

# REGULATION CROWDFUNDING

*Your Inside Guide to the Final Rules*

November 20, 2015

## BACKDROP

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On October 30, 2015 the U.S. Securities and Exchange Commission (SEC) voted in favor of the final rules for Regulation Crowdfunding that will enable all investors the opportunity to invest in private companies in the United States. This concludes the work that we at CCA began in 2010 and helped usher through Congress. We were honored to attend the bill signing ceremony in the Rose Garden of the White House for our contribution to the JOBS Act.

Crowdfund Capital Advisors (CCA) incorporated shortly thereafter and has worked with entrepreneurs, investors, crowdfunding platforms, governments, financial regulators and multilateral organizations in 35 countries to construct and implement strategy for equity and debt crowdfunding ecosystems.

This report is meant to supplement our best selling [How to Crowdfund](#) book available on Amazon.com and our online education series [Success With Crowdfunding](#). The book is a step-by-step guide on how to put together a crowdfunding campaign and leverages our experience as successful entrepreneurs whom have built INC 500 companies and raised millions of dollars from



investors. It also leverages our experience at putting together debt, equity, donation and rewards crowdfunding campaigns and successfully assisting them raise money. For the past 5 years, we have been working in the trenches of the crowdfunding industry and analyzing why campaigns succeed and fail. We have tried to incorporate all of this information into our education materials. So we encourage you to [check them out](#).

As an entrepreneur, raising money is never an easy thing to do and knowing the rules and regulations is just one important part of being successful. Others include knowing how to build a crowd, create a successful pitch for your business, manage a campaign and then managing investors.

What is provided below is an overview summary and it is strongly advised that you supplement this document with professional legal advice when considering making an offering of securities via crowdfunding. Since the SEC bases all its legal action on facts and circumstances, we encourage you to seek legal counsel when putting together a crowdfund offering.

As a potential investor, all investments have a component of risk. For those that choose to invest in crowdfunding opportunities, it should be understood that these opportunities come with significant risk. Investors need to understand these risks and proceed with caution. We recommend using this document along with other educational materials and professional advice from your investment advisors and/or attorneys, to try to mitigate some of the risks if you are investing in one of these crowdfunding offerings. And one final thought for investors: Buying and selling securities (as you will see) is a highly regulated activity and can be very confusing. As an investor, consider additional help and make sure you diversify your investments to protect yourself from loss and conduct proper due diligence before investing. Talking with a professional financial advisor can be a prudent first step when considering a Regulation Crowdfunding investment as part of your portfolio.

## Regulation Crowdfunding Components

Under Regulation Crowdfunding these rules are broken down into 4 categories; the Exemption itself, requirements for issuers seeking the exemption, intermediary requirements and additional requirements. **All the follow is abbreviated and pulled directly from the final rules issued by the SEC<sup>1</sup>.**



### 1) Crowdfunding Exemption

Consider an exemption an exception to the rules. In regards to the process of raising capital it is an exemption from registering with the U.S. SEC provided issuers *follow certain rules*.

- a) **Limit on Capital Raised** - An issuer is permitted to raise a maximum aggregate amount of \$1 million through crowdfunding offerings in a 12-month period. Only the capital raised in reliance on the exemption should be counted toward the limit. Capital raised through other means should not be counted in determining the aggregate amount sold. An offering made in reliance on Section 4(a)(6)<sup>2</sup> should not be integrated with another exempt offering made by the issuer, provided that each offering complies with the requirements.
- b) **Investment Limits** - Individual investors, over the course of a 12-month period, are permitted to invest in the aggregate across all crowdfunding offerings up to:
  - i) If either their annual income or net worth is less than \$100,000, then the greater of:

<sup>1</sup> To read the final rules click here: <http://www.sec.gov/rules/final/2015/33-9974.pdf>

<sup>2</sup> Section 4 (6)(a) states: "The provisions of section 5 shall not apply to ... transactions involving the offer or sale of securities by an issuer (including all entities controlled by or under common control with the issuer), provided that— the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12- month period preceding the date of such transaction, is not more than \$1,000,000;"

- (1) \$2,000 or
- (2) 5 percent of the lesser of their annual income or net worth.
- ii) If both their annual income and net worth are equal to or more than \$100,000, then 10 percent of the lesser of their annual income or net worth; and
- iii) During the 12-month period, the aggregate amount of securities sold to an investor through all crowdfunding offerings may not exceed \$100,000.

If you wish to see how much you can invest, we created this [easy to use calculator](#) for you to use. The SEC also provided the following chart to exemplify the above:

The chart below illustrates a few examples:

Investor Annual Income	Investor Net Worth	Calculation	Investment Limit <sup>52</sup>
\$30,000	\$105,000	Greater of \$2,000 or 5% of \$30,000 (\$1,500)	\$2,000
\$150,000	\$80,000	Greater of \$2,000 or 5% of \$80,000 (\$4,000)	\$4,000
\$150,000	\$100,000	10% of \$100,000 (\$10,000)	\$10,000
\$200,000	\$900,000	10% of \$200,000 (\$20,000)	\$20,000
\$1,200,000	\$2,000,000	10% of \$1,200,000 (\$120,000), subject to \$100,000 cap	\$100,000

- c) **Transaction Conducted Through an Intermediary** - Transactions must be conducted through an intermediary that either is registered as a broker-dealer or is registered as a new type of entity called a “funding portal.” The rules require an issuer to use only one intermediary to conduct an offering or concurrent offerings in reliance on Section 4(a)(6) to help foster the creation of a “crowd” and better accomplish the purpose of the statute. In order for a crowd to effectively share information, the SEC believes it would be most beneficial to have one meeting place for the crowd to obtain and share information, thus avoiding dilution or dispersment of the “crowd.” The final rules define “platform” as “a program or application accessible via the Internet or other similar electronic communication medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act.
- d) **Exclusion of Certain Issuers from Eligibility under Section 4(a)(6)** Certain companies are not eligible to use the Regulation Crowdfunding exemption. Ineligible companies include non-U.S. companies, companies that already are Exchange Act reporting companies, certain investment companies, companies that are disqualified under Regulation Crowdfunding’s disqualification rules, companies that have failed to comply with the annual reporting requirements under Regulation Crowdfunding during the two years immediately preceding the filing of the offering statement, and companies that have no specific business plan or have indicated their business plan is to engage in a merger or acquisition with an unidentified company or companies. Securities purchased in a crowdfunding transaction generally cannot be resold for a period of one year. Holders of these securities do not count toward the threshold that requires an issuer to register its securities with the Commission under Section 12(g) of the Exchange Act if the issuer is current in its annual reporting

obligation, retains the services of a registered transfer agent and has less than \$25 million in assets.

- 2) **Issuer Requirements** - Issuers conducting an offering pursuant to Regulation Crowdfunding must file certain information with the Commission and provide this information to investors and the relevant intermediary facilitating the crowdfunding offering. This information is to be completed on Form C (see Appendix A) in XML format which will allow the SEC to electronically receive and store the information on the form. (You should confirm with our intermediary that they will transmit this information to the SEC or else you will need to do it).
- a) **Disclosure Requirements** – The information required includes:
- i) The name, legal status, physical address and website address of the issuer, including its form of organization, jurisdiction in which it is organized and date of organization;
  - ii) The names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer. The names of the directors and officers, including any persons occupying a similar status or performing a similar function, all positions and offices with the issuer held by such persons, the period of time in which such persons served in the positions or offices and their business experience during the past three years, including: each person’s principal occupation and employment, including whether any officer is employed by another employer; and the name and principal business of any corporation or other organization in which such occupation and employment took place. Final rules require the disclosure only to the extent an issuer has individuals serving in these capacities or performing similar functions.
  - iii) A description of the issuer’s business and the use of proceeds from the offering. The SEC anticipates that issuers engaging in crowdfunding transactions may have businesses at various stages of development in different industries, and therefore, believes that the rules should provide flexibility for these issuers regarding what information they disclose about their businesses. An issuer will be required to provide a reasonably detailed description of the purpose of the offering, such that investors are provided sufficient information to make an informed investment decision. If an issuer does not have definitive plans for the proceeds, but instead has identified a range of possible uses, then the issuer should identify and describe each probable use and the factors the issuer may consider in allocating proceeds among the potential uses. If an issuer indicates that it will accept proceeds in excess of the target offering amount, the issuer must provide a reasonably detailed description of the purpose, method for allocating oversubscriptions, and intended use of any excess proceeds with similar specificity.
  - iv) A description of the financial condition of the issuer. Financial statements of the issuer that are, depending on the amount offered and sold during a 12-month period, accompanied by information from the issuer’s tax returns, reviewed by an independent public accountant, or audited by an independent auditor. An issuer relying on these rules for the first time is permitted to provide reviewed rather than audited financial statements, unless financial statements of the issuer are available that have been audited by an independent auditor. The financial description must include, to the extent material, a discussion of liquidity, capital resources and historical results of operations. Issuers will be required to include a discussion of each period for which financial statements are provided and a discussion of any material changes or trends known to management in the financial condition and results of operations of the issuer

subsequent to the period for which financial statements are provided. If an issuer does not have a prior operating history, the discussion should focus on financial milestones and operational, liquidity and other challenges. If an issuer has a prior operating history, the discussion should focus on whether historical earnings and cash flows are representative of what investors should expect in the future. An issuer's discussion of its financial condition should take into account the proceeds of the offering and any other known or pending sources of capital. Issuers also should discuss how the proceeds from the offering will affect their liquidity, whether these funds and any other additional funds are necessary to the viability of the business and how quickly the issuer anticipates using its available cash. In addition, issuers should describe the other available sources of capital to the business, such as lines of credit or required contributions by principal shareholders. To the extent these items of disclosure overlap with the issuer's discussion of its business or business plan, issuers are not required to make duplicate disclosures.

