Securities Transfer Association of Canada

William J. Speirs
President

Via Email comments@osc.gov.on.ca

June 18, 2014

The Secretary
Ontario Securities Commission
20 Queen St. West
22nd Floor
Toronto, Ontario
M5H 3S8

Re: PROPOSED PROSPECTUS EXEMPTIONS & PROPOSED REPORTS OF EXEMPT DISTRIBUTION IN ONTARIO

Dear Sir / Madam:

The Securities Transfer Association of Canada ("STAC") welcomes the opportunity to comment upon the OSC Notice and Request for Comment concerning Proposed Prospectus Exemptions published on March 20th, 2014.

STAC is a non-profit association of Canadian transfer agents that has, among others, the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

STAC members act as agents for securities issuers with respect to the maintenance and administration of a company's share register, facilitation of transfers of ownership, distribution of entitlements (dividend and interest payments), conduct of shareholder communications, and provision of annual meeting services (including proxy tabulation and scrutineer services) for the majority of shareholder meetings held each year in Canada.

Capital Formation in Ontario

We would like to commend the Ontario Securities Commission (OSC) for its efforts in developing alternative ways by which small companies can access sources of capital within the Province. The introduction of four prospectus exemptions provides small companies with financing options that will allow them the room to develop and grow.

Crowdfunding Exemption – Processing of Transactions and Record-keeping

The essential premise behind crowdfunding is that many investors will contribute relatively small amounts to support the financing needs of a start-up or Small/Medium Enterprise. Unlike donation-based or reward-based crowdfunding where funds received by the company are accepted without a continued liability to return the funds to investors, equity crowdfunding will require substantial on-going record-keeping and administration. We have participated in many crowdfunding forums and this issue does not seem to have been addressed. Those companies and their advisors that are pursuing crowdfunding initiatives cannot ignore the other statutes and regulations that impact a company when it accepts money in return for share ownership. Like any public or private company, the issuer must not only comply with securities legislation but must also comply with its governing corporations act (record keeping, shareholder meeting and other requirements) and the *Canadian Income Tax Act* (tax reporting). *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (provisions to ensure that the issuer's records are checked for persons on the Designated Persons lists published by various departments in the federal government) must also be taken into consideration.

Our membership is uniquely positioned in providing administrative services for companies offering their securities to investors, both public and private. We have extensive record-keeping capabilities, information technology infrastructure, and policies and procedures that ensure that any securities issued from treasury are issued in compliance with the corporation's constating documents. We ensure that subsequent transfers meet industry standards, that records are properly kept and that fraud is mitigated. We also ensure that securities are properly registered so that the registered holders' legal rights to the security and their participation at shareholders meetings are not compromised. Our concern with the crowdfunding prospectus exemption is that these functions will be performed by unregulated entities without the requisite experience and expertise to the detriment of the investing public. We refer you to the Securities Transfer Association, Inc. submission to the U.S. Securities Exchange Commission re: File No. S7-09-13 Proposed Crowdfunding Rules dated December 18, 2013 which clearly states the concerns of transfer agents with Equity Crowdfunding (appended).

We understand that the Commission's overarching goal is to balance the efficient and cost-effective formation of capital for small companies while protecting the investing public. We believe that the Commission should continue to investigate the crowdfunding prospectus exemption in light of our on-going record-keeping concerns. We also believe that the Commission should investigate cost-effective alternatives for small companies to meet related financial disclosure requirements. Any proposed solution must take into consideration or be compatible with corporate business law.

President: William Speirs, CST Trust Company, 320 Bay Street, 3rd Floor, Toronto, Ontario M5H 4A6
Phone: (416) 682-3885 Fax: (514) 985-8837
Secretary/Treasurer: Richard Barnowski, Olympia Corporate & Shareholder Services, 100 University Avenue, 8th Floor, Toronto, Ont. M5J 2Y1
Phone: (416) 364-5043

REGISTRATION REQUIRMENTS, EXEMPTIONS AND ONGOING OBLIGATIONS FOR REGISTERED FUNDING PORTALS
Article 43: Custodial arrangements

Article 43 (1) states "The portal must arrange for a Canadian financial institution (a) to hold in trust all funds or consideration received…"

We support the Commission's view that an independent third party should hold funds in trust prior to releasing those funds to the issuer when the conditions of the offering have been met. Further to our comments above, transfer agents routinely act as independent agents holding funds in this manner ensuring that both sides of the transaction (i.e. the release of the funds to the issuer and the release of the securities) to the investor occur concurrently.

We request that the Commission consider amending this provision to specifically include transfer agents in addition to Canadian financial institutions, to hold funds on behalf of the portal.

We respectfully submit our comments for your consideration and would be please to answer any questions that may arise.

Yours truly,

William J. Speirs
President
Phone: 416-682-3885
Fax: 514-985-8837
Email: bspeirs@canstockta.com

THE STA
SECURITIES TRANSFER ASSOCIATION, INC.

