NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

August 31, 2012

Via electronic submission to pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

RE: Comments in Response to Regulatory Notice 12-34

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (NASAA) appreciates this opportunity to provide comment in response to your Regulatory Notice 12-34 regarding the proposed regulation of crowdfunding activities. The members of NASAA are the state-level securities regulators who work closely with small businesses in their capital formation efforts, and we want those businesses to be successful in raising money through crowdfunding or other methods so they can thrive and produce jobs. However, we are also keenly aware that capital formation requires confident investors who are adequately protected. Thus, we believe that crowdfunding, to be successful, requires a balanced regulatory approach that minimizes unnecessary costs and burdens on the small businesses while protecting their investors from fraud and abuse.

We have a heightened interest in the Securities and Exchange Commission and FINRA rules that govern crowdfunding intermediaries. Section 305 of the Jumpstart Our Business Startups Act ("JOBS Act") preserves the authority of a state securities regulator to conduct examinations and bring enforcement actions with respect to a funding portal whose principal place of business is located within that state. However, state rules cannot exceed federal requirements. Because the JOBS Act essentially puts state governments in the unfortunate position of enforcing federal laws from which we may not deviate, we would naturally appreciate your fullest consideration of our comments as you undertake the rulemaking process.

By letter dated July 3, 2012 (attached), NASAA submitted preliminary comments to the Commission on Titles II, III, and IV of the JOBS Act. With respect to Title III, we urged the Commission to adopt specific disclosure requirements for crowdfunding issuers, and we made recommendations for the types of investor education materials that intermediaries should be required to use. We also gave specific suggestions related to financial statements, background

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Patricia D. Struck (Wisconsin)
Frank L.Widmann (Florida)

checks, escrow requirements, and several other issues, and we offer our proposals to you for your consideration as well.

In addition to the comments we previously submitted to the Commission, we request your consideration of the following comments related more specifically to the regulation of crowdfunding intermediaries. The JOBS Act does not clearly delineate the Commission's and FINRA's rulemaking authority, so for purposes of this letter we assume that the Commission will grant FINRA relatively broad authority to establish rules for intermediaries.

1. Guiding Principles

As a general matter, NASAA believes that FINRA and the Commission should establish clear lines between the permissible activities of funding portals and those that would require broker-dealer registration. Then, to the extent a funding portal is permitted to engage in activities that are similar in nature to traditional broker-dealer activities, the funding portal should be expected to abide by the traditional broker-dealer rules. FINRA should start with the assumption that the full panoply of broker-dealer regulations should be applied to funding portals, then exempt funding portals from only those rules that are truly not relevant in light of the limited scope of funding portal activities.

2. Giving Investment Advice or Recommendations

Under Section 304(b) of the JOBS Act, a funding portal cannot offer investment advice or recommendations. We do not believe this should be interpreted so narrowly that a funding portal is precluded from screening issuers. In fact, we believe the funding portal should be required to conduct due diligence that is as similar as possible to the reasonable investigation required of registered broker-dealers in FINRA Notice to Members 10-22.

A funding portal may be allowed to specialize by limiting its offerings to issuers within a certain industry, geographic area, size, etc. However, the portal should not be allowed to grade or rate the various offerings or otherwise assess their risk. It should also be prohibited from making any customer-specific recommendations or using hypothetical scenarios to indicate the offering is good for a particular type of investor or satisfies a particular type of investment strategy. These types of activities should require broker-dealer registration.

3. Suitability

Because funding portals are precluded from giving recommendations, it may be appropriate to exempt portals from the traditional suitability and know your customer requirements. However, because these offerings will be sold through general solicitations to unsophisticated investors, we reiterate our support for the portal to have an obligation to conduct a reasonable investigation of the issuer in order to ensure that the issuer meets a minimum threshold of "suitability" for sales to the general public.

4. Investment Limits

Part of the rationale for a crowdfunding exemption is that losses are limited, so investors have less need for the protections that come from the securities registration process and the traditional broker-dealer rules. While we do not agree with this rationale, we recognize the potential for its complete failure if the loss limits are not carefully enforced. The traditional broker-dealer obligations of a customer specific suitability analysis have been replaced with loss limits, and we expect intermediaries to be equally vigilant in making sure those limits are enforced.