- v) Financial statement disclosures as they related to the aggregate target offering amounts.
- (1) For issuers offering \$100,000 or less: disclosure of the amount of total income, taxable income and total tax as reflected in the issuer's federal income tax returns certified by the principal executive officer to reflect accurately the information in the issuer's federal income tax returns (in lieu of filing a copy of the tax returns), and financial statements certified by the principal executive officer to be true and complete in all material respects. If, however, financial statements of the issuer are available that have either been reviewed or audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead and need not include the information reported on the federal income tax returns or the certification of the principal executive officer.
  - (2) Issuers offering more than \$100,000 but not more than \$500,000: financial statements reviewed by a public accountant that is independent of the issuer. If, however, financial statements of the issuer are available that have been audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead and need not include the reviewed financial statements.
  - (3) Issuers offering more than \$500,000:
    - (a) For issuers offering more than \$500,000 but not more than \$1 million of securities in reliance on Regulation Crowdfunding for the first time: financial statements reviewed by a public accountant that is independent of the issuer. If, however, financial statements of the issuer are available that have been audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead and need not include the reviewed financial statements.
  - (4) For all issuers that have previously sold securities in reliance on Regulation Crowdfunding: financial statements audited by a public accountant that is independent of the issuer
  - (5) All issuers are required to file with the Commission and provide to investors and the relevant intermediary a complete set of their financial statements (balance sheets, income statements, statements of cash flows and statements of changes in owners' equity), prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP"). To qualify as independent of the issuer, a public

accountant is required to comply with the Commission's independence rules. The financial statements are required to cover the shorter of the two most recently completed fiscal years or the period since inception of the business. Financial statements that are unaudited must be labeled as such.

- (6) Financial statements must cover the shorter of the two most recently completed fiscal years or the period since the issuer's inception. There is no requirement for interim financial statements however any material changes or trends known to management in the financial condition and results of operations must be discussed.
- (7) Where audits are performed, issuers must file with the Commission and provide to investors and the relevant intermediary a signed review or audit report on the issuer's financial statements by an independent public accountant. An audit report that includes an adverse opinion or disclaimer or opinion will not be in compliance with the audit requirements.
- vi) Issuers are required to amend the offering document during the offering period to reflect material changes and provide updates on the issuer's progress toward reaching the target offering amount. Such changes may be noted on the intermediary. All issuers must file a Form C-U to report the total amount of securities sold in the offering. Any amendments to the offering need to be filed with Form C/A. Material changes require reconfirmation by investors of their investment commitments within five business days.
- vii) A description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount;
- viii) The target offering amount, the deadline to reach the target offering amount and regular updates about the progress of the issuer in meeting the target offering amount; The issuer is required to disclose, at the commencement of the offering, how shares in oversubscribed offerings would be allocated. Describe the process to cancel an investment commitment or to complete the transaction once the target amount is met, including a statement that:
  - (1) Investors may cancel an investment commitment until 48 hours prior to the deadline identified in the issuer's offering materials;
  - (2) The intermediary will notify investors when the target offering amount has been met;
  - (3) If an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early if it provides at least five business days' notice prior to that new deadline (absent a material change that requires an extension of the offering and reconfirmation of the investment commitment); and
  - (4) If an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering and the investor will receive securities in exchange for his or her investment.

In an instance where an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early if it provides at least five business days' notice about the new offering deadline.

- ix) The price to the public of the securities or the method for determining the price; and a description of the ownership and capital structure of the issuer. This disclosure should include:
  - (1) The terms of the securities being offered and each other class of security of the issuer, including the number of securities being offered and those outstanding,

- whether or not such securities have voting rights, any limitations on such voting rights, how the terms of the securities being offered may be modified and a summary of the differences between such securities and each other class of security of the issuer, and how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;
- (2) A description of how the exercise of the rights held by the principal shareholders of the issuer could affect the purchasers of the securities;
  - (3) The name and ownership level of persons who are 20 Percent Beneficial Owners;
  - (4) How the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions;
  - (5) The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions including additional issuances of securities, issuer repurchases of securities, a sale of the issuer or of assets of the issuer or transactions with related parties; and
  - (6) A description of the restrictions on the transfer of the securities.
- x) Certain related-party transactions; To disclose any potential conflicts of interest.
- xi) Additional Disclosure Requirements include:
- (1) Disclose any material information necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
  - (2) Disclosure of the name, SEC file number and Central Registration Depository number ("CRD number") (as applicable) of the intermediary through which the offering is being conducted;
  - (3) Disclosure of the amount of compensation paid to the intermediary for conducting the offering, including the amount of any referral or other fees associated with the offering; it could be disclosed either as a dollar amount or percentage of the offering amount or as a good faith estimate if the exact amount is not available at the time of the filing. Any compensation paid to the intermediary in the form of interests rather than cash;
  - (4) Disclose the location on the issuer's website where investors will be able to find the issuer's annual report and the date by which such report will be available on the issuer's website;
  - (5) Certain legends in the offering statement that reinforce the risk to investors;
  - (6) Disclosure of the current number of employees of the issuer;
  - (7) A discussion of the material factors that make an investment in the issuer speculative or risky; a description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date and any other material terms;
  - (8) Disclosure of any exempt offerings conducted within the past three years;
  - (9) Disclose whether the issuer or any of its predecessors previously has failed to comply with the ongoing reporting requirements of Regulation Crowdfunding; and
  - (10) Disclosure of related-party transactions since the beginning of the issuer's last fiscal year in excess of five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6) during the preceding 12-month period, inclusive of the amount the issuer seeks to raise in the current offering.

An issuer will not be required to repeat what is already provided elsewhere in the issuer's disclosure, including the financial statements.

- b) **Ongoing Reporting Requirements** – Issuers are required to file an annual report with the Commission and provide it to investors no later than 120 days after the end of the fiscal year. See Appendix B for ongoing reporting requirements. Such reports are to be posted on the issuer’s website. Issuers will be required to file the annual report until the earliest of the following events occurs:
- i) The issuer is required to file reports under Exchange Act Sections 13(a) or 15(d);
  - ii) The issuer has filed at least one annual report and has fewer than 300 holders of record;
  - iii) The issuer has filed at least three annual reports and has total assets that do not exceed \$10 million;
  - iv) The issuer or another party purchases or repurchases all of the securities issued pursuant to Section 4(a)(6), including any payment in full of debt securities or any complete redemption of redeemable securities; or
  - v) The issuer liquidates or dissolves in accordance with state law.
- c) **Form C and Filing Requirements** – See Appendix A for Form C and Instruction on how to complete.
- d) **Prohibition on Advertising Terms of the Offering** - issuer shall not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker. The notice could include no more than:
- i) A statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted and a link directing the investor to the intermediary’s platform;
  - ii) The terms of the offering; and
  - iii) Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number and website of the issuer, the e-mail address of a representative of the issuer and a brief description of the business of the issuer. The “terms of the offering” should include:
    - (1) the amount of securities offered;
    - (2) the nature of the securities;
    - (3) the price of the securities; and
    - (4) the closing date of the offering period.
  - iv) The permitted notices will be similar to “tombstone ads” except that the notices will be required to direct an investor to the intermediary’s platform through which the offering is being conducted, such as through a link directing the investor to the platform. An issuer can communicate with investors about the terms of the offering through communication channels provided by the intermediary on the intermediary’s platform, so long as the issuer identifies itself as the issuer in all communications. Any persons acting on behalf of the issuer are required under Rule 204(c) to identify their affiliation with the issuer in all communications on the intermediary’s platform.
- e) **Compensation of Persons Promoting the Offering** – Regulation Crowdfunding prohibits an issuer from compensating, or committing to compensate, directly or indirectly, any person to promote the issuer’s offering through communication channels provided by the intermediary, unless the issuer takes reasonable steps to ensure that the person clearly discloses the receipt (both past and prospective) of compensation each time the person makes a promotional communication. This applies broadly to all persons acting on behalf of



the issuer, regardless of whether or not the compensation they receive is specifically for the promotional activities. Issuers should not circumvent the restrictions on advertising by compensating a third party to do what the issuer cannot do directly.

f) **Other Issuer Requirements** –

- i) **Oversubscriptions** – Issuers can accept investments in excess of the target offering amount, as long as they are subject to the \$1 million annual limit
- ii) **Offering Price** - Issuer must disclose the offering price of the securities or, in the alternative, the method for determining the price, provided that prior to any sale of securities, each investor is provided in writing the final price and all required disclosure. The rules do not require issuers to set a fixed price or prohibit dynamic pricing.
- iii) **Types of Securities Offered and Valuation** – No limit to the type of securities that may be offered nor prescribe a method for valuing the securities

3) **Intermediary Requirements** - One of the key investor protections of Title III of the JOBS Act is the requirement that Regulation Crowdfunding transactions take place through an SEC registered intermediary, either a broker-dealer or a funding portal. Under Regulation Crowdfunding, offerings must be conducted exclusively through a platform operated by a registered broker or a funding portal, which is a new type of SEC registrant. The rules require these intermediaries to:

- a) **Provide investors with educational materials** - Regulation Crowdfunding requires intermediaries to deliver to investors, at account opening, educational materials that are in plain language and otherwise designed to communicate effectively and accurately certain specified information. The rule requires the materials to include:
  - i) The process for the offer, purchase and issuance of securities through the intermediary;
  - ii) The risks associated with investing in securities offered and sold;
  - iii) The types of securities that may be offered on the intermediary's platform and the risks associated with each type of security, including the risk of having limited voting power as a result of dilution;
  - iv) The restrictions on the resale of securities offered and sold in reliance on Section 4(a)(6);
  - v) The types of information that an issuer is required to provide in annual reports, the frequency of the delivery of that information, and the possibility that the issuer's obligation to file annual reports may terminate in the future;
  - vi) The limits on the amounts investors may invest, as set forth in Section 4(a)(6)(B);
  - vii) The circumstances in which the issuer may cancel an investment commitment; • the limitations on an investor's right to cancel an investment commitment;
  - viii) The need for the investor to consider whether investing in a security offered and sold in reliance on Section 4(a)(6) is appropriate for him or her;
  - ix) That following completion of an offering, there may or may not be any ongoing relationship between the issuer and intermediary. The rules further require intermediaries to make the current version of the educational materials available on their platforms, and to make revised materials available to all investors before accepting any additional investment commitments or effecting any further transactions in securities offered and sold in reliance on Section 4(a)(6);