December 18, 2013

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

Re: File No. S7-09-13 Proposed Crowdfunding Rules

Dear Ms. Murphy:

I am writing you on behalf of the Securities Transfer Association Inc. ("STA") in response to the Securities and Exchange Commission's ("SEC" or "Commission") request for comment on the recently proposed rulemaking ("Proposed Rules") implementing the crowdfunding provisions of the Jumpstart Our Business Startups Act ("JOBS Act" or "Act"), and Section 4(a)(6) ("Crowdfunding Exemption") of the Securities Act of 1933 ("1933 Act"). These provisions will expand access to capital for small businesses by reducing some of the regulatory costs associated with fundraising, while also attempting to preserve important investor protections.

The STA is an organization of professional recordkeepers that interact daily with both issuers and their investors. Founded in 1911, the STA's membership is comprised of over 150 large and small transfer agents in the United States maintaining records of more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public companies to small privately held companies). Our members are active participants in the Commission's small business initiatives and its' Task Force on Microcap Fraud.

Most of our comments, set forth below, relate specifically to those provisions of the Proposed Rules applicable to issuers and intermediaries that are designed to prevent fraud and to assure the protection of investors. Based on their day-to-day responsibilities, STA members have an expert perspective on some of the issues that the

Commission might take into account when it seeks to find an appropriate balance between the goals of the JOBS Act and its responsibility for protecting investors.

I. Overview

The STA applauds the goals of the JOBS Act and appreciates the difficult challenges encountered by the Commission in attempting to weigh investor protection concerns with the goal of allowing small issuers to have cost effective and efficient access to the capital markets. The majority of STA members are small businesses that also are very sensitive to the importance of containing costs. However, as the Commission is aware, accurate shareholder records are essential to preserve the ownership rights of investors and to prevent fraud.[1]

We want to specifically note the care with which the Commission and its staff have crafted elements of the Proposed Rules relating to the responsibilities of Funding Platforms (including broker-dealers), and the safekeeping of investor assets, including those provisions relating to the manner in which funds are escrowed pending the successful completion of an offering. We also note the Commission's concern regarding recordkeeping of shareholder ownership interests.

The STA supports the provisions of Rule 303(e)(2) of the Proposed Rules requiring that a Funding Platform direct investors to transmit funds to a qualified third party to be held in escrow until any target amount has been reached for the offering. We also support those provisions of Rule 301(b) which require a Funding Platform to have a "reasonable basis for believing" that the issuer has established means to keep accurate records of shareholder investments.

We feel that both of these provisions are equally as important, from an investor protection perspective, as those provisions of the Act relating to issuer disclosure and the registration of Funding Platforms. Below, we have set forth some of our suggestions on the manner in which the Commission might enhance investor protection provisions in the Proposed Rules, while minimizing any additional costs that might be imposed on small issuers.

II. Background

Accurate records of shareholder ownership and the efficient processing of transactions are essential for the protection of investors. Failure to accurately record or maintain shareholder records (including address changes), or to prevent fraudulent transfers, can have the same devastating effect on an investor as if his or her savings were stolen or

[1] Some of these considerations are set forth in our letter to the Commission on crowdfunding dated September 12, 2012 ("2012 Comment Letter") that is cited in the Commission's proposing release for the Proposed Rules ("Proposing Release").

obtained through fraud. Congress recognized the importance of assuring that rights of investors were protected when it enacted Section 17A of the Securities Exchange Act of 1934 ("Exchange Act"). This provision of the Exchange Act requires persons who provide transfer agent services,[2] including issuers, to register as transfer agents and therefore become subject to corresponding regulations, if they provide recordkeeping and other related services on behalf of public companies that have a class of securities subject to the registration and periodic reporting requirements under Section 12 of the Exchange Act.

The regulations promulgated under Section 17A have an important investor protection function. They assure, among other things, that registered transfer agents maintain accurate records, have adequate backup and recovery systems, respond in a timely fashion to shareholder transfer requests, and otherwise protect the interests of shareholders.[3] In addition, registered transfer agents are subject to examination and inspection by regulatory authorities, including the Commission.

However, issuers relying on the Crowdfunding Exemption potentially may have hundreds - or even thousands -of small shareholders and are not subject to registration under Section 12.[4] Thus, they are not required to become registered as a transfer agent or employ a registered transfer agent. As a result, persons responsible for maintaining the records of an individual's investment, processing transfer requests, or assuring that their securities are properly safeguarded, may not be subject to any ongoing regulatory oversight. This presents the possibility that a shareholder's interests will not be protected.

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[2] Section 3(a)(25) of the Exchange Act defines a "transfer agent" as "any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates.

[3] Registered transfer agents also must comply with rules relating to fingerprinting of personnel, disclosure of control persons (to avoid involvement of persons who may have disciplinary records), reporting of lost and stolen securities, and annual independent audits of their control environment. They also are subject to laws designed to protect the privacy of investor information and assure that investors have accurate records for tax reporting. In addition to formal regulations, the Commission has further sought to impose obligations on transfer agents to prevent transfers of restricted securities in violation of the 1933 Act, similar to those under the Proposed Rules.

An exemption from certain of the transfer agent requirements is available to certain types of issuers who are considered "exempt transfer agents". As defined in Rule 17Ad-4 of the Exchange Act, this means a transfer agent that during any six consecutive months has received fewer than 500 items for transfer and fewer than 500 items for processing. However, even exempt transfer agents are subject to the Commission's recordkeeping requirements.

