act. The JOBS Act was of great interest and importance to the Kauffman Foundation. Given the focus in the JOBS Act was to support the creation of jobs, we are looking at the effect of the Proposed Rules on high growth potential firms—startups that have the potential to create jobs.

In this comment letter, we first highlight some potential modifications under consideration that could limit (or even destroy) the potential of crowdfunding. We then provide some suggestions that would make 4(2)(6) more attractive and beneficial to high-quality growth potential startups—the kinds of firms that would ideally seek to raise capital through crowdfunding. Finally, we provide a few comments on smaller, specific issues.

Investor Protections

The educational materials, risk disclosure documents, and investment limit calculator in the proposed rules provide sufficient investor protection when balanced with the goal of capital formation. Requiring a strict standard of verification- such as that required for 506(c) fundraises- will have a negative effect on capital formation, especially given the potential for many small investments. Providing sensitive financial documentation, even a letter from their CPA, is a burden that most investors making small dollar investments are not willing to do. Requiring such information from individuals making small dollar investments would likely result in no participation by those individuals in crowdfunding.

No Integration of Rule 506 and 4(a)(6)

The $1 million investment limit on 4(a)(6) fundraises should not be integrated with other exemptions. Startups should be able to fundraise concurrently with 506(c) and 4(2)(6). Any integration that prevents startup firms to raise funds concurrently with other sources or raise follow-on capital would have detrimental effects on both firms and their investors and would make crowdfunding an unattractive option for high growth potential firms.

Flexible Oversubscription

The oversubscription policy in the proposed rules is fine as is. Founders often have multiple plans for how to accelerate growth if they receive additional unexpected funding. Issuers must also have ultimate say in deciding which of their interested investors are accepted. High growth potential startups are not going to use 4(a)(6) if they are forced to accept investment from every online stranger in a pro-rata or first-come first-served basis. They should be able to use their judgment.

Burdensome Effect of Requiring Audited Financial Statements

Section 4A(b)(1)(D)(iii) requires audited financial statements for offerings of more than $500,000 "or such other amount as the Commission may establish, by rule." Should we increase the offering amount for which audited financial statements would be required? If so, to what amount (e.g., $600,000, $750,000, etc.)?

Audited financial statements, particularly for ongoing reporting requirements, are so cost-prohibitive for startups that they make absolutely no sense as an appropriate use of funds. Many of the issuers looking to raise capital through crowdfunding will be startups with little or no revenue to afford audited financial statements. The requirement that they spend tens of thousands of dollars in advance of a capital raise will likely push these companies to attempt to raise just under the $500,000 threshold. Because the JOBS Act provides the SEC authority to change the threshold for audited financial statements, the SEC should consider raising the threshold amount, so that the proposal's audited financial statement requirement is less burdensome for small business. I suggest that the final rules adjust the threshold amount to more than $800,000 – which will allow larger capital raises without the unnecessary and disproportionate expense of fully audited statements.

Burdensome Disclosure Requirements

Another major concern is that the ongoing compliance costs (with perceived risk of regulatory sanction if they fail to adequately comply) are so high as to make Title III crowdfunding unattractive. Regulation A offerings do not require any ongoing financial disclosure post funding, and that these offerings may involve substantially larger amounts of money than those under Title III. Given the small company size and the limited amounts being raised, requiring ongoing full financial disclosures is an undue burden on these firms. The SEC could develop standard, boilerplate disclosures for some of the more complicated nonfinancial disclosures, such as risk factors. Permitting small business issuers to use standard disclosures would serve as a less burdensome alternative that still accomplishes the purposes of this rulemaking. Because the proposed rule's nonfinancial disclosures are not required by the JOBS Act, the SEC should develop alternatives that would be less burdensome for small business. A limited disclosure form that doesn't require extensive and expensive accounting help is consistent with the intent of the JOBS act and would facilitate greater utilization of crowdfunding by firms.

Allowing Compensation with a Financial Interest

Another big concern is that of limiting the ability of the platforms to share in the economic interests of the companies. Allowing broker dealer participation in the economic interest of the company is allowed under Regulation D. The rule here appears to suggest that platforms (intermediaries) will not be allowed any compensation other than fees. The current proposed rules with a fee-based system is a recipe for disaster. No credible startups that have viable alternatives would choose to pay 5-15% of their fundraising round in cash to an intermediary. This will result in only poor quality startups using platforms to raise funding. Incentives should be aligned, which shared financial interest does.