FINRA or the Commission must establish a mechanism to ensure that issuers and investors do not circumvent the individual investment limits or the overall $1 million offering limit set forth in Section 302. The simplest solution would be to prohibit an issuer from using multiple intermediaries, which would give intermediaries a better ability to police the limits. Otherwise, intermediaries should be required to report the issuers for whom they are conducting offerings, and intermediaries should be required to cross-check investor lists with any other intermediaries who serve the same issuers. FINRA or the Commission could approve the use of an electronic clearinghouse to facilitate this process.

Under Section 302, all persons can invest up to $2,000. However, there are higher investment limits for investors with sufficient annual income or net worth. For these larger investments, intermediaries must be required to verify the requisite level of income or net worth. We recommend a verification process that is similar to what we proposed for accredited investors under Title II of the JOBS Act, as set forth in our attached comment letter to the Commission.

5. Operational Requirements

Section 304(b) prohibits a funding portal from soliciting purchases or sales, compensating employees or agents based upon sales or for solicitation activities, or having custody of investor funds or securities. FINRA should clearly delineate permissible and prohibited practices in these areas, in as much detail as possible, and should establish supervisory rules to ensure compliance at all levels in the portals.

FINRA must also establish recordkeeping rules for funding portals. At a minimum, the portals should be required to maintain records to document compliance with all Commission and FINRA rules, and they should be required to archive all communications with investors, including all versions of website postings related to securities offerings.

To limit the danger of abusive marketing tactics, we also recommend that crowdfunding activities be limited to the internet *only*. The exemption was created to facilitate an on-line marketplace, but other forms of general solicitation and advertising could conceivably be used to promote crowdfunding.

Section 302(b) requires the Commission to make information about the offering available to the states or cause the intermediary to make it available. As FINRA adopts rules for intermediaries, it should coordinate with NASAA and the Commission to facilitate this requirement.

6. Use of Broker-Dealer Subsidiaries or Affiliates

Section 302(a) allows equity-based crowdfunding to be conducted through either a registered broker or a funding portal. Thus, the Act specifically contemplates that traditional broker-dealers will engage in crowdfunding activities and remain subject to the full complement of broker-dealer regulations. Accordingly, a broker-dealer should not be allowed to create a subsidiary or affiliate to act as a funding portal in order to circumvent full broker-dealer regulation. By creating a subsidiary or affiliate, the broker-dealer may create a misleading impression that the funding portal is subject to the same rules as the broker-dealer. For example, the customer of a funding portal that is affiliated with a broker-dealer may reasonably assume that the portal has conducted a suitability analysis.

We note that the incentive for broker-dealers to establish funding portal subsidiaries will be substantially diminished if funding portal regulations are synthesized with broker-dealer regulations to the fullest extent possible.

7. Registration Requirements

To promote transparency, we urge you to use the Central Registration Depository (CRD) to facilitate the registration of funding portals and maintain disciplinary records. Furthermore, because the home state of a funding portal may require registration, we encourage you to work closely with NASAA to create a seamless registration process for this new type of entity.

8. Other Issues

After the 12-month holding period, we will undoubtedly see demand for a secondary market in these types of securities. We would oppose any proposal to allow funding portals to conduct secondary trading of securities, but we welcome further discussion about ways to improve liquidity for Main Street investors.

The JOBS Act creates an unusual system in which the home state of the intermediary is the only state with the authority to conduct examinations or bring enforcement actions. To more effectively root out bad actors from the crowdfunding industry, we recommend that you adopt rules to permit the use of a state-level sanction as a predicate for a FINRA enforcement action.

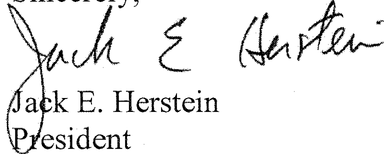
As FINRA moves forward in this process, NASAA will try to provide additional recommendations on other issues that require considerable study. For example, we will consider

what qualification examinations and registration requirements should apply to the supervisors, compliance officers, or other personnel of funding portals. In addition, we are interested in the types of legal recourse, such as arbitration, that will be available to investors who lose money in crowdfunding offerings. NASAA and FINRA should also discuss the actual implementation and enforcement of the new rules, including a coordinated examination program for funding portals.