[4] The STA has similar concerns with respect to other offerings conducted pursuant to the JOBS Act, which may have a significant number of investors, and where the issuers are not registered pursuant to Section 12.

II. Proposed Rule 301(b) - Accurate Shareholder Records are Critical to Prevent Fraud and Protect the Interests of Investors

A. Importance of Accurate Records and the Ability to Process Transfers

The STA anticipates that many of the investors in crowdfunding offerings will not be sophisticated. We also anticipate that most of those who invest in issuers relying on the Crowdfunding Exemption will not profit from an eventual public offering by the issuer. Thus, any return on investment received by these investors is likely to come from the payment of interest and principal on debt, payments from the eventual sale of the company, resales of shares to the issuer or other investors in private transactions, or potentially sales in the lower tier OTC Markets to market makers or other investors.

The STA believes that a number of investor protection concerns will arise in instances in which issuers choose to perform the transfer agent function internally. We note specifically that unlike customers of registered broker-dealers, or shareholders whose records are maintained by registered transfer agents, in most cases investors in offerings relying on the Crowdfunding Exemption will not receive any ongoing account statements or regular communications (other than perhaps dividend or interest payments) directly from the issuer informing them of their ownership interests. Moreover, the lack of any regulatory oversight or independent audit of the recordkeeping function means that, in many cases, problems will not be discovered in a timely fashion. Thus, if an investor ultimately learns that the issuer no longer has a record of his or her ownership, or if their shares have been fraudulently transferred, proving ownership and assigning any liability to the issuer or an unregistered intermediary may be an impossible task. Particularly where the investments are small in size – investors may be left with little practical recourse through the courts or otherwise.

In addition, we note that in the absence of any organized clearing function, an issuer's ability to efficiently process transfers of ownership may be critical to investors. Settlement of secondary market sales will not occur among regulated participants in a central depository. Thus, if the issuer is unresponsive to transfer requests which are necessary to settle the sale of shares, or does not accurately reflect changes in ownership, an investor also may lose the benefit of his or her investment in the issuer.

B. Experience of STA Members

STA members frequently work with small issuers either as the initial recordkeepers for private issuers or in connection with assisting private issuers organize their records as part of raising additional capital. In our experience, a substantial percentage of these issuers lack the ability or resources to maintain accurate records of legal share ownership – which normally is the responsibility of a transfer agent. Moreover, the greater the

number of investors, the more likely it is that records are not going to be accurately maintained.

Typical problems encountered by STA members assuming responsibility for shareholder records previously maintained by issuers include the following: missing records; out of balance records; incorrect handling of corporate actions, including splits; failure to record personal information about the shareholder; failure to note dates of issuance and transfers; failure to record restrictive legends or observe restrictions on transfers; records with duplicate certificate numbers; incorrect or invalid securities registrations under the Uniform Commercial Code ("UCC") (potentially leading to adverse ownership claims); tenancy registration forms that are not valid (such as John or Mary Doe) and that can lead to conflicting ownership claims; failure to observe requirements to transfer securities under estate, divorce, other state and local laws; failure to follow OFAC, Patriot Act, IRS cost basis requirements, tax liens, etc.; failure to follow abandoned property reporting requirements; failure to have essential account data elements (e.g., Federal/Tax ID numbers, date of last contact, affiliate details, lost shareholder codes and search dates); issuing duplicate certificate numbers to replace certificates that were reported as lost (which can result in double presentments); and replacing certificates without surety coverage.

These types of issues can arise in connection with individual shareholders or, commonly, if an issuer is seeking additional funding either in a private transaction, in connection with a public offering, in selling their businesses, or in taking the initial steps to create a market for their securities. In order to protect the interests of new investors, or in connection with the sale of a business, issuers frequently are required to obtain legal opinions regarding the accuracy of issuer shareholder records. These opinions can be expensive and difficult to obtain (and in some cases cannot be obtained) if the issuer's records are not accurate.

More significantly, issuers (and their shareholders) who want to have their shares capable of trading in those segments of the OTC Markets designed for small companies may be prevented from doing so, if they do not have accurate shareholder records. The STA is skeptical, about whether issuers who seek to maintain their own records will be able to meet the eligibility requirements of the Financial Industry Regulatory Authority ("FINRA") to have their shares quoted by a broker in the OTC markets. For example, in order to assure that there has been no fraud, FINRA often requires companies that have not used a transfer agent previously to show original issuances and all transfers and breakdowns of those same shares to others since inception.

While most small transfer agents now have developed software to provide this information, without appropriate software it can be an overwhelming and time-consuming activity even for experienced transfer agents to undertake on behalf of companies who maintained their own records.[5] The STA does not believe that most small issuers relying

[5] FINRA often demands a "trading tree", similar to a genealogy family tree, which shows in chronological form all share issuance and transfers since inception of the issuer.

on the Crowdfunding Exemption, and who maintain their own records, will have the capability to undertake this task. If shares of the issuer cannot trade in the OTC markets, it will not only affect the growth potential of the issuer, but also the ability of its investors to realize a return on their investment.

