

CfPA Policy Positions

As Approved by the CfPA Board of Directors

Adopted May 10, 2024, amended September 13, 2024 and January 10, 2025

1. Exemptive Relief for Small Offerings

Reg CF should be an accessible and useful tool for diverse businesses from small mom-and-pop shops to high-growth tech companies. The current rules make it financially infeasible to conduct small raises because the fixed costs are high and experts are needed to ensure compliance. Therefore: We support the consideration of relief from some of the more onerous requirements for small offerings.

2. Reform of Requirements for Financial Reporting

The requirement to provide an independent review or audit is nonsensical for a business with no operating history – we support tailoring the financial reporting requirements so that reviews and audits are only required for businesses with at least six months of operating history. Similarly, the requirement of GAAP financials should be waived for early-stage and smaller businesses (including crowdfunding vehicles they use for their raises). This applies to post-raise reporting as well. For those issuers that choose to provide a higher level of reporting, this can be prominently disclosed so that potential investors know that they are receiving a more fully vetted financial report. Note that the Small Business Administration does not require GAAP-compliant financials for its borrowers.

3. Consistency and Transparency in Oversight of Portals

- a. Consistent regulatory compliance is necessary to ensure the viability of the industry. All portals should be subject to the same level of scrutiny and enforcement. Rule violations should be addressed quickly to maintain the public's confidence in the tool. To prevent the appearance of arbitrary inconsistency, regulatory decisions and guidance provided by both FINRA and the SEC should be made available to the public.
- b. Portals report that FINRA is not transparent about the requirements it imposes for new applications or for audits, creating a great deal of uncertainty and a long drawn-out approval process. FINRA often imposes multiple extensions on the approval process as seemingly arbitrary requirements are imposed.

- c. We request that FINRA be required to (1) publish guidance regarding its requirements for new portals, (2) update the FP-NMA to reflect what is actually required to be considered complete, (3) provide guidance for ongoing compliance of existing portals, and (4) treat each portal consistently in regards to those requirements.

4. Simplification of Rules

We support streamlining overly complicated requirements such as the per investor annual investment limit, which could mirror the simpler requirement under Reg A. Similarly, the Reg CF advertising rules are extremely confusing and almost impossible to comply with – we support a simplification of these rules such as allowing issuers to include terms in all public communications (irrespective of when those communications are made in the offering process).

5. Disclosures to Investors

It is important that investors understand what they are getting when they invest and the potential tax implications of those investments. The SEC should provide portals with standard disclosures regarding the following:

- i. details of what an investor is receiving in exchange for their investment.
- ii. whether the investor is investing directly in the issuer or a crowdfunding vehicle.
- iii. a warning about potential tax issues in the form of a general overview and the recommendation to consult one's tax advisor.
- iv. if the investor is investing in a crowdfunding vehicle, what this means in terms of fees, costs, tax treatment, governance rights, ongoing record-keeping requirements, etc.
- v. the importance of reviewing the Form C and a prominent link to view the Form C with all Form C pdfs clearly labeled.

6. Searchable PDFs on EDGAR

In the interest of enhancing transparency and efficacy in investor due diligence, we propose a crucial amendment to the current filing requirements within the SEC EDGAR system. Specifically, we recommend the mandatory submission of searchable PDF documents, rather than the current practice of uploading flattened, non-searchable files. The inability to conduct keyword searches within lengthy offering circulars and other crucial documents not only undermines the efficiency of the investment decision process but also potentially obscures critical information necessary for a thorough

evaluation. Key terms or other indicators of investment risk and opportunity must be readily accessible to investors. This enhancement in document accessibility will significantly improve investors' ability to conduct comprehensive and efficient analyses, ensuring they are better informed and more equipped to make judicious investment decisions.

7. Disclosures to Issuers

Issuers must receive clear and complete disclosures regarding portal fees, privacy policies, and the use of crowdfunding vehicles. Portals should be required to provide complete, prominent, plain English disclosures regarding all of the following issues:

- i. When use of a crowdfunding vehicle is required by the portal.
- ii. All fees charged by the portal, including fees charged by third-party service providers required by the portal.
- iii. A reminder that the issuer is responsible for the content of the Form C and the implications of allowing the portal to file on its behalf, including the risks of filing an incomplete or noncompliant document with the SEC.
- iv. Their annual reporting requirements, including the requirement to maintain GAAP financials and additional reporting requirements when a crowdfunding vehicle is used.