Conclusion

NASAA supports FINRA's efforts to establish a rational regulatory framework for crowdfunding intermediaries – one that represents a reasonable balance between the needs of small business issuers and the protection of the investors who will fund those businesses. We appreciate the opportunity to comment in this process, and we look forward to a continuing dialogue as the process moves forward.

Sincerely,



Jack E. Herstein
President

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
750 First Street N.E., Suite 1140
Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

NASAA

July 3, 2012

Submitted electronically to rule-comments@sec.gov

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

RE: Rulemakings under Titles II, III, and IV of the JOBS Act

Dear Ms. Murphy,

Section 302(c) of the Jumpstart Our Business Startups Act ("JOBS Act") directs the Securities and Exchange Commission to consult with state securities regulators who seek consultation in connection with the rules to be adopted under Title III of the JOBS Act (Crowdfunding). By letter dated May 10, 2012, NASAA notified the Commission of the states' desire to consult with the Commission in the development of the crowdfunding rules, as well as the rules under Titles II and IV involving general solicitation in Rule 506 and the new "Regulation A+." The purpose of this letter is to provide specific suggestions to the Commission as it considers rulemaking in these areas.

I. General Solicitation under Rule 506 of Regulation D

Section 201 requires the Commission to revise Rule 506 to permit general solicitation or general advertising, provided that ***all*** purchasers of the securities are accredited investors. Congress mandated that "[s]uch rules shall require the issuer to take reasonable steps to verify that purchasers of the securities are accredited investors, using such methods as determined by the Commission." In addition, Congress created a new exemption from registration as a broker or dealer for any "platform" that facilitates the sale of such securities under certain conditions.

Even though securities sold in compliance with Rule 506 are covered securities, which results in preemption of state-level registration requirements, the states retain antifraud jurisdiction and have proven to be the primary regulator of these offerings. In 2010, for example, states brought more than 250 enforcement actions for fraudulent Rule 506 offerings. Accordingly, the states have a direct interest in the Commission's rulemaking in this area.

To protect investors, we strongly urge the Commission to adopt meaningful verification requirements and constrain the activities of the new private offering platforms. In addition, because Rule 506 is being expanded to permit general solicitation or advertising, it is now necessary to strengthen some of the filing requirements for Form D.

President: Jack E. Herstein (Nebraska)
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Patricia D. Struck (Wisconsin)

1. Verification requirements

Regulation D currently uses a "reasonably believes" standard for compliance with purchaser limitations and the sophistication requirements in Rule 506(b)(2)(i) and (ii). The plain language of the JOBS Act requiring issuers to take"[r]easonable steps to verify" is clearly a higher standard and should lead to a higher duty on issuers.

"Verify" implies more than simply accepting an investor's unsubstantiated representations. In various other contexts, Congress's direction to "verify" has resulted in an affirmative duty to review and confirm individuals' proof that they satisfy specific income or asset requirements. For instance, any person who has applied for unemployment benefits, free or reduced school lunches, college financial aid, or a mortgage is familiar with what is required to "verify" income or assets under various federal and state laws. Under SEC Rule of Practice 630 and Form D-A, the Commission itself requires extensive documentation of income and net worth when a respondent seeks to demonstrate an inability to pay a fine or disgorgement. Similarly, in the context of Rule 506, verification of status as an accredited investor should require the production of evidence to demonstrate the requisite income level or net worth.

The JOBS Act states that the *issuer* must take reasonable steps to verify the accredited investor status of each purchaser. In order to address privacy concerns, the Commission should require the issuer to maintain the confidentiality of any information received for the purpose of verifying the investors' status as accredited. In addition, the Commission should require an issuer to retain records for at least five years in order to preserve the proof that its verification efforts were reasonable.

As mandated by the JOBS Act, the issuer is ultimately responsible for the verification because it is a condition of the exemption. However, NASAA recommends that the Commission allow an issuer to obtain the necessary verification through registered broker-dealers, provided there are independent liability provisions for failure to adequately perform the verification. Investors will likely be more comfortable giving sensitive financial information to a registered broker-dealer, and the broker-dealer will be subject to rules requiring the safeguarding of private information. If broker-dealers continue to re-verify accredited status each year, the broker-dealers could develop registries of accredited investors, leading to an efficient mechanism for issuers to verify whether investors are accredited.