III. Specific Proposals to Reduce Fraud

A. Overview

As evident from our comments above, the STA believes that accurate recordkeeping is an important mechanism to protect the rights of investors and to reduce fraud. Two provisions of the Proposed Rules specifically address recordkeeping.

301(b) requires the Funding Platform to:

> [h]ave a reasonable basis for believing that the issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning compliance with this requirement unless the intermediary has reason to question the reliability of those representations.

301(c)(2) requires the Funding Platform to deny access to issuers if it:

> [b]elieves that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection. In satisfying this requirement, an intermediary must 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 believe that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection, the intermediary must promptly remove the offering from its platform, cancel the offering, and return (or, for Funding Platforms, direct the return of) any funds that have been committed by investors in the offering (Emphasis supplied).

The STA agrees that investor protection concerns dictate that the Funding Platform have some reasonable basis for believing that the issuer is capable of maintaining accurate shareholder records, including the related responsibility to process transfers of ownership in a timely fashion. In the view of the STA, the two provisions cited above are related. We do not believe that most small issuers will have full knowledge of their legal obligations with respect to recordkeeping and transfer processing, or will have fully considered the issues with which they may be confronted over time. Thus, an issuer's representation or certification that it is capable of undertaking recordkeeping responsibilities, alone, should not be sufficient unless it is detailed enough to evidence a reasonable awareness by the issuer of its key obligations and the ability to comply with those obligations.

In addition, regardless of any representation or certification by an issuer that it is capable of complying with a requirement to keep accurate records, or process transfers, the facts of a particular offering may suggest that investor protection concerns require that the Funding Platform must deny access to the issuer in the absence of some level of inquiry about its capacity to process transfers or maintain accurate records – particularly if the issuer has not previously had to manage any significant amount of shareholder records.[6] In the event that a Funding Platform is unable to document that it has conducted some level of inquiry to have a "reasonable basis" for believing that an issuer can fulfill its requirements, we believe there is a risk that Funding Platforms may be subject to enforcement action or potentially civil liability.[7]

As we have stressed above, the recordkeeping process involves not only maintenance of a share registry, but also requires knowledge of related laws and the ability to process transfers in a timely fashion, and in accordance with the law. Regardless of the amount of capital being raised, as a general rule, STA members believe that the greater the number of shareholders, the more complex the task of managing shareholder records will become. It has been the experience of STA members that, in most instances, issuers with greater than 100 shareholders will require professional assistance to maintain accurate records. This is particularly true if the issuer has multiple classes of stock or a history of corporate actions.

A very basic inquiry of the issuer by the Funding Portal should include the manner in which ownership will be evidenced (e.g., share certificates or bookentry positions) [8] and whether the securities are validly issued. More specific capabilities that a Funding Platform might consider for purposes of determining whether they may have a reasonable belief in the issuer's ability to keep accurate records – which may vary in importance depending on the facts of the offering – include the following key capabilities:

- Procedures to record registered shareowner positions and balance them to the number of shares outstanding;

[6] For example, if it is evident that the issuer does not have the internal resources or sophistication to properly execute routine functions to safeguard the ownership interests of investors, then a Funding Platform should not permit an issuer to access its facilities. If the issuer has given consideration to its recordkeeping responsibilities, the STA does not believe that a reasonable inquiry would necessarily be expensive or time consuming.

[7] The STA has noted that the advertising limitations in the Proposed Rules, which require that information about a particular offering be presented in a neutral fashion, appear to reflect a desire by the Commission that Funding Portals do not "recommend" particular transactions. The STA believes, however, that if an issuer does not appear to have the ability to keep accurate records, some offerings may not be appropriate for any investors. The STA also suggests that this issue is one that FINRA may wish to consider as well in the formulation of any rules it adopts to implement the JOBs Act and the SEC's Proposed Rules. *Cf* FINRA Rule 2111 (non-customer specific recommendations regarding securities or strategies must be suitable for at least *some* customers).

[8] We discuss form of ownership more fully in Section V of this comment letter.

- Procedures that demonstrate that the issuer is aware of, and can enforce, restrictions on transfer of shares;

- The ability to follow shareholder instructions (and retain records of the instructions) to change an address or efficiently transfer interests as a result of death, divorce, or sale (including signature guarantees where necessary);[9]

- Knowledge of relevant state laws concerning escheatment of unclaimed assets;[10]

- Procedures to address lost or stolen certificates (if ownership is evidenced in physical form);

- Knowledge of, and the ability to comply with, UCC requirements under Article 8 relating to transfers;[11]

- Knowledge of, and the ability to comply with, IRS regulations relating to, among other things, transferee and cost basis reporting, as well as reporting of any dividends or interest payments;

- Knowledge of, and the ability to comply with, State and Federal privacy laws;

- Provisions for back-up, storage, and recovery systems to assure that shareholder records are not lost; and,

- Reasonable controls to prevent theft (e.g., unauthorized alteration of records).