- x) Intermediaries, rather than the Commission are required to provide such disclosures, including disclosures related to risks and other investor education materials as the Commission determines to be appropriate;
  - xi) Educational materials must indicate that under certain circumstances an issuer may cease to publish annual reports and, therefore, an investor may not continually have current financial information about the issuer;
  - xii) (Note that FINRA might institute other education requirements so you need to check with them);
  - xiii) Educational materials must be kept up to date; and
  - xiv) An intermediary is required to obtain a representation that an investor has reviewed the intermediary's most recent educational materials before accepting an investment commitment from the investor.
- b) **Take measures to reduce the risk of fraud;** This includes obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person. An intermediary must have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's platform complies with the requirements in Securities Act Section 4A(b) and the related requirements in Regulation Crowdfunding.
- c) **Make available information about the issuer and the offering;** All information about the issuer and offering must be listed on the intermediary.
- d) **Provide communication channels to permit discussions about offerings on the platform** - An intermediary that is a funding portal is prohibited from participating in communications in these channels. The intermediary must:
- i) Make the communications channels publicly available;
  - ii) Permit only those persons who have opened accounts to post comments; and
  - iii) Require any person posting a comment in the communication channels to disclose whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote the issuer's offering.
- e) **Facilitate the offer and sale of crowdfunded securities** - Upon receipt of an investment commitment from an investor, an intermediary must promptly give or send to the investor a notification disclosing:
- i) The dollar amount of the investment commitment;
  - ii) The price of the securities, if known;
  - iii) The name of the issuer; and
  - iv) The date and time by which the investor may cancel the investment commitment. This notification must be provided by e-mail or other electronic media, and should be documented in accordance with applicable recordkeeping rules

**The rules prohibit funding portals from:**

- i) Offering investment advice or making recommendations;
- ii) Soliciting purchases, sales or offers to buy securities offered or displayed on its platform;

- iii) Compensating promoters and others for solicitations or based on the sale of securities; and
  - iv) Holding, possessing, or handling investor funds or securities.
- f) **Definitions of Funding Portals and Associated Persons.** A person associated with a funding portal or associated person of a funding portal means any partner, officer, director or manager of a funding portal (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling or controlled by a funding portal, or any employee of a funding portal, other than persons whose functions are solely clerical or ministerial.
- g) **General Requirements for Intermediaries.** The intermediary, as well as its directors, officers or partners (or any person occupying a similar status or performing a similar function), from having:
- i) A financial interest in an issuer using its services; and
  - ii) From receiving a financial interest in the issuer as compensation for services provided to, or for the benefit of, the issuer, in connection with the offer and sale of its securities. A financial interest in an issuer means a direct or indirect ownership of, or economic interest in, any class of the issuer's securities. HOWEVER an intermediary may receive a financial interest provided that:
    - (1) The intermediary receives the financial interest from the issuer as compensation for the services provided to, or for the benefit of, the issuer in connection with the offer or sale of such securities being offered or sold in reliance on Section 4(a)(6) through the intermediary's platform; and
    - (2) The financial interest consists of securities of the same class and having the same terms, conditions and rights as the securities being offered or sold in reliance on Section 4(a)(6) through the intermediary's platform.
- h) **Take Measures to Reduce Risk of Fraud;** This includes background checks, vetting of materials and requiring all communication regarding the buying and selling of securities to take place on the intermediary.
- i) **Account Opening** – Regulation Crowdfunding prohibits an intermediary or its associated persons from accepting an investment commitment in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) unless the investor has opened an account with the intermediary, and the intermediary has obtained from the investor consent to electronic delivery of materials. An intermediary must provide all information required by Subpart C of Regulation Crowdfunding, including, but not limited to, educational materials, notices and confirmations, through electronic means. An intermediary must provide such information through an electronic message that either contains the information, includes a specific link to the information as posted on the intermediary's platform, or provides notice of what the information is and that it is located on the intermediary's platform or the issuer's website. Electronic messages include, but are not be limited to, messages sent via e-mail. The intermediary must provide the information either through
- i) An electronic message that contains the information,
  - ii) An electronic message that includes a specific link to the information as posted on the intermediary's platform, or

- iii) An electronic message that provides notice of what the information is and notifies investors that this information is located on the intermediary's platform or on the issuer's website.
- j) **Requirements with Respect to Transactions** – Intermediary must make available to the Commission and investors, not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), any information provided by the issuer pursuant to Section 4A(b).749 Accordingly, each intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) is required to make available to the Commission and to investors any information required to be provided by the issuer of Regulation Crowdfunding. The Rule requires that this information:
- i) Be publicly available on the intermediary's platform, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information;
  - ii) Be made publicly available on the intermediary's platform for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments; and
  - iii) Remain publicly available on the intermediary's platform until the offer and sale of securities is completed or cancelled (including any additional information provided by the issuer).
  - iv) In addition, an intermediary is prohibited from requiring any person to establish an account with the intermediary in order to access this information.
- k) **Compliance with Investment Limits** – The rule limits the aggregate amount of securities that can be sold by an issuer to an investor in reliance on Section 4(a)(6) during a 12-month period. Securities Act Section 4A(a)(8) requires that intermediaries “make such efforts as the Commission determines appropriate, by rule” to ensure that no investor has made purchases in the aggregate, from all issuers, that exceed the limits in Section 4(a)(6). The Rule implements this provision by requiring that, each time before accepting an investment commitment on its platform (including any additional investment commitment from the same person), an intermediary must have a reasonable basis for believing that the investor satisfies the investment limits established by Section 4(a)(6)(B). The rule allows an intermediary to rely on an investor's representations concerning annual income, net worth and the amount of the investor's other investments in securities sold in reliance on Section 4(a)(6) through other intermediaries unless the intermediary has a reasonable basis to question the reliability of the representation.
- l) **Acknowledgement of Risk** – An intermediary must ensure that each investor:
- i) Reviews educational materials;
  - ii) Positively affirms that the investor understands that he or she is risking the loss of the entire investment and that the investor could bear such a loss; and
  - iii) Completed a questionnaire demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses and small issuers, the risk of illiquidity.
- m) **Completion of Offerings, Cancellations and Reconfirmations** – An intermediary must ensure that all offering proceeds are only provided to the issuer when the aggregate capital

raised from all investors is equal to or greater than a target offering amount. Because a funding portal cannot receive any funds, it is required to direct investors to transmit money or other consideration directly to a “qualified third party” that has agreed in writing to hold the funds for the benefit of the investors and the issuer and to promptly transmit or return the funds to the persons entitled to such funds. A “qualified third party” means a registered broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons, a bank, or a credit union insured by the National Credit Union Administration (“NCUA”) that has agreed in writing to either:

- i) Hold the funds in escrow for the persons who have the beneficial interests in the funds and to transmit or return the funds directly to the persons entitled to them when the appropriate event or contingency has occurred; or
- ii) Establish a bank account (or accounts) for the exclusive benefit of investors and the issuer.

In no event may the funding portal direct the transmission of funds earlier than 21 days after the date on which the intermediary makes publicly available on its platform the information required to be provided by the issuer under other Rules. An intermediary can, in its discretion, decline to accept certain payment methods, such as credit cards, or accept them only in certain circumstances. An intermediary, at or before the completion of a transaction made pursuant to Section 4(a)(6), must give or send to each investor a notification disclosing:

- (1) the date of the transaction;
- (2) the type of security that the investor is purchasing;
- (3) the identity, price and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold;
- (4) certain specified terms of the security, if it is a debt or callable security; and
- (5) the source and amount of any remuneration received or to be received by the intermediary in connection with the transaction, whether from the issuer or from other persons. This notification is required to be provided by e-mail or other electronic media, and must be documented in accordance with applicable recordkeeping rules. The source is defined as any remuneration received or to be received by the intermediary in connection with the transaction, including any remuneration received or to be received by the intermediary from persons other than the issuer.

An intermediary is required to give investors an unconditional right to cancel an investment commitment for any reason until 48 hours prior to the deadline identified in the issuer’s offering materials. An investor should not be able to cancel any investment commitments made within the final 48 hours of the offering (except in the event of a material change to the offering). If an issuer reached the target offering amount prior to the deadline identified in its offering materials, it could close the offering once the target offering amount was reached, provided that:

- (1) the offering had been open for a minimum of 21 days;
- (2) the intermediary provided notice about the new offering deadline at least five business days prior to the new offering deadline;
- (3) investors should be given the opportunity to reconsider their investment decision and to cancel their investment commitment until 48 hours prior to the new offering deadline; and

(4) at the time of the new offering deadline, the issuer continued to meet or exceed the target offering amount.

In addition, if there was a material change to the terms of an offering or to the information provided by the issuer about the offering, the intermediary is required to give or send to any investors who have made investment commitments notice of the material change, stating that the investor's investment commitment will be cancelled unless the investor reconfirms his or her commitment within five business days of receipt of the notice. If the investor failed to reconfirm his or her investment within those five business days, the intermediary is required, within five business days thereafter, to:

- (1) provide or send the investor a notification disclosing that the investment commitment was cancelled, the reason for the cancellation and the refund amount that the investor should expect to receive; and
- (2) direct the refund of investor funds. This notification, like other notifications from an intermediary, is required to be provided by e-mail or other electronic media, and to be documented in accordance with applicable recordkeeping rules.

If an issuer did not complete an offering, because the target was not reached or the issuer decided to terminate the offering, the intermediary is required, within five business days, the intermediary must:

- (1) give or send to each investor who had made an investment commitment a notification disclosing the cancellation of the offering, the reason for the cancellation, and the refund amount that the investor should expect to receive;
  - (2) direct the refund of investor funds; and
  - (3) prevent investors from making investment commitments with respect to that offering on its platform.
- This notification, like other notifications from an intermediary, is required to be provided by e-mail or other electronic media, and to be documented in accordance with applicable recordkeeping rules.

NOTE - Investors associated with the issuer, are subject to the antifraud provisions of the securities laws. So if they cancel their subscription to nullify an offering that could be considered fraud on their part

- o) **Payments to Third Parties** – All of this needs to be disclosed including the compensation the intermediary will receive.
- p) **Records of Securities Holders** – Intermediary must have a reasonable basis for believing that an issuer has established means to keep accurate records of the holders of the securities it offers and sells through the intermediary's platform. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning its means of recordkeeping unless the intermediary has reason to question the reliability of those representations. An intermediary will be deemed to have satisfied this requirement if the issuer has engaged the services of a transfer agent that is registered under Section 17A of the Exchange Act. The record keeping function may be provided by the issuer, a broker, a transfer agent or some other (registered or unregistered) person.