NASAA also recommends that the Commission set forth clear, non-exclusive safe harbors to specify the types of actions that will be deemed "reasonable steps to verify." The verification requirements should be tailored to three types of accredited investors – natural persons who purport to satisfy the income test in Rule 501(a)(6), natural persons who purport to satisfy the net worth test in Rule 501(a)(5), and entities who purport to meet one of the other tests set forth in Rule 501(a).

We note again, however, the JOBS Act mandate that advertised offerings are exempt only if "all" purchasers are accredited investors. Thus, if a sale is ultimately made to an unaccredited investor, an issuer or its broker-dealer's conducting reasonable verification of accredited investor status for each investor will not preclude the loss of the exemption for that offering.

a. Verification of Income

An individual's income can be verified with documents that are readily available, including tax returns, Form W-2, and Form 1099. To satisfy the safe harbor for verification, the issuer or its broker-dealer should be required to obtain copies of adequate documentary proof that the investor has satisfied the income requirements for the past two years. In addition, the investor should be required to produce a recent pay stub to demonstrate a reasonable expectation of reaching the same income level in the current year.

b. Verification of Net Worth

Verification of net worth is more challenging because an individual could provide proof of assets but not liabilities. In addition, NASAA recognizes that the verification requirements should not require the issuer to conduct a financial investigation of its investors. However, a simple fill-in-the-blank self-certification is not sufficient to meet the standard of "reasonable steps to verify."

At a minimum, the Commission should require an issuer or its broker-dealer to obtain documentation that the investor has at least $1 million in assets, excluding the primary residence. Such documentation could include items like bank statements, brokerage account statements, tax assessment valuations, or appraisals. In addition, the Commission should require the issuer or broker-dealer to obtain a list of liabilities from the investor, which would include a sworn statement that all material liabilities are disclosed.

Other simple evidence may demonstrate that an investor has $1 million in net worth. For example, if an investor makes an investment of $1 million in the issuer's securities, it would be reasonable for the issuer to assume that the investor has $1 million in net worth, even though it is not necessarily a certainty. NASAA would not oppose the creation of this type of specific safe harbor, provided the factors used to demonstrate the requisite net worth are set sufficiently high.

c. Verification for Entities

The JOBS Act mandate for verification of accredited investor status is not limited to investors who are natural persons. Thus, an issuer or its broker-dealer must also verify whether an entity satisfies one of the standards for an accredited investor in Rule 501(a). For the purposes of determining whether an entity meets the definition of accredited investor, organizational documents and a simple balance sheet may be sufficient for most entities, and a quarterly statement could be used for employee benefit plans.

2. Regulation of platforms

Title II of the JOBS Act authorizes a new type of "platform," presumably internet-based, to facilitate an offer, sale, purchase, or *negotiation* involving securities. The Act prohibits transaction-based compensation and custody, and it has a bad actor disqualification, but it specifically allows the platform to conduct "ancillary services" including due diligence and the provision of standardized offering documents.

We are concerned with the intrusion of these platforms into traditional broker-dealer activities and the potential devolution of those functions. These concerns are magnified because the platform will not be held to traditional suitability and know-your-customer standards. To maintain a clear distinction between broker-dealers and platforms, the rules should articulate the scope of ancillary services that are permissible for unregistered platforms and establish bright lines between compensation "in connection with the purchase or sale" of a security and compensation for ancillary services. In addition, the due diligence that is performed by a platform should be no less rigorous than the reasonable investigation required of registered broker-dealers (See FINRA Notice to Members 10-22). Should the Commission feel it lacks the jurisdiction to set rules for the unregistered platforms, it should at a minimum provide guidance detailing the type of activities that will subject the platforms to broker-dealer registration requirements.

3. Filing requirements

The expansion of Rule 506 to allow general solicitation will make it very difficult for SEC and state enforcement personnel to distinguish between legitimate and illegitimate offerings. If a regulator sees a highly suspicious offering on the internet, it is doubtful that the regulator will be able to take injunctive action until the investors' money is gone. To alleviate this problem, and to provide a modicum of information to the investing public before an issuer begins to advertise an offering, we recommend that the Commission take two concrete steps.