Many small issuers that choose to undertake recordkeeping responsibilities may be able to do so effectively using internal resources, provided they have only a limited number of investors and also have access to educational materials and model procedures, which may

[9] This might include the creation of forms for transfer requests, including the necessary level of endorsements and whether or not the issuer will require signature guarantees (e.g., medallions), notarized forms, or other evidence of legal authority.

[10] Escheat laws vary from state to state, but generally require an issuer or its transfer agent to remit abandoned property (which can include the positions of a registered securityholder) to a state's unclaimed property administrator after a three to seven years period, if it has not had contact with an investor.

[11] For example, the issuer may be liable to investors for failing to process transfers within a reasonable period of time (Article 8-401), or for processing a transfer with a forged signature (Article 8-404). Thus, issuers should have a basic understanding of their obligations and rights under the UCC.

be provided by the Funding Platforms themselves. [12] Nevertheless, as we noted above, when the number of investors increases, the task of complying with recordkeeping requirements and processing transfers is likely to become more difficult for many smaller organizations. Because of the uncertainty created by the standards in the Proposed Rule, we believe that it would be helpful for the Commission, or potentially FINRA, to identify specific areas of inquiry regarding the issuer's capabilities, such as those outlined above, that might be considered by Funding Platforms in determining whether or not to provide access to issuers.

C. Proposed Safe Harbor for Issuers Using Registered Transfer Agents

In the Proposing Release, the Commission also noted that:

> [An] intermediary also may be able to establish a reasonable belief, for example, if the issuer has engaged a broker, transfer agent, or other third party that can provide the requisite recordkeeping services, including a third party providing such services tailored to crowdfunding issuers.

Both registered transfer agents and registered broker-dealers are professional recordkeepers, and subject to regulation and examination. For this reason, the STA believes that if the issuer retains a registered transfer agent or broker-dealer - then for purposes of Proposed Rule 301 Funding Platforms should be entitled to presume that there is a reasonable basis to believe that the issuer's records will be properly maintained.[13] For this reason, it is our view that the Commission should create a presumption through an explicit "safe harbor", or through other means, that in the absence of facts which dictate otherwise, the Funding Platform has met any obligations it may have with respect to shareholder records when a registered transfer agent or broker-dealer is retained by the issuer to perform the recordkeeping function. [14]

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[12] The Commission also inquired whether Funding Platforms may be affiliated with registered transfer agents or broker-dealers. The STA notes that such arrangements are not uncommon between registered broker-dealers and transfer agents and does not see any justification for a prohibition.

[13] The STA does not believe that a community bank would necessarily have the same expertise with the issuer recordkeeping and transfer requirements as either a registered transfer agent or a registered broker-dealer.

[14] We address the potential that an issuer may have ability to keep adequate records at the time of closing. However, with transfers and other shareholder activity, the integrity of issuer controls over recordkeeping may erode over time due to inexperience, inadequate systems and the natural focus towards running the business and not keeping stockholder records. Having a transfer agent appointed for a period of time (e.g., a two year agreement) would provide some assurance that the recordkeeping during this period would meet minimum standards to protect the investors.

The Commission correctly pointed out in the Proposing Release that third party recordkeepers - other than transfer agents and broker-dealers[15] - also may be able to offer necessary services to issuers to meet their recordkeeping and transfer responsibilities. These entities would not be required to register as transfer agents, because they do not provide services for Section 12 issuers. However, as the Commission is aware, the registration requirements for non-bank transfer agents, in contrast to other SEC registration categories, are relatively simple and involve only the completion of a Form TA (we have attached relevant portions of the form, excluding those portions addressing disciplinary history) that is submitted to the SEC and normally becomes effective in 30 days. This form, excluding any disclosure of disciplinary history, is six pages long and requires only very basic information about the transfer agent. The SEC estimates a compliance burden of one-and-a-half hours.

Once registered, the SEC has stated that its transfer agent regulations apply to all types of issuers and securities serviced by the transfer agent, and therefore would apply to offerings made in reliance on the Crowdfunding Exemptions. Although transfer agents are subject to an annual reporting requirement and annual audit requirements, many of the SEC's regulations simply formalize processes that also are necessary to comply with requirements under the UCC[16] and other laws, or would be regarded as best practices in the absence of any regulatory requirements. Because the barriers to entering the transfer agent business are not significant, we believe that the existence of a safe harbor would encourage third-party recordkeepers to register as transfer agents and enhance the protection afforded investors.[17]

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[15] The Commission also asked whether a Funding Platform, which would be registered with the Commission and FINRA, should be able to provide third party transfer agent or recordkeeping services in light of the prohibition on the handling of customer funds and securities in the JOBS Act. Although the Commission has latitude to interpret this provision in the context of the Act, the STA believes that maintaining shareholder records and processing transfers of certificates representing ownership interests would entail handling customer funds and securities.

[16] See e.g., footnote 11.

