



CrowdFund Intermediary Regulatory Advocates
1345 Avenue of the Americas
New York, NY 10105
Telephone: (212) 370-1300

January 20, 2014

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No.: S7-09-13; Curation - “Safe Harbor for Certain Activities; Highlighting Issuers and Offerings”; Release 33-9470

Dear Ms. Murphy:

I am writing you on behalf of the Crowdfund Intermediary Regulatory Advocates (“CFIRA”), a crowdfunding trade organization that lobbies and advocates for regulations that will support the crowdfunding industry in connection with Title II and Title III of the Jumpstart Our Business Startups Act of 2012. CFIRA’s role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members comprise intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in, or who intend to engage in, business under Titles II and III.

In response to the request for comments in Section II.D.3 of the Proposing Release, CFIRA recognizes that the under the proposed rules, a funding portal may highlight particular offerings of securities made in reliance on Section 4(a)(6) on its platform based on objective criteria that may include the type of securities being offered (e.g., common stock, preferred stock, or debt securities); the geographic location of the issuer, the industry or business segment of the issuer, the number or amount of investment commitments made and the progress in meeting the target offering amount, or, if applicable, the maximum offering amount and minimum or maximum investment amount.

This letter is submitted to clarify the purpose and function of curation by Funding Portals and address the reservations expressed by representatives of the Divisions of Corporation Finance, Trading and Markets and the Office of Compliance, Inspection and Examinations (collectively, the

“Staff”) to CFIRA members during meetings to develop rules and regulations governing crowdfunding throughout 2012 – 2013.

We appreciate the Staff’s efforts to provide a list of allowable criteria that are sufficiently objective so as to reduce the risk of a funding portal applying them to advance a particular bias or subjective assessment of the issuers or offerings.

The Commission has requested comments in response to question 130:

The proposed rules incorporate a “reasonable basis” standard for intermediaries to determine whether an issuer would be subject to a disqualification. In contrast, there is no reasonableness standard for intermediaries’ requirement under the proposed rules to deny access to an issuer if it believes the issuer or the offering presents potential for fraud or otherwise raises concerns regarding investor protection. Is it appropriate to have these two different standards under the proposed rules? Why or why not? If one of these standards is not appropriate, please explain what would be a more appropriate standard and why?

The proposed rules would require an intermediary to have a reasonable basis for believing that each issuer is in compliance with relevant regulations and has established means to keep accurate records of holders of the securities it offers, and will require that the intermediary deny access if it believes the issuer or its offering would present a potential for fraud.¹

The Commission has requested comments in response to question 220:

Are there any additional criteria that a funding portal should be permitted to use when highlighting issuers and offering on its platform? If so, which ones and why? Should funding portals be permitted to highlight issuers and offerings based on criteria that specifically relate to the activities of users on its site, such as offering that gave have been viewed by the largest number of visitors to the platform over a particular time period? Why or Why not?

The central premise of objective curation was best expressed by Senator Scott Brown, one of the sponsors of the JOBS Act and an advocate of crowdfunding, who stated in April 2012 that “none of the requirements placed on intermediaries should prevent an intermediary or funding portal from removing or preventing the public display of an offering that it deems not credible.”² This concept is vital to understanding what we mean by “curation” and why we believe it is so important to preserve.

The Staff correctly grants a safe harbor for funding portals to [Deny] Access Based on Potential Fraud or Investor Protection Concerns - “In light of the comments received, the proposed rules would require a funding portal to deny access to its platform to, or cancel an offering of, an

¹ See proposed Rule 301 of Regulation Crowdfunding

² Citation for quote (other than CFIRA site)

³ See proposed Rule 402(b)(10) of Regulation Crowdfunding. See also discussion in Section II.C.3

⁴ With respect to intermediaries (CFIRA site) funding portals, see proposed Rule 403(a) of Regulation Crowdfunding and the discussion in Section II.D.4

issuer that the funding portal believes may present the potential for fraud or otherwise raises concerns regarding investor protection, as is required under proposed Rule 301(c).”³

In addition, Section II.E.5, the Commission states that, “steps intermediaries could take in exercising reasonable care in light of this liability provision would include establishing policies and procedures that are reasonably designed to achieve compliance with the requirements of Regulation Crowdfunding, and that include the intermediary conducting a review of the issuer’s offering documents, before posting them to the platform, to *evaluate* whether they contain materially false or misleading information.”⁴ [emphasis added]

As we understand from the plain reading of the rule proposals, the Commission is granting funding portals the ability to refuse or remove a proposed or posted offering by an issuer and this evaluation prior to posting does not constitute investment advice, which would require registration as a broker dealer or investment adviser. Further, verifying that an offering does not contain materially false or misleading information will not be construed as curation but rather fulfilling a requirement that will enhance investor protections on equity and debt security funding portals.

We recognize the importance of a Funding Portal not using subjective criteria based on an assessment of the characteristics, merits, or the shortcomings of a particular issuer or offering. The examples of objective criteria that would be allowed is a good start: security type, geography, and industry are all likely criteria that Funding Portals will use to limit issuers on their platforms. We recommend including the following objective criteria for use by Funding Portals to limit the issuers on their platform:

- 1) Amount of money being raised pursuant to the 4(a)(6) offering
- 2) Whether the issuer is pre or post revenue or pre or post EBITDA
- 3) How long the issuer has been operational or profitable
- 4) Historical and projected revenue
- 5) Historical and projected EBITDA
- 6) Size of the management team for the issuer
- 7) Relevant experience / length of experience of the management team in the business proposed

While these are important factors for limiting the issuers and offerings on a given funding portal, if they are deemed by the Commission to be too limiting, then they should be included as permissible objective criteria for highlighting/advertising/searching/filtering for issuers or offerings on the platform.

