

March 24, 2015

Secretary William Francis Galvin
Massachusetts Securities Division
McCormack Building
One Ashburton Place, 17th Floor
Boston, MA 02108

Dear Secretary Galvin:

This letter responds to the Massachusetts Securities Division's request for comments in connection with its recently enacted crowdfunding exemption. We would like to begin by noting our agreement with the sentiments you expressed on behalf of the Massachusetts Securities Division in your letter to the Securities & Exchange Commission, dated May 2, 2012. Specifically, we noted your comment that "Crowdfunding presents opportunities for issuers to use innovative technologies and techniques to raise capital," and that you "expect the rulemaking will break new ground in securities regulation." Over the past three years there has been substantial progress in the development of the crowdfunding marketplace, both at home and abroad. It has become apparent, however, that concomitant regulatory developments have been hampered by what appears to be a belief that simplification of the fundraising process and maintenance of investor protections are somehow in opposition. As set forth below, we believe that 'innovative technologies' do not simply allow for a simplification of the securities issuance process; they also allow for an increase in investor protections at the same time. This additional protection is also maintained through the 'wisdom of the crowd' so long as such 'crowd' can be properly accessed.

Before noting the ways in which the Massachusetts crowdfunding exemption may be made to achieve the best combination of capital raising simplification and investor protection, we would like to address the Division's questions relating to the regulatory environment and federal exemptions (Questions 1 and 2). Specifically, we do not believe that as currently contemplated the Massachusetts crowdfunding exemption would be particularly useful following the issuance of final rules under Title III of the JOBS Act. As other commentators have noted, the internet by its nature allows for multi-state (and multi-country) offerings. Offerings exempted under Section 3(a)(11) must be restricted to a single state and may not be combined with offerings under the federal crowdfunding exemption – thus, crowdfunding issuers will essentially be forced to choose between a single state crowdfunded offering or a national crowdfunded offering. In that case it is necessary for a state level offering to provide advantages to issuers that are not available at the federal level – one such advantage may be an allowance for a larger offering amount (Question 4). We would suggest offhand an offering allowance of \$2,000,000 which could be increased to \$5,000,000 with the provision of audited financial statements. Allowing for a larger offering size does not hinder investor protection since each individual investor would still be restricted in terms of the amount that they could invest in any single offering (Question 5). A successful larger offering would simply mean that more investors had reviewed the details of the offering and determined on the merits of the investment. With respect to overall investor limits, we note our agreement with the Division's decision to forego an attempt at restricting

investments in crowdfunding as a category, specifically because the Division has imposed a cap on an investor's investment in individual offerings. We believe the Division's approach to the investor cap is likely to be easier to enforce and is likely to provide a greater protection against fraud than a category-wide restriction which nevertheless allows larger investments in individual offerings.

Indeed, we commend much of the substance of the Massachusetts crowdfunding exemption. We also believe, however, that there are mechanisms which have been left out of the Massachusetts crowdfunding exemption that would go a long way towards assisting both in increasing access to capital and in fraud prevention. We would suggest, in particular, that one of the best mechanisms for resolving the conflict between investor protection and access to the capital markets would be an allowance for the use of crowdfunding portals (Question 14). Requiring the issuance of securities through fully registered broker-dealers necessitates an expense upon issuers that is likely to cool potential offerings, particularly at lower offering levels. Funding portals designed specifically for the crowdfunding space are likely to develop economies of scale and appropriate software that would enable them to offer a product to potential issuers and investors that is more efficient and cheaper. These funding portals may also grow to assist issuers in additional ways beyond simply transaction financing. In short, funding portals that can be registered with a minimal amount of excess work can provide a cost advantage and may help issuers in other ways.

Interestingly, the alternative that the Division suggests to the use of a broker-dealer is the issuance and sale of crowdfunded securities by the issuing company itself. This alternative highlights the benefits of crowdfunding portals to the investor protection element of the regulatory analysis. Funding portals whose business and reputation is dependent on their ability to prevent fraud will provide a meaningful advantage to investors; one that is unlikely to be afforded when individual companies are advertising and selling securities on their own behalf. Moreover, the use of funding portals allows a far simpler means of regulatory oversight than an allowance for offerings without the assistance of any registered entity. In addition to allowing regulatory oversight, funding portals provide a single reference point for individuals to manage crowd intelligence (effectively, a Yelp! for securities issuers), something that is not otherwise available. Further benefits may accrue even beyond those listed above by allowing such portals to invest alongside other investors in an offering (which would align the portal's incentives with those of its investors while increasing the amount of capital available to issuers) or by explicitly allowing portals to curate opportunities for investors.

It is also important to focus on the communal element of crowdfunding, something which can serve both as a generator of jobs and as a deterrent to fraud. We believe this local element may be highlighted by allowing community based organizations to play larger roles in crowdfunding campaigns (without otherwise restricting other potential actors). As one example of this, we highlight the Division's approach to escrowed funds (Question 8). While we fully agree with the Division's decision to place funds in escrow during the period of an offering, institutions for the depositing of escrowed funds might ideally include local or communal organizations such as credit unions, local savings & loans and other institutions that offer depositors protections similar to those of banks. Most credit unions, for example, offer NCUSIF

insurance identical to that of the FDIC. Other thrifts and cooperatives that offer similar investor protection should also be allowed to function as an institution for escrowed funds as they provide the same investor protections.

Finally with respect to the disclosure requirement, we would suggest an approach which is as standardized and efficient as possible. Large scale disclosure demands are just as likely to deter potential investors from reviewing any documents as they are to provide additional insights into an issuing company or bring light to a fraud. Disclosure demands can easily become overly burdensome to the issuing company and reach a point where they add cost to an offering without creating any additional investor protection (this is particularly the case, for example, in connection with disclosure demands for the period after an offering has closed). We believe that the best approach would be to develop a defined, standardized term sheet for disclosure of specific items combined with the utilization of anti-fraud protections for any additional disclosures made by the issuing company. This approach, combined with the 'wisdom of the crowd,' is more likely to be reviewed and considered by potential investors than an elongated disclosure document.

Above all, however, we would like to commend the Division for adopting the crowdfunding exemption. As a center of cutting edge research and startup development, the people of the state of Massachusetts deserve to have the simplest and smartest mechanisms with respect to capital access for good ideas and great companies.

Sincerely,

GrowthFountain LLC