[17] We believe that Rule 301(b) should be amended to reflect not only a safe harbor for issuers retaining registered transfer agents and broker-dealers, but also to reflect that the recordkeeping function includes the ability to process transfers of ownership. As an illustration of the STA's proposal, Rule 301(b) might be revised to state:

> [h]ave a reasonable basis for believing that the issuer has established means to *process transfers and* keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform. *In satisfying this requirement, an intermediary may rely on (i) the issuer's appointment of a transfer agent or broker-dealer registered pursuant to Section 17A or Section 15 of the Act, respectively, to process transfers and maintain records of shareholders; or, (ii) the written representations of the issuer, or a third-party agent appointed by the issuer, specifically reflecting that the issuer or its agent has a reasonable awareness of the issuer's transfer processing and key recordkeeping responsibilities and the ability to comply with those responsibilities, unless the intermediary has reason to question the reliability of those representations.*

D. Costs

In the Proposing Release, the Commission specifically inquired about the potential cost of requiring an issuer to use professional recordkeepers:

[w]e are not proposing to require that an issuer relying on Section 4(a)(6) engage a transfer agent due, in part, to the potential costs we believe such a requirement would impose on issuers. What would be the potential benefits and costs associated with having a regulated transfer agent for small issuers? Are there other less costly means by which an issuer could rely on a qualified third party to assist with the recordkeeping related to its securities?

The registered transfer agent industry is highly competitive and we believe strongly that many of our members can develop business models that will suit the needs of small issuers and, at the same time, provide adequate protection to investors. The STA does not anticipate that most small issuers, for example, would require services (including the processing of interest or dividend payments) that would make professional recordkeeping more expensive. Preliminary feedback from our members suggests that competition may result in monthly fees of $75-$300 for transfer agent services, depending on a number of factors. [18] For the reasons noted earlier in this letter, the STA also does not believe that the costs associated with registration as a transfer agent are likely to provide unregistered third party recordkeepers with any meaningful cost advantage that could be passed on to issuers.

While we do not contend that registered transfer agents are necessary in each instance, a "safe harbor" for Funding Platforms that wish to condition access to certain issuers based on the presence of registered entities is consistent with the reality of the regulatory environment in which registered transfer agents and broker-dealers operate. Such a "safe harbor" would address investor protection concerns, and will also accommodate different business models of Funding Portals. For example, some Funding Platforms may believe that they have greater latitude to work with a broader range of issuers if they can rely on a safe harbor to avoid potential liability, or they might require issuers to use registered transfer agents to avoid potential recordkeeping problems that could impede any follow-on offerings, the initiation of trading markets, the efficient transfer of ownership interests between investors necessary to settle transactions, or they simply may wish to require issuers to retain registered transfer agents because it is a feature that is important to potential investors (like exchange listing standards).

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[18] The STA believes that competition in this market among small transfer agents is likely to be fierce. In the past, smaller transfer agents in particular have developed creative compensation arrangements in which issuers costs are minimal. This might include, for example, revenue models in which the transfer agent's income is derived primarily as a result of fees collected from banks, brokers, and shareholders presenting requests for transfers.

Regardless of their motivation, Funding Platforms should be able to rely on the registered status of a transfer agent as evidence of meeting their "reasonable basis" requirement, even if their use by issuers is not required by the Proposed Rules. Ultimately, however, we believe that competitive forces will dictate both the level of regulatory certainty required by individual Funding Platforms (in terms of potential liability) with respect to issuer recordkeeping, as well as pricing structures offered by transfer agents and other third party recordkeepers.

III. Disclosure and Education - Proposed Rules 201, 202, and 302(b)

Several provisions of the Proposed Rules address disclosure and education. The STA believes that these provisions may be very helpful to investors in crowdfunding offering.

A. Rule 201 – Initial Disclosure

Rule 201 sets forth the initial disclosure requirements for an issuer relying on the Section 4(6) exemption, including specifically: risk factors, ownership structure, and restrictions on the transfer of securities. With respect to risk factors, specifically, depending on the number of investors in the offering, if the issuer does not choose to use the services of a qualified third party record-keeper or registered transfer agent, we believe that it would be material to investors to know whether the issuer has any experience maintaining shareholder records and whether it has implemented procedures to assure the protection of their ownership interests.

Apart from risk factors, we believe that it also is important for the issuer to disclose to investors relevant information regarding the manner in which their ownership interests will be evidenced and where records of ownership will be maintained (e.g., whether by the issuer or a third party). In addition, it is important for investors to be aware that the issuer may not provide any ongoing information about their ownership positions in the form of account statements or reports and that they have the responsibility of monitoring their investments and communicating with the record keeper to ensure their shares are not escheated and that any basic information (e.g., address) regarding their investment remains current. Thus, we believe specific contact information should be provided to investors that they may use to update records to reflect address changes; to process transfer requests; or, as relevant, to report lost or stolen certificates, the failure to receive any dividends, interest or principal payments, or where the issuer should send notices to shareholders (including notices of any shareholder meetings).

B. Rules 202 and 203 – Ongoing Reports

Rules 202 and 203 require an issuer to provide an annual report, including some of the information on risks, ownership structure and restrictions on transfer set forth in Rule 201. The annual report also must contain information concerning ownership structure.

Again, we believe that it should contain current information about specific contact information that investors may use to update records to reflect address changes, to process transfer requests, or to report lost or stolen certificates, the failure to receive any dividends, interest or principal payments, or where the issuer should send notices to shareholders, including notices of any shareholder meetings.