8. Crowdfunding Vehicles and Avoiding the Registration Requirement

The CfPA supports the following changes:

- i. The rules governing crowdfunding vehicles are challenging to apply in practice – the concept of a “one-to-one relationship” is not easily interpreted in many contexts. There is a need for greater clarity and examples of how the SPV should be structured when the crowdfunding issuer securities are SAFEs, convertible notes, etc. (as opposed to shares or LLC equity interests).
- ii. The use of a crowdfunding vehicle can add a great deal of expense and complexity to an offering because the crowdfunding vehicle itself is subject to all of the same compliance requirements as the underlying issuer. To reduce the need to use crowdfunding vehicles, we support removing the \$25 million asset cap for companies wishing to avoid registration under Section 12(g).
- iii. There is a lack of consistency regarding the use of Series LLCs as crowdfunding vehicles – while one portal uses a Series LLC, other portals have been told by FINRA that Series LLCs may not be used. FINRA should provide unequivocal guidance on this issue.

- iv. We also request clarification regarding what it means to be “current in ongoing annual reports” with respect to the requirements for avoiding registration under Section 12(g). We request confirmation that as long as the issuer has filed all required reports, it will be considered “current in ongoing annual reports.”

9. Crowdfunding by Portals

We support allowing portals to raise funding on their own platforms as long as the relationship is fully disclosed and the number of raises is limited (e.g. one per year). Requiring portals to raise on competitor’s platforms creates an unfair limitation on portals’ ability to raise under Reg CF.

10. Investment Funds Excluded from the Definition of Investment Companies

We request the following amendment to Title III of the JOBS Act:

The current statute provides that Title III does not apply to any issuer that “is an investment company, as defined in section 80a–3 of this title, or is excluded from the definition of investment company by section 80a–3(b) of this title or section 80a–3(c) of this title.”

We propose striking the language following the last comma so that companies excluded from the definition of an investment company under Sections 3(b) and (c) of the Investment Company Act may raise funds under Regulation Crowdfunding.

11. Tax and Accounting Treatment of Securities

Many of the securities offered by small businesses face ambiguity regarding their tax treatment. We request assistance with securing guidance from the IRS and FASB on instruments like revenue-based debt and SAFEs.

12. Unsecured RBF Debt

We request that the SBA treat unsecured revenue-based debt instruments as equity when determining eligibility for a loan.

13. Tax Credit for Crowd Investors

We support the implementation of an annual tax credit of up to \$1,000 for any individual (up to \$2,000 for married couples filing jointly) with income not exceeding \$539,000 (or \$647,850 for married couples filing jointly), or whatever corresponding income levels may be in effect and applicable to the top tax bracket, and that has made an investment into one or more issuers raising money through a Reg CF offering,

such that the total amount invested into issuers for the preceding year totals two times the amount of the tax credit.

14. Annual Report Submission

We request that the SEC provide a more user-friendly tool (outside of EDGAR which is extremely confusing for inexperienced users) for submitting annual reports so that issuers may avoid vendor fees for filing their reports.

15. When a Reg CF Issuer Goes Public

Investors that have invested in an issuer via Reg CF have difficulty getting their securities into a brokerage account when the issuer conducts an IPO. This sometimes results in the Reg CF investors being unable to sell when the shares are at their highest price. We request industry guidance to prevent this unfair treatment of Reg CF investors.

16. Annual Raise Limits

- a. We support an increase on the cap for issuers raising funds for the Reg CF annual limit from \$5M to \$20M and the Reg A (Tier 2) annual limit from \$75M to \$150M.
- b. We support an amendment to Title III of the JOBS Act that removes limits on the SEC's authority to increase the caps on the amounts that can be raised under Regulation Crowdfunding.

17. Privacy and Safeguarding of Nonpublic Personal Information

Funding portal intermediaries should be required to provide notices to customers about their privacy policies and practices, describe conditions under which they may disclose nonpublic personal information to nonaffiliated third parties, and provide customers with an opportunity to opt out of such disclosures. Portals should also implement an information security program that includes administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of nonpublic personal information.

18. Consistency of Terminology

The term "equity crowdfunding" is used frequently by industry participants. This term is misleading because it implies that what investors are getting is an equity investment which is often not the case. We support the requirement to use the term "Regulated Investment Crowdfunding" consistently to prevent confusion and request the SEC formalize this requirement, thereby reinforcing the integrity of the investment landscape.