- q) **Denial of Platform Access** – An intermediary must deny access by an issuer to its platform if it has a reasonable basis for believing that an issuer, or any of its officers, directors or any person occupying a similar status or performing a similar function, or any 20 Percent Beneficial Owner is subject to a disqualification. An intermediary must deny access to its platform if the intermediary has a reasonable basis for believing the issuer or offering presents the potential for fraud or otherwise raises concerns about investor protection. In satisfying this requirement, the rule requires that an intermediary deny access if it believes that it is unable to adequately or effectively assess the risk of fraud of the issuer or its potential offering. In addition, if an intermediary becomes aware of information after it has granted access that causes it to reasonably believe the issuer or the offering presents the potential for fraud or otherwise raises concerns about investor protection, the intermediary is required to promptly remove the offering from its platform, cancel the offering, and return (or, for funding portals, direct the return of) any funds that have been committed by investors in the offering.

## 2) Additional Funding Portal Requirements

- a) **Registration Requirement** - A person acting as an intermediary in a crowdfunding transaction must register with the Commission as a broker or as a funding portal. This process may be done on EDGAR. An intermediary to register with any applicable self-regulatory organization (“SRO”) which is otherwise known (at the moment) as FINRA. Funding Portals must register using Form Funding Portal which includes a narrative explaining the funding portal’s principal place of business, its legal status and its disciplinary history, if any; business activities, including the types of compensation the funding portal receives; control affiliates of the funding portal and disclosure of their disciplinary history, if any; FINRA membership or membership with any other registered national securities association; and the funding portal’s website address(es) or other means of access.

If any information about the Funding Portal changes, an amendment to Form Funding Portal must be submitted within 30 days. Form Funding Portal consists of eight sections: identifying information, form of organization, successions, control persons, disclosure information, non-securities related business, escrow, compensation arrangements, and withdrawal. These items require an applicant to provide certain basic identifying and contact information concerning its business; list its direct owners and executives; identify persons that directly or indirectly control the funding portal, control the management or policies of the funding portal and persons the funding portal controls; and supply information about its litigation and disciplinary history and the litigation and disciplinary history of its associated persons. A funding portal is able to operate multiple website addresses under a single funding portal registration, provided the funding portal disclosed on Form Funding Portal all the websites and names under which it does business.

An applicant must describe any nonsecurities related business activities and supply information about its escrow arrangements, and compensation arrangements with issuers. Upon a filing to withdraw from registration, a funding portal is required to provide certain books and records information.

Applicants that are incorporated in or organized under the laws of a jurisdiction outside of the United States or its territories, or whose principal place of business is not in the United States or its territories, are required to complete Schedule C to Form Funding Portal, which requires information about the applicant's arrangements to have an agent for service of process in the United States, as well as a certification and an opinion of counsel addressing the ability of the applicant to provide the Commission and the national securities association of which it is a member with prompt access to its books and records and to submit to onsite inspection and examination by the Commission and the national securities association.

The funding portal will receive an SEC file number after it files its Form Funding Portal initial application, and thereafter must that file number when submitting an amendment or withdrawal from registration on Form Funding Portal.

- b) **Nonresident Funding Portals** - A "nonresident funding portal" is conditioned upon there being an information sharing arrangement in place between the Commission and the competent regulator in the jurisdiction under the laws of which the nonresident funding portal is organized or where it has its principal place of business that is applicable to the nonresident funding portal. The rule requires a nonresident funding portal registered or applying for registration to:

- (1) obtain a written consent and power of attorney appointing an agent for service of process in the United States (other than the Commission or a Commission member, official or employee), upon whom may be served any process, pleadings, or other papers in any action;
- (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; and
- (3) certify on Schedule C of Form Funding Portal and provide an opinion of counsel that it can, as a matter of law, provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and such national securities association

Any changes must be notified to the commission. The Foreign Funding Portal must have a registered U.S. agent.

- c) **Exemption from Broker-Dealer Registration** – Funding Portals are exempt, conditionally or unconditionally, from the requirement to register as a broker or dealer under Exchange Act Section provided that the funding portal:

- i. Remains subject to the examination, enforcement and other rulemaking authority of the Commission;
- ii. Is a member of a registered national securities association; and
- iii. Is subject to other requirements that the Commission determines appropriate.

- b. **Safe Harbor for Certain Activities** - A funding portal is defined as an intermediary that does not:

- i. Offer investment advice or make recommendations;
- ii. Solicit purchases, sales or offers to buy the securities offered or displayed on its platform or portal;



- iii. Compensate employees, agents or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform or portal;
- iv. Hold, manage, possess or otherwise handle investor funds or securities; or
- v. Engage in such other activities as the Commission, by rule, determines appropriate

The permissible activities in the safe harbor involve:

- (i) limiting offerings on the platform;
- (ii) highlighting and displaying offerings on the platform;
- (iii) providing communication channels;
- (iv) providing search functions;
- (v) advising issuers;
- (vi) compensating others for referring persons to the funding portal;
- (vii) paying or offering to pay compensation to registered brokers or dealers;
- (viii) receiving compensation from a registered broker or dealer;
- (ix) advertising the funding portal and offering;
- (x) denying access to, or cancelling, offerings due to fraud or investor protection concerns;
- (xi) accepting investment commitments on behalf of the issuer;
- (xii) directing the transmission of investor funds; and
- (xiii) directing a qualified third party's transmission of investor funds.

A funding portal may, consistent with the prohibitions under Exchange Act (including the prohibition against offering investment advice or recommendations), determine whether and under what terms to allow an issuer to offer and sell securities in reliance on Securities Act Section 4(a)(6) through its platform. This is designed to make it clear that a funding portal may exercise its discretion, subject to the prohibition in the statute on providing investment advice or recommendations, to limit the offerings and issuers that it allows on its platform under the safe harbor, as long as it complies with all other provisions of Regulation Crowdfunding.

**A funding portal cannot advertise, make statements or otherwise represent that the offerings listed on its platform are safer or better investments than those listed on other platforms.** Given this statutory restriction, a funding portal must provide a disclaimer stating that limiting the offerings on its platform does not constitute investment advice or a recommendation.

A funding portal may apply objective criteria to highlight offerings on the funding portal's platform where:

- (i) The criteria are reasonably designed to highlight a broad selection of issuers offering securities through the funding portal's platform, are applied consistently to all issuers and offerings and are clearly displayed on the funding portal's platform;

- (ii) The criteria may include, among other things, the type of securities being offered (for example, 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, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount; and the minimum or maximum investment amount; provided that a funding portal may not highlight an issuer or offering based on the advisability of investing in the issuer or its offering; and
- (iii) The funding portal does not receive special or additional compensations for highlighting one or more issuers or offerings on its platform.

A funding portal may not highlight an issuer or offering based on the advisability of investing in the issuer or offering or give the impression that the funding portal is providing an implicit (or explicit) recommendation on whether to invest in the issuer or offering. A funding portal may not receive any special or additional compensation for highlighting (or offering to highlight) one or more issuers or offerings on its platform.

- d. **Search** - A funding portal may provide search functions or other tools that investors can use to search, sort, or categorize the offerings available through the funding portal's platform according to objective criteria where:
  - (i) The criteria may include, among other things, the type of securities being offered (for example, 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, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount; and the minimum or maximum investment amount; and
  - (ii) The criteria may not include, among other things, the advisability of investing in the issuer or its offering, or an assessment of any characteristic of the issuer, its business plan, its key management or risks associated with an investment.

This does not preclude the use of computational sorting algorithms using objective searching and sorting criteria. However, a funding portal must take care not to indicate that the platform's search results or tools, directly or indirectly, correlate to successful investments. Likewise, the more particular, biased or weighted a funding portal's algorithm or assessment is, the less likely the criteria as a whole will be objective. However, this does not preclude a funding portal from permitting investors with access to its communication channels from rating issuers or offerings (e.g., a star rating) on its platform or searching such ratings, as long as a funding portal (including its associated persons, such as its employees) does not participate in the rating process

- e. **Communication channels** - A funding portal should provide communication channels by which investors can communicate with one another and with representatives of the issuer through the funding portal's platform about offerings conducted through the platform, as required. A safe harbor applies so long as the funding portal (and its associated persons):

- (i) Does not participate in these communications, other than to establish guidelines for communication and remove abusive or potentially fraudulent communications;
- (ii) Permits public access to view the discussions made in the communication channels;
- (iii) Restricts posting of comments in the communication channels to those persons who have opened an account on its platform; and (iv) requires that any person posting a comment in the communication channels clearly disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote an issuer's offering.

A funding portal may advise an issuer about the structure or content of the issuer's offering, including preparing offering documentation. A funding portal can, for example, provide pre-drafted templates or forms for an issuer to use in its offering that will help it comply with its disclosure obligations. Other examples of permissible assistance can include advice about the types of securities the issuer can offer, the terms of those securities and the procedures and regulations associated with crowdfunding.

- f. **Broker-dealer/Funding Portal Relationships** - A funding portal may pay or offer to pay compensation to a registered broker or dealer for services, including for referring a person to the funding portal, in connection with the offer or sale of securities by the funding portal in reliance on Section 4(a)(6) of the Securities Act, provided that

- (i) such services are provided pursuant to a written agreement between the funding portal and the registered broker or dealer;
- (ii) such compensation is permitted under Regulation Crowdfunding; and
- (iii) such compensation complies with the rules of any registered national securities association of which the funding portal is a member.

All such arrangements must be in writing. A funding portal may, pay a broker-dealer for certain services, such as information technology services, qualified third party services or referral services, pursuant to a written agreement. Each party to this type of arrangement will need to comply with all applicable regulations, including the rules of the registered national securities association of which it is a member.

The same holds true for relationships between broker-dealers and funding portals providing it is within the scope of services available for funding portals to allow.

- g. **Compliance** – A funding portal must implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder, relating to its business as a funding portal. A funding portal may rely on the representations of others to form a reasonable basis, the funding portal should have policies and procedures regarding under what circumstances it can reasonably rely on such representations and when additional investigative steps may be appropriate. A funding portal's policies and procedures should cover not only permitted activities, but also address prohibited activities. For example, a funding portal should have policies and procedures on the criteria used to limit, highlight and advertise issuers and offerings.