C. Rule 302(b) Educational Materials

The STA also fully endorses provisions of the Proposed Rules and Act requiring that educational materials be provided to investors. In addition to the information specifically required under the Proposed Rules, we also believe that the educational materials should emphasize that it is important for the shareholder to maintain their own records of share ownership, that they may not receive any account statements or other reports relating to their ownership interests in the issuer, and that they should notify the issuer, or its designee, of any changes in address or other material events, including death or divorce, that may affect their ownership interests.

Further, we believe that educational materials should contain a reference to the Commission's own website, and that the Commission's Office of Consumer Affairs should develop educational materials specifically intended for investors in crowdfunding offerings. We believe that through this mechanism, the SEC can be assured that some basic information about crowdfunding, which may be relevant to them in enforcing any rights that they may have, is available to investors long after an offering is completed.[19]

D. 303 (b)(2) Investor Questionnaire

In connection with the qualification process, Proposed Rule 303(b)(2) also requires that an intermediary obtain from the investor a questionnaire demonstrating their understanding that, among other things, it may be difficult to resell the securities issued in reliance on the Crowdfunding Exemption. We believe it also is important to obtain an acknowledgement from the investor that they are aware that they will not receive any reports relating to their shareholdings and that they may need to be diligent in notifying the issuer, or its designee, of any changes that would affect their ability to receive communications from the issuer.

IV. Proposed Rule 303(e)(2) - Escrow Requirements

The STA is pleased that the Proposed Rules contain a requirement that Funding Portals transmit investor assets to qualified escrow agents, which are banks, prior to their release

[19] Representatives of the STA would be pleased to assist the Staff of the Commission in preparing relevant portions of the materials.

to the issuer. If there is a condition associated with closing, such as meeting a minimum level of commitments, the STA believes that this requirement, patterned after Exchange Act Rule 15c2-4, provides additional protection to investors.

V. Evidence of Ownership

The STA believes that evidence of legal ownership is a shareholder protection issue that may deserve some consideration by the Commission. Generally, shareholder ownership is reflected on the records of issuer (or its transfer agent) and, with most public companies, no physical shares are issued to investors. This form of ownership is referred to as "book entry" ownership. "Book entry" ownership does not imply that the issuer's securities must be part of the "direct registration system" operated by Depository Trust Company (although issuers of shares listed on an exchange must participate in this facility). [20]

The manner in which share ownership is reflected may not present an easy choice from a policy perspective. As the SEC is aware, in the absence of any central clearing facility, secondary market sales of shares issued in crowdfunded offerings will most likely need to be processed by the issuer or its agent in order to settle the transaction. This places additional emphasis on the ability of the issuer, or its agent, to be responsive to ownership transfer requests to protect the interests of investors.

The SEC has promoted the dematerialization and immobilization of shares for many years to facilitate transfers of shares and orderly settlement. However, while bookentry ownership has advantages in many other contexts, as evidenced by this letter, the STA is skeptical of whether any bookentry recordkeeping system operated by inexperienced issuers will remain accurate over time in an environment in which no periodic account reporting is required. Unless the issuer relies on professional recordkeepers, such as registered transfer agents, the STA believes that the issuance of certificates is one way a shareholder might perfect a claim against an issuer who lets its records go awry. [21]

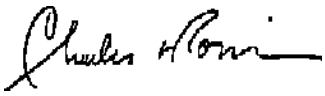
* * *

[20] The direct registration system is one in which securities ownership may be easily transferred between brokers and registrars using the facilities of DTC.

[21] The confirmation that Funding Portals are required to provide investors may not be adequate legal evidence of their share ownership. As we noted earlier, the manner in which ownership will be evidenced should be an inquiry undertaken by the Funding Portal.

The STA appreciates this opportunity to present its views on the Proposed Rules. We welcome the opportunity to discuss the issues raised in this letter or address any other questions you may have.

Sincerely,



Charles V. Rossi
Chairman
STA Board Advisory Committee
The Securities Transfer Association, Inc.

cc:
Mary Jo White, Chairman
Kara M. Stein, Commissioner
Luis A. Aguilar, Commissioner
Michael S. Piwowar, Commissioner
Daniel M. Gallagher, Commissioner

Exhibit Attached

OMB Approval
OMB Number: 3235-0084 Expires: April 30, 2015 Estimated average burden hours per response 1.5

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

FORM TA-1

UNIFORM FORM FOR REGISTRATION AS A TRANSFER AGENT AND FOR AMENDMENT TO REGISTRATION PURSUANT TO SECTION 17A OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL: Form TA-1 is to be used to register or amend registration as a transfer agent with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934.
Read all instructions before completing this form. Please print or type all responses.