If Funding Portals were allowed to participate in the potential economic benefit of the firms, then they would logically focus on those companies with greater potential. This aligns the interest of the platform, the investors and the company. The current model separates the interest of the investors from the platforms, and aligns the platforms with the interests of the company founders in a transactional model. Allowing warrants or carried interest in profits is commonplace in higher risk transactions. By allowing the platforms this participation, this could lead to lower up-front and back-end fees and lead to more firms (and better firms) participating in the equity markets.

Cost of Limiting Curation

The proposed rules state that portals cannot deny listings on the basis of qualitative or subjective factors. Only licensed broker-dealer will be able to curate the deals on their site. The prohibition on curation is burdensome because it would place funding portals at a competitive disadvantage to broker dealers (who may curate offerings under the proposal).

The rules should balance the needs of platforms to protect their business models with the requirement that they do not provide investment advice. Funding portals should be allowed to use subjective factors to exclude some listings. The screening of clearly unprepared or ill-conceived offerings allows the funding portals to keep the interest and engagement of investors – in essence, attracting and retaining the audience, which allows the business to succeed. If sites cannot curate out listings, they lose the opportunity for competitive advantage via maintaining the investor base that fuels the transactions.

The SEC should create a safe harbor for funding portals to curate on the basis of subjective factors that do not engage in activities that could be treated as "solicitations" or to permit funding portals to curate on the basis of subjective factors so long as the portals disclosed to the public that its curation does not constitute a recommendation regarding the advisability of any investment on the funding portals. If clearly disclosed to investors, it should also be permissible for a Funding Portal to sort offerings with an algorithmic score that takes into account any objective, numeric data that is reasonably likely to correlate with successful investments, such as numeric ratings by accredited and unaccredited users on the platform, number of commitments from investors (weighted by valuation of their portfolios), and page views.

Additional Fees Created by Undue Liability

The proposed rule appears to impose statutory issuer liability on intermediaries. This is potentially a large expense for intermediaries. This liability standard would be especially burdensome for funding portals because broker dealers will already have these procedures in place under requirements set by the Financial Industry Regulatory Authority (FINRA). The SEC should clarify that broker dealers and funding portals would not be subject to personal liability as an issuer.

Single Purpose Vehicles

High-growth startups can't accept hundreds of direct shareholders, as the cost of maintaining records can be enormous, and venture capitalists are wary of investing in startups with "messy cap tables". No startup can take the risk of endangering their follow-on financing. One solution for 506(c) offerings is to group up to 99 accredited investors into one Single-Purpose LLC Fund, which then invests — as one shareholder — into the startup. Unfortunately, The JOBS Act prohibits private funds from using 4(a)(6).

Congressional intent was to block hedge funds, not single-purpose vehicles, which they had not contemplated (the practice became common only after the Commission's no- action letters to FundersClub and AngelList). The SEC could create a special class of single-purpose vehicles - only available for 4(a)(6) offerings – that groups an unlimited number of investors into one fund, sponsored by the intermediary, and that may invest as a single shareholder into the issuer.

Allowing for such a vehicle will attract high-quality startups, reduce transaction costs, and accommodate intermediary compensation in the form of carried interest, which perfectly aligns the incentives between intermediaries and investors. Intermediaries may also advocate for smaller unsophisticated investors during follow-on financing, who individually won't have the power to protect their rights from venture capitalists. The $1 million limit on 4[a][6] raises in any 12 month period, which will effectively become 500k in the absence of a change to the audit requirement, serves as a natural constraint on the amount of capital that this vehicle could raise. The SEC should consider whether Funding Portals that sponsor such funds should also be registered Investment Advisors or exempt reporting advisors.

If the Commission will not create a special purpose vehicle Funding Portals should be permitted to act as holder of record, as noted in the Congressional Record:

"Intermediaries should also be permitted to act as the holder of record for offerings that they facilitate to reduce compliance complexity for issuers and to increase the

likelihood of subsequent funding from institutional investors. Providing holder of record services will reduce compliance complexity for issuers and place the burden of managing crowd funded investors on the intermediary. Without this mechanism, issuer capitalization tables may become unwieldy, discouraging subsequent funding from institutional investors."