Portals must maintain the privacy of personal information.

- h. **Records to be Created and Maintained by Funding Portals** – Funding portals must preserve certain records for five years, with the records retained in a readily accessible place for at least the first two years. The required records include the following:

- i. All records relating to investors who purchase or attempt to purchase securities through the funding portal;
- ii. All records relating to issuers that offer and sell, or attempt to offer and sell, securities through the funding portal and to persons having control with respect to those issuers;
- iii. Records of all communications that occur on or through its platform;
- iv. All records related to persons that use communication services provided by a funding portal to promote an issuer's securities or to communicate with potential investors;
- v. All records demonstrating a funding portal's compliance with requirements of Subparts C (intermediary obligations) and D (additional funding portal requirements);
- vi. All notices provided by the funding portals to issuers and investors generally through the funding portal's platform or otherwise;
- vii. All written agreements (or copies thereof) entered into by a funding portal, relating to its business as such;
- viii. All daily, monthly and quarterly summaries of transactions effected through the funding portal; and
- ix. A log reflecting the progress of each issuer who offers and sells securities through the funding portal toward meeting the target offering amount.

A funding portal must preserve its organizational documents during its operation as a funding portal and also those of any successor funding portal. These include, but not be limited to:

- (1) partnership agreements;

- (2) articles of incorporation or charter;
- (3) minute books; and
- (4) stock certificate books (or other similar type documents).

The records are required to be maintained and preserved be produced, reproduced, and maintained in the original, non-alterable format in which they were created or as permitted under the Exchange Act. Third parties may prepare or maintain the required records on behalf of the funding portal, provided that there is a written undertaking in place between the funding portal and the third party stating that the required records are the property of the funding portal and will be surrendered promptly, on request by the funding portal, to the Commission or the national securities association of which the funding portal is a member. The funding portal also is also required to file, with the registered national securities association of which it is a member, this written undertaking, signed by a duly authorized representative of the third party. An agreement between a funding portal and a third party does not relieve the funding portal of its responsibility to prepare and maintain records, as required under Rule 404 of Regulation Crowdfunding.

Funding portals are subject to SEC's examination authority to, among other things, rely on any exemptions from broker-dealer registration that they impose. A funding portal is required to permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by their representatives and by representatives of the registered national securities association of which it is a member.

**i. Miscellaneous Provisions**

- i. Insignificant Deviations from Regulation Crowdfunding** – The rules provide a safe harbor for insignificant deviations from a term, condition or requirement of Regulation Crowdfunding. To qualify for the safe harbor, the issuer relying on the exemption has to show that:
  1. The failure to comply with a term, condition or requirement was insignificant with respect to the offering as a whole; and
  2. The issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements of Regulation Crowdfunding; and
  3. The issuer did not know of the failure to comply, where the failure to comply with a term, condition or requirement was the result of the failure of the intermediary to comply with the requirements of Section 4A(a) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer's offering. Notwithstanding this safe harbor, any failure to comply with Regulation Crowdfunding would nonetheless be actionable by the Commission.
- ii. Restrictions on Resales** - securities issued in reliance on Section 4(a)(6) may not be transferred by the purchaser for one year after the date of purchase, except when transferred:
  1. to the issuer of the securities;

2. to an accredited investor;
3. as part of an offering registered with the Commission; or
4. to a family member of the purchaser or the equivalent, or in connection with certain events, including death or divorce of the purchaser, or other similar circumstances. A family member includes a “child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships.”

One-year resale restriction applies to any purchaser during the one-year period beginning when the securities were first issued, not just the initial purchaser.

- iii. **Information Available to States** – The SEC shall make available, or shall cause to be made available by the relevant intermediary, the information required under Section 4A(b) and such other information as the Commission, by rule, determines appropriate to the securities commission (or any agency or office performing like functions) of each state and territory of the United States and the District of Columbia. Issuers are required to file on EDGAR. Information filed on EDGAR is publicly available and would, therefore, be available to each state, territory and the District of Columbia. This will satisfy the statutory requirement to make the information available to each state and territory of the United States, and the District of Columbia.
- iv. **Exemption from Section 12(g)**- Securities issued pursuant to an offering made under Section 4(a)(6) are exempted from the 500 record holder count under Section 12(g), provided that the issuer is current in its ongoing annual reports, has total assets as of the end of its last fiscal year not in excess of \$25 million, and has engaged the services of a transfer agent registered.
- v. **Scope of Statutory Liability** – The SEC is specifically declining to exempt funding portals (or any intermediaries) from the statutory liability provision of Section 4A(c) or to interpret this provision as categorically excluding such intermediaries. They do not believe that they should preclude the ability of investors to bring private rights of action against funding portals (or any intermediaries). They believe such a categorical exemption or exclusion could pose undue risks to investors by providing insufficient incentives for intermediaries to take steps to prevent their platforms from becoming vehicles for fraud. Congress provided a defense to any such liability if an intermediary did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. The SEC believes, that there are appropriate steps that intermediaries might take in exercising reasonable care in light of this liability provision. These steps may

include establishing policies and procedures that are reasonably designed to achieve compliance with the requirements of Regulation Crowdfunding, and 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.

vi. **Disqualification Provisions** – The disqualification provisions must be “substantially similar” to the “bad actor” disqualification provisions of the Dodd-Frank Act and they also must cover certain actions by state regulators. The disqualifying events include:

1. Felony and misdemeanor convictions within the last five years in the case of issuers, their predecessors and affiliated issuers, and 10 years in the case of other covered persons in connection with the purchase or sale of a security involving the making of a false filing with the Commission; or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;
2. Injunctions and court orders within the last five years against engaging in or continuing conduct or practices in connection with the purchase or sale of securities; involving the making of any false filing with the Commission; or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;
3. Certain final orders and bars of certain state and other federal regulators;
4. Commission cease-and-desist orders relating to violations of scienter-based anti-fraud provisions of the federal securities laws or Section 5 of the Securities Act;
5. Filing, or being named as an underwriter in, a registration statement or Regulation A offering statement that is the subject of a proceeding to determine whether a stop order or suspension should be issued, or as to which a stop order or suspension was issued within the last five years;
6. United States Postal Service false representation orders within the last five years; 1195 and • for covered persons other than the issuer:
  - a. being subject to a Commission order:
    - i. revoking or suspending their registration as a broker, dealer, municipal securities dealer, investment adviser or funding portal;
    - ii. placing limitations on their activities as such;
    - iii. barring them from association with any entity; or
    - iv. barring them from participating in an offering of penny stock; or

- b. being suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or national securities association for conduct inconsistent with just and equitable principles of trade.
  - c. Intermediaries will be subject to the same statutory disqualification standard regardless of whether or not they are engaging in transactions involving the offer or sale of securities in reliance on Section 4(a)(6) and note that applying consistent standards for all brokers and funding portals will also assist FINRA or any other registered national securities association in its oversight of its members.
- vii. **Secondary Market Trading** – It is allowed and the SEC is reviewing the development of secondary market trading.

The above rules will go into effect May 16, 2016.

If you have any questions about Regulation Crowdfunding, the team at Crowdfund Capital Advisors can easily address them. Feel free to contact us via [Sherwood@meccagroup.com](mailto:Sherwood@meccagroup.com).

## About Crowdfund Capital Advisors

Crowdfund Capital Advisors (CCA) delivers strategic services and implementation programs that create proprietary deal flow for professional investors, actionable strategies for companies in the crowdfunding industry, and policy and regulatory innovation for governments. We are passionate about creating innovation, entrepreneurship, and jobs through the use of crowdfunding. CCA also advises and invests in the emerging ecosystem of crowdfunding, including solutions being created that will impact the broader private capital markets.

CCA co-founders and Managing Partners Sherwood Neiss and Jason Best created the original Startup Exemption regulatory framework that became crowdfunding language in the U.S. JOBS Act. They then started a grassroots, self-funded campaign to make one of the largest changes to securities regulations in 80 years. Their 460-day campaign concluded April 5th 2012 when they attended the White House Rose Garden ceremony where President Obama signed The JOBS Act into law. On October 30, 2015 the Securities and Exchange Commission (SEC) finalized the rules for debt and equity crowdfunding in the USA and the industry will begin transacting volume in May 2016.

Since 2012, CCA has gone on to work with over 35 governments and security regulators globally on creating crowdfunding policy. CCA wrote the World Bank report *Potential for Crowdfunding in the Developing World*, (reference) the Multilateral Investment Fund (MIF) report [Creating a Crowdfunding Ecosystem in Chile](#), and the first “how to” crowdfund book for entrepreneurs. CCA is currently engaged in a 2-year MIF advisory project, ‘Accelerating the Crowdfunding Ecosystem in Mexico to Promote Entrepreneurship, Innovation and Economic Inclusion.’ CCA principals are the co-founders of the UC Berkeley Research Program on Innovation in Entrepreneurial and Social Finance, the top research program in the world in crowdfinance and the host of the annual Global Academic and Policy Symposium on Crowdfunding.



# APPENDIX A – FORM C & INSTRUCTIONS TO USE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

## FORM C

### UNDER THE SECURITIES ACT OF 1933

(Mark one.)