First, if an issuer wants to take advantage of general solicitation, it should be required to file a Form D ***before*** the public solicitation begins. To make this requirement more meaningful, the failure to file a Form D must result in the loss of the exemption. *We also believe it is absolutely imperative to change the filing deadline at the same time that you change the rule to facilitate public solicitation.* Without a strict pre-solicitation filing requirement, unscrupulous promoters will have an easy defense against injunctive actions by state and federal regulators. We will have no way of knowing whether a promoter is legitimately trying to comply with Rule 506, so a fraudulent offering will be allowed to continue until the regulators have gathered sufficient evidence to prove fraud has already occurred. As a result, it will be much more difficult to prevent or stop investor losses.

Second, the Form D should be improved to require more fulsome notice to regulators. In addition, the form is due for several technical amendments. Please see Attachment A for our proposed amendments to the form, many of which have previously been communicated to the Commission. We would welcome the opportunity for further discussion about the needed changes.

4. Deceptive Advertising

To prevent deceptive or misleading advertising in these offerings, the Commission should require advertising to comply with requirements that are similar to those applicable to registered offerings. In December 2011, the Commission released "CF Disclosure Guidance: Topic No. 3," which provides guidance regarding the review of promotional and sales material. Rule 506 offerings should be required to adhere to many of those same standards, including a "balanced

presentation of risks and rewards" and a requirement that statements in advertising are consistent with representations in the offering documents. If the Commission does not adopt any standards, unsophisticated or unscrupulous issuers will attempt to take advantage of investors with misleading and deceptive marketing material.

II. Crowdfunding

Title III of the JOBS Act establishes a new exemption for crowdfunding, and many issues will need to be resolved in the rules to be adopted by the Commission and the self-regulatory organization ("SRO") for funding portals. We offer the following initial observations and suggestions, and we will undoubtedly develop additional proposals for your consideration as the process moves forward.

1. SRO

Section 304 of the JOBS Act requires a funding portal that is not a registered broker or dealer to maintain membership in a national securities association. Given the potential for huge numbers of unsophisticated investors to participate in crowdfunded offerings and the lack of regulatory oversight of these public offerings, it is imperative for the Commission to protect investors by establishing high standards for the funding portal SRO that are as similar as possible to the broker-dealer SRO.

2. Disclosure Requirements

Section 302 (in new Sec. 4A(a)(3) of the Securities Act of 1933) requires an intermediary to "provide such disclosures, including disclosures related to risks and other investor education materials," as the Commission deems appropriate. Section 302 (new Sec. 4A(b)(1)) also requires an issuer to file with the Commission and provide to investors a list of disclosures, plus any other information that the Commission requires by rule "for the protection of investors and in the public interest."

To ensure a minimum level of disclosure, NASAA recommends that the Commission prescribe the use of a specific disclosure form. The SEC Form 1-A or NASAA's Form U-7 (for Small Company Offering Registration, or SCOR) would be good models. Instead of shortening the form to simplify it, we suggest that you allow the use of electronic forms that walk the issuers through the disclosure requirements based upon their answers to questions (similar to tax preparation software programs). In this way, disclosure items that are not relevant to a particular issuer would be screened out, but those same items would be completed by issuers for whom they are relevant.

Section 302 (new Sec. 4A(b)(4)) also requires an issuer, not less than annually, to file with the Commission and report to investors its "results of operations" as the Commission requires by rule. Because crowdfunding was advocated as a job-producing innovation, the initial disclosure document to investors should disclose, in addition to its financial statements, how many persons the issuer currently employs and how many it intends to employ twelve months after a successful offering. Then, the Commission should require its actual employment levels to be disclosed to

investors annually as part of the issuer's results of operations. This data can be used to inform subsequent cost-benefit analyses if future changes to the exemption are sought.

3. Investor Education Information

In addition to information that is specific to the particular issuer and offering, Section 302 (new Section 4A(a)(3)) requires the intermediary to provide investors with disclosures related to the general risks of investing in crowdfunded offerings. We have provided a sample of the type of language that may be used for this purpose in Attachment B.

Section 302 (new Sec. 4A(a)(4)) also requires an intermediary to "ensure" that investors review information, affirm that they understand they may lose their entire investment, and answer various questions demonstrating that they understand certain other risks. This language requires more than self-certification. At a minimum, intermediaries should be required to design their web portals to require investors to "click through" a page that indicates they have read the investor-education information and to require investors to correctly answer a series of specific questions that are controlled by the Commission. This should be a precondition to setting up any type of on-line registration or membership with a funding portal.