Currently, only clearing brokers and banks may act as a holder of record. The costs associated with registering and operating these entities for the purpose of crowdfunding is not economically feasible. However, the risks associated with acting as a holder of record are significantly diminished given the few activities that would be performed by crowdfunding platforms, especially for investments where there is no secondary market. Funding portals could perform these activities under a less intrusive regulatory regime, consistent with the Commission's investor protection mandate.

Some other minor comments:

8. We are proposing to permit an issuer to rely on the efforts that an intermediary takes in order to determine that the aggregate amount of securities purchased by an investor will not cause the investor to exceed the investor limits, provided that the issuer does not have knowledge that the investor had exceeded, or would exceed, the investor limits as a result of purchasing securities in the issuer's offering. Is this approach appropriate? Why or why not? Should an issuer be required to obtain a written representation from the investor that the investor has not and will not exceed the limit by purchasing from the issuer? Why or why not?

The intermediary should take on the responsibility of ensuring an investor has not exceeded their limits. If a startup has to worry about whether hundreds of strangers are complying with their investment limits, they will not raise via 4(a)(6). Startups will not subject themselves to this liability if they have other fundraising alternatives, meaning the crowd will only have access to deals that professional investors pass on. The intermediary is in a better position to track compliance across multiple investments.

9. Should institutional and accredited investors be subject to the investment limits, as proposed? Why or why not?

For accredited investors, we propose to cap an investment into any individual startup raising via 4(a)(6) at $100,000, but not impose investment limits on aggregate investments. It does not make sense to allow accredited investors to invest any amount they desire in some deals, but have to calculate annual investment limits on all their startup investments based on their current year's income or net worth for others. The investment caps outlined in the statute were intended to protect unaccredited investors. Accredited investors are accustomed to current regulations. Imposing these restrictions on them will be confusing, make them less likely to invest in 4(a)(6) deals, and contribute to the possibility that unaccredited investors will only be able to access second tier deals.

While most startups will fundraise concurrently with both a 506(c) and a 4(a)(6) offering, they should be able to forgo the cost of organizing a single purpose vehicle to hold small dollar accredited investors by making it easy to include those investors in the 4(a)(6) offering. Making this difficult by subjecting accredited investors to aggregate investing limits will cause many startups to choose between paying to organize a single purpose vehicle or conducting a 4(a)(6) offering, and many of them will choose the former, removing the opportunity for unaccredited investors to invest.

29.Are these proposed disclosure requirements appropriate? Why or why not? Should we require any additional disclosures? Should we prescribe specific disclosure requirements about the business of the issuer and the anticipated business plan of the issuer or provide a non-exclusive list of the types of information an issuer should consider disclosing? Why or why not? ….

The proposed disclosure requirements regarding the "business plan" of the issuer are fine as is and no changes are recommended. The proposed rules understand that companies at different stages have a very different idea of what a "business plan" is, and should have flexibility in presenting the material that investors demand. Formal business plans are obsolete.

56. Should we require some or all issuers also to provide financial statements for interim periods, such as quarterly or semi-annually? Why or why not? If so, which issuers and why? Should we require these financial statements to be subject to public accountant or auditor involvement? If so, what level of involvement is appropriate?

Annual financial statements are sufficient. Most early-stage startups do not have quarterly financial statements, as they add little value.

76. Should we specify that an amendment to an offering statement must be filed within a certain time period after a material change occurs? Why or why not? What would be an appropriate time period for filing an amendment to an offering statement to reflect a material change? Why?

The world of startups is can be by nature chaotic and problematic. It's not always immediately clear what is a permanent material change, and what can be fixed with a little effort. The only legal requirement should be proper disclosure of all outstanding potential material changes before the fundraise closes. It is important that the proposed rules are not modified to cause startups to lose their ability to take advantage of 506 or other exemptions by accidently neglecting to file an annual report. This would destroy some startups, and make the community as a whole more reluctant to risk conducting 4(a)(6) offerings.

Thank you for the opportunity to comment on the proposed crowdfunding rules. Please contact us at the phone numbers or emails below if we can provide any further help.

Sincerely,

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