- Form C: Offering Statement**
- Form C-U: Progress Update:** \_\_\_\_\_
- Form C/A: Amendment to Offering Statement:** \_\_\_\_\_
  - Check box if Amendment is material and investors must reconfirm within five business days.**
- Form C-AR: Annual Report**
- Form C-AR/A: Amendment to Annual Report**
- Form C-TR: Termination of Reporting**

Name of issuer: \_\_\_\_\_

Legal status of issuer:

Form: \_\_\_\_\_

Jurisdiction of Incorporation/Organization: \_\_\_\_\_

Date of organization): \_\_\_\_\_

Physical address of issuer: \_\_\_\_\_

Website of issuer: \_\_\_\_\_

Name of intermediary through which the offering will be conducted: \_\_\_\_\_

CIK number of intermediary: \_\_\_\_\_

SEC file number of intermediary: \_\_\_\_\_

CRD number, if applicable, of intermediary: \_\_\_\_\_

Amount of compensation to be paid to the intermediary, whether as a dollar amount or a percentage of the offering amount, or a good faith estimate if the exact amount is not available at the time of the filing, for conducting the offering, including the amount of referral and any other fees associated with the offering:

\_\_\_\_\_

Any other direct or indirect interest in the issuer held by the intermediary, or any arrangement for the intermediary to acquire such an interest:

\_\_\_\_\_

Type of security offered: \_\_\_\_\_

Target number of securities to be offered: \_\_\_\_\_

Price (or method for determining price): \_\_\_\_\_

Target offering amount: \_\_\_\_\_

Oversubscriptions accepted:  Yes  No

If yes, disclose how oversubscriptions will be allocated:  Pro-rata basis  First-come, first-served basis

Other – provide a description: \_\_\_\_\_

Maximum offering amount (if different from target offering amount): \_\_\_\_\_

Deadline to reach the target offering amount: \_\_\_\_\_

**NOTE: If the sum of the investment commitments does not equal or exceed the target offering amount at the offering deadline, no securities will be sold in the offering, investment commitments will be cancelled and committed funds will be returned.**

should be directed to the terms, conditions and requirements of the exemption.

**II. Preparation and Filing of Form C**

Information on the cover page will be generated based on the information provided in XML format. Other than the cover page, this Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of Form C. General information regarding the preparation, format and how to file this Form is contained in Regulation S-T (§ 232 *et seq.*).

**III. Information to be Included in the Form**

**Item 1. Offering Statement Disclosure Requirements**

An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100 *et seq.*) must file the Form prior to the commencement of the offering and include the information required by Rule 201 of Regulation Crowdfunding (§ 227.201).

An issuer must include in the XML-based portion of this Form: the information required by paragraphs (a), (e), (g), (h), (l), (n), and (o) of Rule 201 of Regulation Crowdfunding (§ 227.201(a), (e), (g), (h), (l), (n), and (o)); selected financial data for the prior two fiscal years (including total assets, cash and cash equivalents, accounts receivable, short-term debt, long-term debt, revenues/sales, cost of goods sold, taxes paid and net income); the jurisdictions in which the issuer intends to offer the securities; and any information required by Rule 203(a)(3) of Regulation Crowdfunding (§ 227.203(a)(3)).

Other than the information required to be provided in XML format, an issuer may provide the required information in the optional Question and Answer format included herein or in any other format included on the intermediary’s platform, by filing such information as an exhibit to this Form, including copies of screen shots of the relevant information, as appropriate and necessary.

Current number of employees: \_\_\_\_\_

Total Assets:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Cash & Cash Equivalents:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Accounts Receivable:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Short-term Debt:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Long-term Debt:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Revenues/Sales	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Cost of Goods Sold:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Taxes Paid:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____
Net Income:	Most recent fiscal year-end: _____	Prior fiscal year-end: _____

Using the list below, select the jurisdictions in which the issuer intends to offer the securities:

**[List will include all U.S. jurisdictions, with an option to add and remove them individually, add all and remove all.]**

**GENERAL INSTRUCTIONS**

**I. Eligibility Requirements for Use of Form C**

This Form shall be used for the offering statement, and any related amendments and progress reports, required to be filed by any issuer offering or selling securities in reliance on the exemption in Securities Act Section 4(a)(6) and in accordance with Section 4A and Regulation Crowdfunding (§ 227.100 *et seq.*). This Form also shall be used for an annual report required pursuant to Rule 202 of Regulation Crowdfunding (§ 227.202) and for the termination of reporting required pursuant to Rule 203(b)(2) of Regulation Crowdfunding (§ 227.203(b)(2)). Careful attention

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If disclosure in response to any paragraph of Rule 201 of Regulation Crowdfunding (§ 227.201) or Rule 203(a)(3) is responsive to one or more other paragraphs of Rule 201 of Regulation Crowdfunding (§ 227.201) or to Rule 203(a)(3) of Regulation Crowdfunding (§ 227.203(a)(3)), issuers are not required to make duplicate disclosures.

## **Item 2. Legends**

(a) An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100 *et seq.*) must include the following legends:

A crowdfunding investment involves risk. You should not invest any funds in this offering unless you can afford to lose your entire investment.

In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document.

The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering document or literature.

These securities are offered under an exemption from registration; however, the U.S. Securities and Exchange Commission has not made an independent determination that these securities are exempt from registration.

(b) An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100 *et seq.*) must disclose in the offering statement that it will file a report with the Commission annually and post the report on its website, no later than 120 days after the end of each fiscal year covered by the report. The issuer must also disclose how an issuer may terminate its reporting obligations in the future in accordance with Rule 202(b) of Regulation Crowdfunding (§ 227.202(b)).

## **Item 3. Annual Report Disclosure Requirements**

\_\_\_\_\_ should be directed to the terms, conditions and requirements of the exemption.

## **II. Preparation and Filing of Form C**

Information on the cover page will be generated based on the information provided in XML format. Other than the cover page, this Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of Form C. General information regarding the preparation, format and how to file this Form is contained in Regulation S-T (§ 232 *et seq.*).

## **III. Information to be Included in the Form**

### **Item 1. Offering Statement Disclosure Requirements**

An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100 *et seq.*) must file the Form prior to the commencement of the offering and include the information required by Rule 201 of Regulation Crowdfunding (§ 227.201).

An issuer must include in the XML-based portion of this Form: the information required by paragraphs (a), (e), (g), (h), (l), (n), and (o) of Rule 201 of Regulation Crowdfunding (§ 227.201(a), (e), (g), (h), (l), (n), and (o)); selected financial data for the prior two fiscal years (including total assets, cash and cash equivalents, accounts receivable, short-term debt, long-term debt, revenues/sales, cost of goods sold, taxes paid and net income); the jurisdictions in which the issuer intends to offer the securities; and any information required by Rule 203(a)(3) of Regulation Crowdfunding (§ 227.203(a)(3)).

Other than the information required to be provided in XML format, an issuer may provide the required information in the optional Question and Answer format included herein or in any other format included on the intermediary's platform, by filing such information as an exhibit to this Form, including copies of screen shots of the relevant information, as appropriate and necessary.

An issuer filing this Form for an annual report, as required by Regulation Crowdfunding (§ 227.100 *et seq.*), must file the Form no later than 120 days after the issuer's fiscal year end covered by the report and include the information required by Rule 201(a), (b), (c), (d), (e), (f), (m), (p), (q), (r), (s), (t), (x) and (y) of Regulation Crowdfunding (§§ 227.201(a), (b), (c), (d), (e), (f), (m), (p), (q), (r), (s), (t), (x) and (y)). For purposes of paragraph (t), the issuer shall provide financial statements certified by the principal executive officer of the issuer to be true and complete in all material respects. If, however, the issuer has available financial statements prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) that have been reviewed or audited by an independent certified public accountant, those financial statements must be provided and the principal executive officer certification will not be required.

An issuer must include in the XML-based portion of this Form: the information required by paragraphs (a), and (e) of Rule 201 of Regulation Crowdfunding (§ 227.201(a) and (e)); and selected financial data for the prior two fiscal years (including total assets, cash and cash equivalents, accounts receivable, short-term debt, long-term debt, revenues/sales, cost of goods sold, taxes paid and net income).

**SIGNATURE**

Pursuant to the requirements of Sections 4(a)(6) and 4A of the Securities Act of 1933 and Regulation Crowdfunding (§ 227.100 *et seq.*), the issuer certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form C and has duly caused this Form to be signed on its behalf by the duly authorized undersigned.

\_\_\_\_\_  
(Issuer)

By

\_\_\_\_\_  
(Signature and Title)

Pursuant to the requirements of Sections 4(a)(6) and 4A of the Securities Act of 1933 and Regulation Crowdfunding (§ 227.100 *et seq.*), this Form C has been signed by the following persons in the capacities and on the dates indicated.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

*Instructions.*

1. The form shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions.
2. The name of each person signing the form shall be typed or printed beneath the signature.

Intentional misstatements or omissions of facts constitute federal criminal violations. See 18 U.S.C. 1001.

## OPTIONAL QUESTION & ANSWER FORMAT

### FOR AN OFFERING STATEMENT

Respond to each question in each paragraph of this part. Set forth each question and any notes, but not any instructions thereto, in their entirety. If disclosure in response to any question is responsive to one or more other questions, it is not necessary to repeat the disclosure. If a question or series of questions is inapplicable or the response is available elsewhere in the Form, either state that it is inapplicable, include a cross-reference to the responsive disclosure, or omit the question or series of questions.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may be liable to investors based on that information.

### THE COMPANY

1. Name of issuer: \_\_\_\_\_

### ELIGIBILITY

2.  Check this box to certify that all of the following statements are true for the issuer:
- Organized under, and subject to, the laws of a State or territory of the United States or the District of Columbia.
  - Not subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934.
  - Not an investment company registered or required to be registered under the Investment Company Act of 1940.
  - Not ineligible to rely on this exemption under Section 4(a)(6) of the Securities Act as a result of a disqualification specified in Rule 503(a) of Regulation Crowdfunding. (For more information about these disqualifications, see Question 30 of this Question and Answer format).
  - Has filed with the Commission and provided to investors, to the extent required, the ongoing annual reports required by Regulation Crowdfunding during the two years immediately preceding the filing of this offering statement (or for such shorter period that the issuer was required to file such reports).
  - Not a development stage company that (a) has no specific business plan or (b) has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

**INSTRUCTION TO QUESTION 2: If any of these statements is not true, then you are NOT eligible to rely on this exemption under Section 4(a)(6) of the Securities Act.**

3. Has the issuer or any of its predecessors previously failed to comply with the ongoing reporting requirements of Rule 202 of Regulation Crowdfunding?  Yes  No  
Explain: \_\_\_\_\_

### DIRECTORS OF THE COMPANY

4. Provide the following information about each director (and any persons occupying a similar status or performing a similar function) of the issuer:

Name: \_\_\_\_\_ Dates of Board Service: \_\_\_\_\_  
Principal Occupation: \_\_\_\_\_  
Employer: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_

List all positions and offices with the issuer held and the period of time in which the director served in the position or office:

Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_

Business Experience: List the employers, titles and dates of positions held during past three years with an indication of job responsibilities:

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

### OFFICERS OF THE COMPANY

5. Provide the following information about each officer (and any persons occupying a similar status or performing a similar function) of the issuer:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

List any prior positions and offices with the issuer and the period of time in which the officer served in the position or office:

Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Position: \_\_\_\_\_ Dates of Service: \_\_\_\_\_

Responsibilities: \_\_\_\_\_

Business Experience: List any other employers, titles and dates of positions held during past three years with an indication of job responsibilities:

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

Employer: \_\_\_\_\_  
Employer's principal business: \_\_\_\_\_  
Title: \_\_\_\_\_ Dates of Service: \_\_\_\_\_  
Responsibilities: \_\_\_\_\_

INSTRUCTION TO QUESTION 5: For purposes of this Question 5, the term officer means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing similar functions.