4. Other Requirements for Issuers

Financial statements. For offerings under $100,000, issuers are required to provide financial statements certified by the chief executive officer that are "true and complete in all material respects." To ensure completeness and consistency, we suggest that such statements should be prepared in accordance with generally accepted accounting principles, including explanatory notes.

Disqualification. Section 302(d) requires the Commission to adopt disqualification provisions for issuers who shall not be eligible to use the crowdfunding exemption. We urge the Commission to finalize the disqualification rule for offerings conducted under Rule 506, as required by the Dodd-Frank Act, and to apply the same standards to this exemption. Furthermore, an offering should be subject to disqualification based on the prior bad acts of the funding portal and its management.

5. Other Requirements for Intermediaries

Background checks. Section 302(b) (new Sec. 4A(a)(5)) requires the intermediary to take measures as established by the Commission to reduce the risk of fraud, including a background check and a "securities enforcement regulatory history check" of the issuer's principals. We recommend that the Commission mandate specific checks that must be done, as well as what the intermediary must do with the information that is found (e.g., a prior bankruptcy that is not disclosed in the offering documents). The background check should include a review of credit reports, verification of necessary business or professional licenses, evidence of corporate good standing, UCC checks, and a CRD snapshot report that would presumably be available from the SRO for crowdfunding intermediaries. These checks can be readily performed and reflect a

minimum level of due diligence necessary to ensure bad actors are not permitted to raise money in lightly regulated public offerings.

Escrow requirements. Section 302(b) (new Sec. 4A(a)(7)) requires an intermediary to ensure that proceeds are not provided to the issuer until the target offering amount is raised. We recommend that the Commission prohibit purchases by an issuer or its officers, directors, control persons, or affiliates from counting toward meeting the target offering amount and breaking escrow. This will ensure that issuers who have been unable to attract sufficient interest of unaffiliated investors are not permitted to game the system to accept investor funds in an offering that would otherwise fail.

6. State Notification Process

Section 302(b) (new Sec. 4A(d)) requires the Commission to make information about the offering available to the states or cause the intermediary to make it available. We are considering whether open internet access to the portals would be sufficient for our purposes, and we will provide further information at a later date. Currently, our primary concern with such access would be the ability to maintain or archive records from websites that are routinely updated.

7. Investment Limits

The investment limits in Section 302(a) (new Sec. 4(6)(B)(i) and (ii)) contain conflicting language. The new statute limits an investment to the greater of $2,000 or 5 percent of an investor's annual income or net worth "if either the annual income or the net worth of the investor is less than $100,000," but it goes on to allow investments up to 10 percent "if either the annual income or the net worth of the investor is equal to or more than $100,000." Thus, if an investor has income less than $100,000 but net worth greater than $100,000, the statute prohibits investments of more than 5 percent but allows investments up to 10 percent. The Commission's rules must resolve this conflict. Due to the risks inherent in these offerings, we recommend that the Commission by rule require the $2,000 or 5 percent limitation.

III. Regulation A+

Title IV of the JOBS Act requires the Commission to adopt a rule to provide an exemption for certain offerings up to $50 million. Because of its similarity to the current exemption under Regulation A, which is capped at only $5 million, this new exemption is commonly referred to as Reg. A+.

Existing Regulation A was designed before the advent of the internet for small companies raising a limited amount of capital, so the offerings tended to be localized. It remains to be seen whether the new "Reg. A+" will be used with any greater frequency than old Reg. A, especially when you consider the new alternative of crowdfunding and the newly expanded Rule 506. To the extent that Reg. A+ is used, however, the increase in the cap from $5 million to $50 million will mean that the offerings are more broadly dispersed. NASAA is developing an electronic filing system

that could be further developed to accommodate multistate Reg. A+ offerings and plans to develop a uniform review process for these types of offerings.

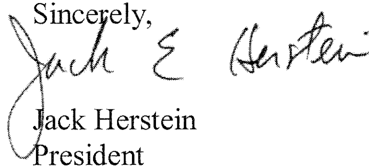
To ensure the efficacy of a filing and review system for Reg. A+ offerings, it is critically important for the federal and state requirements – especially the required disclosure document – to be in sync. Issuers would undoubtedly prefer heightened disclosure requirements in one universal document instead of varying degrees of disclosure to satisfy different regulators. We ask the Commission and its staff to work closely with us in the development of the new Reg. A+ exemption so that the framework that is developed will coordinate effectively with the state-level filing and review process for these offerings.

