

September 1, 2020

VIA ELECTRONIC SUBMISSION

Mr. Jay Clayton, Chairman of the Securities and Exchange Commission
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Regulatory Changes to Support and Promote Small Businesses During the Pandemic

Dear Chairman Clayton,

As we have written in the past, the Association of Online Investment Platforms (AOIP) is in general broad support of the Commission's Harmonization efforts and proposed rules currently under consideration. We are writing to you again, given the changed world that we all find ourselves in due to the ongoing Covid-19 pandemic, to emphasize the necessity and impact of accelerating the approval of certain specific provisions in the Harmonization Concept Proposals.

In particular, small businesses all across the country are being disproportionately impacted by the pandemic and the related government actions, especially those owned by minorities and women and operating in industries that typically require in-person interactions, such as the restaurant and hospitality industry. Small businesses are the lifeblood of the U.S. economy: they create two-thirds of net new jobs and drive U.S. innovation and competitiveness, and account for 44 percent of U.S. economic activity. While countless small and emerging businesses are in a literal life-or-death battle during this pandemic, we believe the Commission can make a fundamental difference by facilitating a more efficient, democratic private capital ecosystem to support these small businesses that act as the central nervous system of communities across the country.

Online investment platforms utilizing Regulation Crowdfunding have functioned extremely effectively during the pandemic in continuing to provide capital to small enterprises, in contrast to the flow of non-government guaranteed bank loans or traditional venture capital/private equity into local communities. If history serves as a guide, institutional venture capital and private equity firms will likely slow or diminish new investments and focus on recapitalizing existing portfolios, or seek to opportunistically invest in distressed assets, rather than capitalizing emerging businesses and new ideas. In contrast, the online investment platforms that facilitate Regulation Crowdfunding offerings, regulated by the Commission and FINRA, have seen a substantial increase in the demand for new funding requests for businesses and investment opportunities from a broad base of investors.

We believe that now is the time to recognize that regulated online investment platforms have responsibly facilitated the funding of thousands of small businesses in a compliant manner

for more than 4 years since the implementation of JOBS Act Title III, facilitating hundreds of millions of dollars to diverse communities all across the country with virtually no indication of widespread fraud or abuse by market participants. Moreover, during the ongoing pandemic, regulated online investment platforms are actively stepping up by facilitating capital flow directly to small businesses in ways the traditional financial system is unable or unwilling to do. The conditional temporary relief the Commission has provided was well-intentioned and had some impact, but unfortunately the relief has been insufficient in time and scope to make a permanent difference.

We appreciate that it will take the Commission more time to fully assess, develop and implement comprehensive new rules from those proposed in the Harmonization Concept Proposals. However, we believe there are three simple, existing, proposals that, if adopted today, will make an immediate positive impact towards revitalizing our nation by creating more funding options for small businesses:

1. Increase the Regulation Crowdfunding offering cap to \$5,000,000

We believe raising the Regulation Crowdfunding offering cap from \$1.07M to \$5M, as recently proposed, will allow the numerous benefits provided to date to be accessed by a greater number of companies and will reduce the limitations previous utilizers have experienced. As companies look to sustain and expand their businesses as efficiently as possible, they often need to raise a significant amount of capital before becoming sustainable – occurrences like the pandemic can bring instability to a once stable business, creating additional needs for capital. The regulatory change necessary to implement this rule change would be simply changing one number in Rules 100(a)(1) and (t)(3) of Regulation Crowdfunding, which otherwise could all remain applicable until further rulemaking commenced.

2. Align investment limits under Regulation Crowdfunding with Regulation A, Tier 2

We believe the proposals to align investment limits for investors between Regulation Crowdfunding and Regulation A, Tier 2 with respect to the investment limit calculations are extremely sensible and practical. The confusing investment limit requirements under Regulation Crowdfunding have historically reduced utility for both issuers and investors while increasing uncertainty for everyone. We therefore support the Commission's proposals to (1) remove investment limits under Regulation Crowdfunding for accredited investors, (2) calculate investment limits for non-accredited investors based on the greater of an income or net worth standard, and, although not currently proposed, we believe the Commission should (3) establish aggregate investment limits on a *per offering* basis rather than a *cumulative 12-month* basis. These changes would clarify and simplify the tracking of these limits for investors, issuers and intermediaries and avoid confusion between investment limitations between Regulation Crowdfunding and Regulation A, Tier 2. The regulatory change necessary to implement this rule change would be simply replacing Rule 100(a)(2) of Regulation Crowdfunding with Rule 251(d)(2)(i)(c) of the Securities Act, which otherwise could all remain applicable until further rulemaking commence.

3. Permit issuers to “test the waters” under Regulation Crowdfunding in same manner as Regulation A, Tier 2, so that issuers do not unnecessarily waste the cost of preparing for a Regulation Crowdfunding Offering that fails due to lack of interest

We believe issuers’ ability to test the waters prior to the filing of a Form C is critical to reduce the costs and difficulties for small businesses to consider utilizing Regulation Crowdfunding. Regulation Crowdfunding’s prohibition on discussing a potential offering before a Form C is filed means that issuers cannot gain any real insight into the likelihood of success before making a huge decision as to whether or not to incur the significant monetary and human capital costs associated with conducting a Regulation Crowdfunding offering. In addition, businesses potentially face the negative inferences that customers, employees and future financing sources may draw from the public failure of an offering. The regulatory change necessary to implement this rule change would be amending Rule 203(a)(1) of Regulation Crowdfunding by adding “*provided*” and substantially adding Rule 255 of the Securities Act as the exception to Rule 203(a)(1) of Regulation Crowdfunding.

We would be happy to make ourselves available to discuss these topics with you and your staff further and we thank you for the actions the Commission has taken to date with respect to promoting Regulation Crowdfunding as well as providing conditional relief in light of the pandemic. Thank you very much for your consideration.

Sincerely,

Association of Online Investment Platforms

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