### PRINCIPAL SECURITY HOLDERS

6. Provide the name and ownership level of each person, as of the most recent practicable date, who is the beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.

<u>Name of Holder</u>	<u>No. and Class of Securities Now Held</u>	<u>% of Voting Power Prior to Offering</u>
_____	_____	_____%
_____	_____	_____%
_____	_____	_____%
_____	_____	_____%

INSTRUCTION TO QUESTION 6: The above information must be provided as of a date that is no more than 120 days prior to the date of filing of this offering statement.

To calculate total voting power, include all securities for which the person directly or indirectly has or shares the voting power, which includes the power to vote or to direct the voting of such securities. If the person has the right to acquire voting power of such securities within 60 days, including through the exercise of any option, warrant or right, the conversion of a security, or other arrangement, or if securities are held by a member of the family, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the securities (or share in such direction or control — as, for example, a co-trustee) they should be included as being "beneficially owned." You should include an explanation of these circumstances in a footnote to the "Number of and Class of Securities Now Held." To calculate outstanding voting equity securities, assume all outstanding options are exercised and all outstanding convertible securities converted.

### BUSINESS AND ANTICIPATED BUSINESS PLAN

7. Describe in detail the business of the issuer and the anticipated business plan of the issuer.

### RISK FACTORS

**A crowdfunding investment involves risk. You should not invest any funds in this offering unless you can afford to lose your entire investment.**

**In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document.**

**The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering document or literature.**

**These securities are offered under an exemption from registration; however, the U.S. Securities and Exchange Commission has not made an independent determination that these securities are exempt from registration.**

8. Discuss the material factors that make an investment in the issuer speculative or risky:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_
- (7) \_\_\_\_\_
- (8) \_\_\_\_\_
- (9) \_\_\_\_\_
- (10) \_\_\_\_\_

INSTRUCTION TO QUESTION 8: Avoid generalized statements and include only those factors that are unique to the issuer. Discussion should be tailored to the issuer's business and the offering and should not repeat the factors addressed in the legends set forth above. No specific number of risk factors is required to be identified. Add additional lines and number as appropriate.

### THE OFFERING

9. What is the purpose of this offering?



10. How does the issuer intend to use the proceeds of this offering?

	If Target Offering Amount Sold	If Maximum Amount Sold
Total Proceeds	\$	\$
Less: Offering Expenses		
(A)		
(B)		
(C)		
Net Proceeds	\$	\$
Use of Net Proceeds		
(A)		
(B)		
(C)		
Total Use of Net Proceeds	\$	\$

**INSTRUCTION TO QUESTION 10:** An issuer must provide a reasonably detailed description of any intended use of proceeds, such that investors are provided with an adequate amount of information to understand how the offering proceeds will be used. If an issuer has identified a range of possible uses, the issuer should identify and describe each probable use and the factors the issuer may consider in allocating proceeds among the potential uses. If the issuer will accept proceeds in excess of the target offering amount, the issuer must describe the purpose, method for allocating oversubscriptions, and intended use of the excess proceeds with similar specificity.

11. How will the issuer complete the transaction and deliver securities to the investors?  
 12. How can an investor cancel an investment commitment?

**NOTE: Investors may cancel an investment commitment until 48 hours prior to the deadline identified in these offering materials.**

**The intermediary will notify investors when the target offering amount has been met.**

**If the issuer reaches the target offering amount prior to the deadline identified in the offering materials, it may close the offering early if it provides notice about the new offering deadline at least five business days prior to such new offering deadline (absent a material change that would require an extension of the offering and reconfirmation of the investment commitment).**

**If an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering and the investor will receive securities in exchange for his or her investment.**

**If an investor does not reconfirm his or her investment commitment after a material change is made to the offering, the investor's investment commitment will be cancelled and the committed funds will be returned.**



## OWNERSHIP AND CAPITAL STRUCTURE

### The Offering

13. Describe the terms of the securities being offered.
14. Do the securities offered have voting rights?  Yes  No
15. Are there any limitations on any voting or other rights identified above?  Yes  No  
Explain: \_\_\_\_\_
16. How may the terms of the securities being offered be modified?

### Restrictions on Transfer of the Securities Being Offered

The securities being offered may not be transferred by any purchaser of such securities during the one-year period beginning when the securities were issued, unless such securities are transferred:

- (1) to the issuer;
- (2) to an accredited investor;
- (3) as part of an offering registered with the U.S. Securities and Exchange Commission; or
- (4) to a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance.

**NOTE: The term “accredited investor” means any person who comes within any of the categories set forth in Rule 501(a) of Regulation D, or who the seller reasonably believes comes within any of such categories, at the time of the sale of the securities to that person.**

**The term “member of the family of the purchaser or the equivalent” includes a child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and includes adoptive relationships. The term “spousal equivalent” means a cohabitant occupying a relationship generally equivalent to that of a spouse.**

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**Description of Issuer's Securities**

17. What other securities or classes of securities of the issuer are outstanding? Describe the material terms of any other outstanding securities or classes of securities of the issuer.

<u>Class of Security</u>	<u>Securities (or Amount) Authorized</u>	<u>Securities (or Amount) Outstanding</u>	<u>Voting Rights</u>	<u>Other Rights</u>
Preferred Stock (list each class in order of preference): _____			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____
_____			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____
Common Stock:			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____
Debt Securities:			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____
Other: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____
_____			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No Specify: _____

<u>Class of Security</u>	<u>Securities Reserved for Issuance upon Exercise or Conversion</u>
Warrants:	
Options:	
Other Rights:	
_____	
_____	

18. How may the rights of the securities being offered be materially limited, diluted or qualified by the rights of any other class of security identified above?

19. Are there any differences not reflected above between the securities being offered and each other class of security of the issuer?  Yes  No  
Explain: \_\_\_\_\_

24. Describe the material terms of any indebtedness of the issuer:

<u>Creditor(s)</u>	<u>Amount Outstanding</u>	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Other Material Terms</u>
	\$ _____	_____ %		
	\$ _____	_____ %		
	\$ _____	_____ %		

25. What other exempt offerings has the issuer conducted within the past three years?

<u>Date of Offering</u>	<u>Exemption Relied Upon</u>	<u>Securities Offered</u>	<u>Amount Sold</u>	<u>Use of Proceeds</u>

\$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_

26. Was or is the issuer or any entities controlled by or under common control with the issuer a party to any transaction since the beginning of the issuer’s last fiscal year, or any currently proposed transaction, where the amount involved exceeds five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6) of the Securities Act during the preceding 12-month period, including the amount the issuer seeks to raise in the current offering, in which any of the following persons had or is to have a direct or indirect material interest:
- (1) any director or officer of the issuer;
  - (2) any person who is, as of the most recent practicable date, the beneficial owner of 20 percent or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power;
  - (3) if the issuer was incorporated or organized within the past three years, any promoter of the issuer; or
  - (4) any immediate family member of any of the foregoing persons.

If yes, for each such transaction, disclose the following:

<u>Specified Person</u>	<u>Relationship to Issuer</u>	<u>Nature of Interest in Transaction</u>	<u>Amount of Interest</u>
			\$ _____
			\$ _____
			\$ _____

**INSTRUCTIONS TO QUESTION 26:**

The term transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

Beneficial ownership for purposes of paragraph (2) shall be determined as of a date that is no more than 120 days prior to the date of filing of this offering statement and using the same calculation described in Question 6 of this Question and Answer format.

The term “member of the family” includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the person, and includes adoptive relationships. The term “spousal equivalent” means a cohabitant occupying a relationship generally equivalent to that of a spouse.

Compute the amount of a related party’s interest in any transaction without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, disclose the approximate amount involved in the transaction.

**FINANCIAL CONDITION OF THE ISSUER**

27. Does the issuer have an operating history?     Yes    No
28. Describe the financial condition of the issuer, including, to the extent material, liquidity, capital resources and historical results of operations.

**INSTRUCTIONS TO QUESTION 28:**

The discussion must cover each year for which financial statements are provided. Include a discussion of any known material changes or trends in the financial condition and results of operations of the issuer during any time period subsequent to the period for which financial statements are provided.

For issuers with no prior operating history, the discussion should focus on financial milestones and operational, liquidity and other challenges.

For issuers with an operating history, the discussion should focus on whether historical results and cash flows are representative of what investors should expect in the future.

Take into account the proceeds of the offering and any other known or pending sources of capital. Discuss how the proceeds from the offering will affect liquidity, whether receiving these funds and any other additional funds is necessary to the viability of the business, and how quickly the issuer anticipates using its available cash. Describe the other available sources of capital to the business, such as lines of credit or required contributions by shareholders.

References to the issuer in this Question 28 and these instructions refer to the issuer and its predecessors, if any.