Because securities offered under Reg. A+ will be freely tradable, we urge the Commission to adopt meaningful ongoing financial reporting requirements for these issuers as authorized by Section 401 of the JOBS Act (new Sec. 3(b)(4) of the Securities Act of 1933). This will provide a source for investors to find information about issuers that is necessary to make an informed investment decision when secondary trading is done.

Conclusion

NASAA appreciates the opportunity to consult with the Commission in its rulemaking efforts. Our discussions with staff on these matters have been productive, and we trust that you will continue to use us as a resource as you develop rules that will directly impact our work at the state level. Please let us know if you would like further information or clarification.

Sincerely,



Jack Herstein
President

Attachment A

SUGGESTED REVISIONS TO FORM D

Item 2 – Principal Place of Business and Contact Information

- Add website address for issuer.

Item 3 – Related Persons

- Control Persons and Beneficial Owners should be included in this section.

Item 5 – Issuer Size

- Eliminate the options of "Decline to Disclose" and "Not Applicable."

Item 6 – Federal Exemptions and Exclusions Claimed

- Under Rule 506, require an indication of whether general solicitation will be used. This could be accomplished by subdividing Rule 506 like it is done with Rule 504.

Item 7 – Type of Filing

- Revise to require filing prior to the use of general solicitation.

Item 9 – Type(s) of Securities Offered

- If the issuer indicates that it is selling interests in a pooled investment fund, require the issuer to identify any adviser to the pooled investment fund and indicate whether it is registered as an investment adviser or exempt from registration.

Item 14 – Investors

- If the issuer indicates that it has sold or may sell to non-accredited investors, require the issuer to indicate whether the investors are sophisticated, whether it has created an offering circular, and whether non-accredited investors have been provided with the same information that is available to accredited investors.

Item 15 – Sales Commissions and Finders' Fees Expenses

- Add a warning that finders' fees may trigger state and federal salesperson and broker-dealer registration requirements.

Signature and Submission

- Require consent to venue as well as service of process.
- Require a certification that the offering is not disqualified under the proposed new rule for "bad actors."

Attachment B

THE RISKS OF CROWDFUNDING

Investments in small businesses and start-up companies are often risky. For example, if a company is new, its management may be inexperienced and investors will not be able to evaluate the company's operating history. Small businesses may also depend heavily upon a single customer, supplier, or employee whose departure would seriously damage the company's profitability.

The demand for the company's product may be seasonal or be impacted by the overall economy, or the company could face other risks that are specific to its industry or type of business. The company may also have a hard time competing against larger companies who can negotiate for better prices from suppliers, produce goods and services on a large scale more economically, or take advantage of bigger marketing budgets. Furthermore, a small business could face risks from lawsuits, governmental regulations, and other potential impediments to growth. **According to the U.S. Small Business Administration, half of all new businesses fail within 5 years.**

Small investors typically have very little power, so they are unable to influence the management decisions that affect the profitability of the investment. New investors are often asked to pay more money for their shares than the company's officers or principal owners (who may have contributed "sweat equity"). Furthermore, the value of the small investor's ownership share in the company's assets (the "tangible book value") is almost always less than the amount paid for the shares.

In addition to these general risks related to investing in small companies, you should carefully consider the specific information and risks disclosed by the company issuing the securities. It may be difficult or impossible to recover your money if the investment does not perform as expected. Due to limited regulatory oversight over these types of offerings, investors may be left on their own to pursue costly private lawsuits when things go wrong. **Because of these risks, you should not invest any funds in a securities offering unless you can afford to lose your entire investment.**

You also should not invest if you may have an immediate need for the return of your funds. Securities issued in reliance upon an exemption for "crowdfunding" are subject to a 12 month holding period, so investors will be unable to freely resell their securities for at least a year. The company may also restrict re-sales of its securities. Even after these restrictions are lifted, it may be difficult to resell these types of securities because they are not listed on any securities exchanges and a public trading market may never develop.

You should consider the terms and risks of a crowdfunding offering before you invest. No government regulator has verified that the disclosure document is accurate or determined that it is adequate. No government regulator is recommending these securities, and it is a crime for anyone to tell you differently.