These specific objective criteria are suggested because they are often important to investors when deciding for themselves what issuers they want to invest in.

In keeping with desired transparency by all parties, and as support for the Commission to require funding portals to clearly display on a public page on their platforms the objective criteria they use in limiting or highlighting offerings, we submit the following information for

³ See proposed Rule 402(b)(10) of Regulation Crowdfunding. See also discussion in Section II.C.3

⁴ With respect to intermediaries that are funding portals, see proposed Rule 403(a) of Regulation Crowdfunding and the discussion in Section II.D.4

consideration.

I. International Experience with Securities Crowdfunding⁵

As you are aware, securities crowdfunding, both equity and debt offerings, has existed for almost a decade. While incidences of fraud are very low for crowdfunding sites in general, platforms that utilize an objective posting criteria coupled with a secondary subjective review yield the lowest reported incidences of fraud. It is fundamental to the success of the U.S. market for funding portals to have the authority to reject or remove an issuer that appears to meet the stated criteria to be eligible for a crowdfunded offering, but that may not be “credible” in Senator Brown’s words.

It is important to distinguish the pre-posting review process from issuer ratings. The latter is a statistical tool that some crowdfunding sites may feature to enable investors to sort investment opportunities against an articulated matrix. The Commission has conceded that the use of objective algorithms does not constitute investment advice or trigger broker-dealer registration without some other subjective element. Following is one use case that provide some insight from an international platform:

Case Study: Australia – Equity Crowdfunding

The Australian Small Scale Offerings Board (www.ASSOB.com.au), founded in 1997, operates the largest investment crowdfunding platform in Australia and one of the largest and oldest in the world. It is an equity crowdfunding platform that has successfully served both accredited and non-accredited investors since its inception, raising over AUD\$138 million to date for more than 176 small and medium size enterprises without a single case of fraud reported.

Companies must be vetted prior to going on ASSOB’s platform. There have been 176 pitches funded since inception. 83% of companies funded are still operational (compare this to 50% of U.S. companies that fail within one year according to the Small Business Administration). Businesses can raise between AUD\$250,000 and AUD\$5 million, with an average equity raise of \$500,000 in exchange for 21% of the issuer equity. Regulations allow a maximum of 20 non-sophisticated investors in any 12-month period, in any given issuance. There are an average of 14 investors per offering, with an average amount of AUD\$38,023.

Issuers are required to choose a “Sponsor” to help with the fundraising process (preparing documents, due diligence, financials, etc.). These “Sponsors” provide an ecosystem of professional service providers to help guide businesses through the fundraising process similar to the DAD-PAL model used by the OTC.QX or the NOMAD model used by AIM in the UK. Sponsors are compensated with a portion of the listing fee, which averages AUD\$5,000. ASSOB’s business model includes an on-boarding application fee, a one-time admission fee, monthly maintenance fee and a success fee of approximately 1.5% - 2.5% of funds raised.

⁵ The information in this section is from Crowdfund Capital Advisors, “How the Crowd Detects Fraud” (blogpost December 12, 2012 - <http://www.crowdfundcapitaladvisors.com/resources/26-resources/120-crowd-detects-fraud.html>).

Once ideas are approved they go live on ASSOBS platform. An issuer uses social media (email, Twitter, Facebook, or other social media) to reach out to its social network to attract investors. Investors are allowed to comment on pitches. Issuers must defend comments on platform in an open dialog.

The Australian experience has shown that curated offering platforms have value in the marketplace, lead to greater business longevity, and adequately protect investors and issuers.

II. A New Understanding of Curation

Respectfully, CFIRA requests that the Commission to provide a clear definition for what constitutes investment advice while remaining open to the necessity for Funding Platforms to provide objective criteria and reasonable standards for posting offerings on their websites.

We ask the Commission to consider both the stated purpose for curation and the international experience of curation; curation permits portals to present issuer data to investors in a coherent and user friendly manner while at the same time offering another investor protection benefit, that of objectively filtering offerings. Funding portals will not make recommendations, or review the appropriateness of an investment for an investor. It will be the decision of each investor whether to make a particular investment and to create an appropriately balanced and diversified portfolio.

Portals will not be the only entities providing objective information to the marketplace about issuers. Independent third party service providers intend to balance the ecosystem by providing ratings platforms such as Crowdbureau's Collective Market Intelligence Ratings platform, which will rate both issuers and investors.

The Commission is urged to recognize that funding portals share its concerns about deterring fraud and enhancing investor protection. Allowing portals to perform limited, objective curation will promote our mutual goals.

CFIRA is available to further discuss the recommendations and concerns expressed in this letter. We look forward to continue support working with the Staff and to making crowdfund investing a success for investors, small businesses and entrepreneurs.

Respectfully submitted,



Kim Wales
Wales Capital, Founder & CEO
CFIRA, Executive Board Member



Chris Tyrrell
OfferBoard, Founder & CEO
CFIRA, Chairman

CROWDFUND INTERMEDIARY REGULATORY ADVOCATES