### FINANCIAL INFORMATION

29. Include the financial information specified below covering the two most recently completed fiscal years or the period(s) since inception, if shorter:

<b>Aggregate Offering Amount (defined below):</b>	<b>Financial Information Required:</b>	<b>Financial Statement Requirements:</b>
(a) \$100,000 or less:	<ul style="list-style-type: none"> <li>• The following information or their equivalent line items as reported on the federal income tax return filed by the issuer for the most recently completed year (if any):               <ul style="list-style-type: none"> <li>○ Total income</li> <li>○ Taxable income; and</li> <li>○ Total tax;</li> </ul>               certified by the principal executive officer of the issuer to reflect accurately the information reported on the issuer’s federal income tax returns; and             </li> <li>• Financial statements of the issuer and its predecessors, if any.</li> </ul>	<p>Financial statements must be <b>certified</b> by the principal executive officer of the issuer as set forth below.</p> <p>If financial statements are available that have either been reviewed or audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead along with a signed audit or review report and need not include the information reported on the federal income tax returns or the certification of the principal executive officer.</p>

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(b) More than \$100,000, but not more than \$500,000:	<ul style="list-style-type: none"> <li>• Financial statements of the issuer and its predecessors, if any.</li> </ul>	<p>Financial statements must be <b>reviewed</b> by a public accountant that is independent of the issuer and must include a signed review report.</p> <p>If financial statements of the issuer are available that have been audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead along with a signed audit report and need not include the reviewed financial statements.</p>
(c) More than \$500,000:	<ul style="list-style-type: none"> <li>• Financial statements of the issuer and its predecessors, if any.</li> </ul>	<p>If the issuer <b>has</b> previously sold securities in reliance on Regulation Crowdfunding:</p> <p>Financial statements must be <b>audited</b> by a public accountant that is independent of the issuer and must include a signed audit report.</p> <p>If the issuer <b>has not</b> previously sold securities in reliance on Regulation Crowdfunding and it is offering more than \$500,000 but not more than \$1,000,000:</p> <p>Financial statements must be <b>reviewed</b> by a public accountant that is independent of the issuer and must include a signed review report.</p> <p>If financial statements of the issuer are available that have been audited by a public accountant that is independent of the issuer, the issuer must provide those financial statements instead along with a signed audit report and need not include the reviewed financial statements.</p>

**INSTRUCTIONS TO QUESTION 29:** To determine the financial statements required, the Aggregate Offering Amount for purposes of this Question 29 means the aggregate amounts offered and sold by the issuer, all entities controlled by or under common control with the issuer, and all predecessors of the issuer in reliance on Section 4(a)(6) of the Securities Act within the preceding 12-month period plus the current maximum offering amount provided on the cover of this Form.

To determine whether the issuer has previously sold securities in reliance on Regulation Crowdfunding for purposes of paragraph (c) of this Question 29, “issuer” means the issuer, all entities controlled by or under common control with the issuer, and all predecessors of the issuer.

Financial statements must be prepared in accordance with U.S. generally accepted accounting principles and must include balance sheets, statements of comprehensive income, statements of cash flows, statements of changes in stockholders' equity and notes to the financial statements. If the financial statements are not audited, they shall be labeled as "unaudited."

Issuers offering securities and required to provide the information set forth in row (a) before filing a tax return for the most recently completed fiscal year may provide information from the tax return filed for the prior year (if any), provided that the issuer provides information from the tax return for the most recently completed fiscal year when it is filed, if filed during the offering period. An issuer that requested an extension of the time to file would not be required to provide information from the tax return until the date when the return is filed, if filed during the offering period.

A principal executive officer certifying financial statements as described above must provide the following certification\*\*:

I, [identify the certifying individual], certify that:

- (1) the financial statements of [identify the issuer] included in this Form are true and complete in all material respects; and
- (2) the tax return information of [identify the issuer] included in this Form reflects accurately the information reported on the tax return for [identify the issuer] filed for the fiscal year ended [date of most recent tax return].

[Signature]

[Title]

\*\* Intentional misstatements or omissions of facts constitute federal criminal violations. See 18 U.S.C. 1001.

To qualify as a public accountant that is independent of the issuer for purposes of this Question 29, the accountant must satisfy the independence standards of either:

- (i) Rule 2-01 of Regulation S-X or
- (ii) the AICPA.

The public accountant that audits or reviews the financial statements provided by an issuer must be (1) duly registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office or (2) in good standing and entitled to practice as a public accountant under the laws of his or her place of residence or principal office.

An issuer will not be in compliance with the requirement to provide reviewed financial statement if the issuer received a review report that includes modifications. An issuer will not be in compliance with the requirement to provide audited financial statements if the issuer received a qualified opinion, an adverse opinion, or a disclaimer of opinion.

The issuer must notify the public accountant of the issuer's intended use of the public accountant's audit or review report in the offering.

For an offering conducted in the first 120 days of a fiscal year, the financial statements provided may be for the two fiscal years prior to the issuer's most recently completed fiscal year; however, financial statements for the two most recently completed fiscal years must be provided if they are otherwise available. If more than 120 days have passed since the end of the issuer's most recently completed fiscal year, the financial statements provided must be for the issuer's two most recently completed fiscal years. If the 120th day falls on a Saturday, Sunday, or holiday, the next business day shall be considered the 120th day for purposes of determining the age of the financial statements.

An issuer may elect to delay complying with any new or revised financial accounting standard until the date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 is required to comply with such new or revised accounting standard, if such standard also applies to companies that are not issuers. Issuers electing such extension of time accommodation must disclose it at the time the issuer files its offering statement and apply the election to all standards. Issuers electing not to use this accommodation must forgo this accommodation for all financial accounting standards and may not elect to rely on this accommodation in any future filings

30. With respect to the issuer, any predecessor of the issuer, any affiliated issuer, any director, officer, general partner or managing member of the issuer, any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated in the same form as described in Question 6 of this Question and Answer format, any promoter connected with the issuer in any capacity at the time of such sale, any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities, or any general partner, director, officer or managing member of any such solicitor, prior to May 16, 2016:

- (1) Has any such person been convicted, within 10 years (or five years, in the case of issuers, their predecessors and affiliated issuers) before the filing of this offering statement, of any felony or misdemeanor:
- (i) in connection with the purchase or sale of any security?  Yes  No
  - (ii) involving the making of any false filing with the Commission?  
 Yes  No
  - (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities?  Yes  No

If Yes to any of the above, explain: \_\_\_\_\_

(2) Is any such person subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the information required by Section 4A(b) of the Securities Act that, at the time of filing of this offering statement, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

- (i) in connection with the purchase or sale of any security?  Yes  No;
- (ii) involving the making of any false filing with the Commission?  
 Yes  No
- (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities?  Yes  No

If Yes to any of the above, explain: \_\_\_\_\_

(3) Is any such person subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

- (i) at the time of the filing of this offering statement bars the person from:
  - (A) association with an entity regulated by such commission, authority, agency or officer?  Yes  No
  - (B) engaging in the business of securities, insurance or banking?  
 Yes  No
  - (C) engaging in savings association or credit union activities?  
 Yes  No



- (ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct and for which the order was entered within the 10-year period ending on the date of the filing of this offering statement?  Yes  No

If Yes to any of the above, explain: \_\_\_\_\_

- (4) Is any such person subject to an order of the Commission entered pursuant to Section 15(b) or 15B(c) of the Exchange Act or Section 203(e) or (f) of the Investment Advisers Act of 1940 that, at the time of the filing of this offering statement:

- (i) suspends or revokes such person's registration as a broker, dealer, municipal securities dealer, investment adviser or funding portal?  Yes  No
- (ii) places limitations on the activities, functions or operations of such person?  Yes  No
- (iii) bars such person from being associated with any entity or from participating in the offering of any penny stock?  Yes  No

If Yes to any of the above, explain: \_\_\_\_\_

- (5) Is any such person subject to any order of the Commission entered within five years before the filing of this offering statement that, at the time of the filing of this offering statement, orders the person to cease and desist from committing or causing a violation or future violation of:

- (i) any scienter-based anti-fraud provision of the federal securities laws, including without limitation Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, Section 15(c)(1) of the Exchange Act and Section 206(1) of the Investment Advisers Act of 1940 or any other rule or regulation thereunder?  Yes  No
- (ii) Section 5 of the Securities Act?  Yes  No

If Yes to either of the above, explain: \_\_\_\_\_

- (6) Is any such person suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade?

Yes  No

If Yes, explain: \_\_\_\_\_

- (7) Has any such person filed (as a registrant or issuer), or was any such person or was any such person named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before the filing of this offering statement, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is any such person, at the time of such filing, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued?

Yes  No

If Yes, explain: \_\_\_\_\_

- (8) Is any such person subject to a United States Postal Service false representation order entered within five years before the filing of the information required by Section 4A(b) of the Securities Act, or is any such person, at the time of filing of this offering statement, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations?

Yes  No

If Yes, explain: \_\_\_\_\_

**If you would have answered “Yes” to any of these questions had the conviction, order, judgment, decree, suspension, expulsion or bar occurred or been issued after May 16, 2016, then you are NOT eligible to rely on this exemption under Section 4(a)(6) of the Securities Act.**

INSTRUCTIONS TO QUESTION 30: Final order means a written directive or declaratory statement issued by a federal or state agency, described in Rule 503(a)(3) of Regulation Crowdfunding, under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

No matters are required to be disclosed with respect to events relating to any affiliated issuer that occurred before the affiliation arose if the affiliated entity is not (i) in control of the issuer or (ii) under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

#### **OTHER MATERIAL INFORMATION**

31. In addition to the information expressly required to be included in this Form, include:
- (1) any other material information presented to investors; and
  - (2) such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

INSTRUCTIONS TO QUESTION 31: If information is presented to investors in a format, media or other means not able to be reflected in text or portable document format, the issuer should include

- (a) a description of the material content of such information;
- (b) a description of the format in which such disclosure is presented; and
- (c) in the case of disclosure in video, audio or other dynamic media or format, a transcript or description of such disclosure.

CCA Regulation C

# APPENDIX B – ONGOING REPORTING REQUIREMENTS

## ONGOING REPORTING

The issuer will file a report electronically with the Securities & Exchange Commission annually and post the report on its website, no later than:

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(120 days after the end of each fiscal year covered by the report).

Once posted, the annual report may be found on the issuer's website at:

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The issuer must continue to comply with the ongoing reporting requirements until:

- (1) the issuer is required to file reports under Section 13(a) or Section 15(d) of the Exchange Act;
- (2) the issuer has filed at least one annual report pursuant to Regulation Crowdfunding and has fewer than 300 holders of record and has total assets that do not exceed \$10,000,000;
- (3) the issuer has filed at least three annual reports pursuant to Regulation Crowdfunding;
- (4) the issuer or another party repurchases all of the securities issued in reliance on Section 4(a)(6) of the Securities Act, including any payment in full of debt securities or any complete redemption of redeemable securities; or
- (5) the issuer liquidates or dissolves its business in accordance with state law.

CCA Regulation Crowdfunding