☑Check to show blank form for printing

1(a). Filer CIK: **1(b).**Filer CCC:

1(c). Live/Test Filing? ○ Live ○ Test

1(d). Return Copy ☐ Yes

1(e). Is this filing an amendment to a previous filing? ☐ Yes

1(e)(i). File Number: 084-

1(f)(i). Contact Name: **1(f)(ii).** Contact Phone Number: **1(f)(iii).** Contact E-mail Address:

1(g). Notification E-mail Address:

SEC 1528 (12-06)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

2. Appropriate regulatory agency (check one):

- ◉ Securities and Exchange Commission
- ○ Board of Governors of the Federal Reserve System
- ○ Federal Deposit Insurance Corporation
- ○ Comptroller of the Currency
- ○ Office of Thrift Supervision

3(a). Full Name of Registrant:

3(a)(i). Previous name, if being amended:

3(b). Financial Industry Number Standard (FINS) number:

3(c). Address of principal office where transfer agent activities are, or will be, performed:

3(c)(i). Address 1

3(c)(ii). Address 2

3(c)(iii). City

3(c)(iv). State or Country

3(c)(v). Postal Code

3(d). Is mailing address different from response to Question 3(c)?

Yes	No
○	○

If "yes," provide address(es):

3(d)(iv). State or Country

3(d)(v). Postal Code

3(e). Telephone Number
(Include Area Code)

4. Does registrant conduct, or will it conduct, transfer agent activities at any location other than that given in Question 3(c) above? Yes ○ No ○

If "yes," provide address(es):

4(a)(i). Address #1

4(a)(ii). Address #2

4(a)(iii). City

4(a)(iv). State or Country

4(a)(v). Postal Code

5. Does registrant act, or will it act, as a transfer agent solely for its own securities and/or securities of an affiliate(s)? Yes ○ No ○

6. Has registrant, as a named transfer agent, engaged, or will it engage, a service company to perform any transfer agent functions? Yes ○ No ○

If "yes," provide the name(s) and address(es) of all service companies engaged, or that will be engaged, by the registrant to perform its transfer agent functions:

6(a). Name:

6(b). File Number: -

6(c)(i). Address 1

6(c)(ii). Address 2

6(c)(iii). City

6(c)(iv). State or Country

6(c)(v). Postal Code

7. Has registrant been engaged, or will it be engaged, as a service company by a named transfer agent to perform transfer agent functions? Yes ○ No ○

If "yes," provide the name(s) and File Number(s) of the named transfer agent(s) for which the registrant has been engaged, or will be engaged, as a service company to perform transfer agent functions:

7(a). Name:

7(b). File Number: -

7(c)(i). Address 1

7(c)(ii). Address 2

7(c)(iii). City

7(c)(iv). State or Country

7(c)(v). Postal Code

Completion of Question 8 on this form is required by all independent, non-issuer registrants whose appropriate regulatory authority is the Securities and Exchange Commission. Those registrants who are not required to complete Question 8 should select "Not Applicable."

8. Is registrant a:

- ○ Corporation
- ○ Partnership
- ○ Sole Proprietorship
- ○ Other
- ○ Not Applicable

Section for Initial Registration and for Amendments Reporting Additional Persons. (Corporation or Partnership)

8(a)(i). Full Name

8(a)(ii). Relationship Start Date

8(a)(iii). Title or Status

8(a)(iv). Ownership Code

- ○ NA - 0 to 5%
- ○ A - 5% up to 10%
- ○ B - 10% up to 25%
- ○ C - 25% up to 50%
- ○ D - 50% up to 75%
- ○ E - 75% up to 100%

8(a)(v). Control Person ☐

8(a)(vi). Relationship End Date

Section for Initial Registration and for Amendments Reporting Additional Persons. (Sole Proprietorship or Other)

8(a)(i). Full Name

8(a)(ii). Relationship Start Date

8(a)(iii). Title or Status

8(a)(iv). Description of Authority

8(a)(v). Relationship End Date

9. Does any person or entity not named in the answer to Question 8:

	Yes	No
9(a). Directly or indirectly, through agreement or otherwise exercise or have the power to exercise control over the management or policies of applicant; or	○	○

9(a)(i). Exact name of each person or entity

9(a)(ii). Description of the Agreement or other basis

	Yes	No
9(b). Wholly or partially finance the business of applicant, directly or indirectly, in any manner other than by a public offering of securities made pursuant to the Securities Act of 1933 or by credit extended in the ordinary course of business by suppliers, banks and others ?	○	○

9(b)(i). Exact name of each person or entity

9(b)(ii). Description of the Agreement or other basis

10. Applicant and Control Affiliate Disciplinary History:

The following definitions apply for purposes of answering this Question 10

Control affiliate	- An individual or firm that directly or indirectly controls, is under common control with, or is controlled by applicant. Included are any employees identified in 8(a), 8(b), 8(c) of this form as exercising control. Excluded are any employees who perform solely clerical, administrative support of similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.
Investment or investment related	- Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
Involved	- Doing an act of aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

10(a). In the past ten years has the applicant or a control affiliate been convicted of or plead guilty or nolo contender ("no contest") to:

	Yes	No
10(a)(1). A felony or misdemeanor involving: investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion?	○	○

10(a)(1)(i). The individuals named in the Action

10(a)(1)(ii). Title of Action

10(a)(1)(iii). Date of Action

10(a)(1)(iv). The Court or body taking the Action and its location

10(a)(1)(v). Description of the Action

10(a)(1)(vi). The disposition of the proceeding