



1423 Leslie Avenue
Alexandria, VA 22301

March 18, 2021

Dear Senator Toomey,

I am pleased to submit a proposal in response to your request for legislative proposals to increase economic growth and job creation by facilitating capital formation.

I am the CEO of CrowdCheck, Inc. and the Managing Partner of CrowdCheck Law LLP. Between them, the two entities provide a wide range of legal, compliance, due diligence and disclosure services, primarily focused on online capital formation. We provide services for offerings under Regulations A, D and CF under the Securities Act of 1933, and have filed at least 132 offering statements under Regulation A and had more than 83 of them qualified by the SEC.

You have stated that you wish to encourage more companies to become public companies and enhance retail investor access to investment opportunities. I believe Regulation A could be used to achieve both these aims.

I have practiced corporate and securities law since the 1980s and have seen the disclosure documents used for public companies steadily expand in size and complexity. The same has happened for the ongoing disclosure reports filed by those companies. The lawyers and accountants serving public companies naturally focus on protecting their clients from litigation, and less on helping retail investors make informed decisions. As a result, offering documents have become unintelligible to everyday investors, which has the effect of limiting the demand for public companies principally to institutional investors. Even worse, since institutional investors can participate in private sales of securities, there is diminished incentive for companies to make public offerings in the first place.

Regulation A, an exemption from registration under the Securities Act for smaller public offerings (under \$75 million) was amended in 2015 as a result of the JOBS Act of 2012. It has become a popular form of capital-raising for early-stage companies, and most of the investment in Regulation A offerings is from retail investors, since early-stage companies do not generally attract institutional investors. Many, if not most, Regulation A offerings are conducted online.

The advantages of Regulation A from the issuer's point of view are:

- Disclosure requirements that are scaled to the needs of early-stage companies, in both timing and content;

- An SEC review process that does not assume that the company or its counsel are omniscient with respect to securities law, and SEC examiners who, in our experience, generally try to help the issuer get to the point of qualification;
- The ability to use modern channels of communication to reach investors. Retail investors are more likely to be found on Instagram than at roadshow meetings organized by investment banks; and
- Liability based on actual knowledge of misstatements as opposed to strict liability.

Investor protection is not compromised:

- Regulation A offerings can only be made using audited financial statements; the audit process elicits significant information that can be used by counsel and which confirms the accuracy of the financial statements;
- Legal opinions are required confirming that the securities to be issued have been authorized and exist; and
- The SEC review process in our experience is robust and focuses on the rights of investors and accuracy of the information presented to them.

I would propose permitting Regulation A to be used as a true alternative to full registration under the Securities Act and the Securities Exchange Act for small public companies, say, those with a market capitalization of under \$250 million and revenues under \$100 million, treating the ongoing reporting requirements under Regulation A as sufficient for a listing on a national securities exchange. In order to do so, the following legislative changes would be required:

- Amend Section 12(g) of the Exchange Act of 1934 to allow for reporting under Regulation A instead of registration under the Securities Act.
- Amend Section 12(b) of the Exchange Act to permit national securities exchanges to list companies that report under Regulation A.
- Extend Regulation FD to any traded Regulation A companies, whether traded over the counter, on a national securities exchange or on an alternative trading system (ATS).
- Expand liability under the Exchange Act to apply to ongoing reporting under Regulation A (which is made pursuant to Securities Act requirements and may not technically be covered by liability provisions such as Rule 10b-5).
- Expand Section 18 of the Securities Act to preempt registration under state securities laws for trades in securities of Regulation A reporting companies.

I would be very happy to discuss any of these items with your staff.

Sincerely,

/s/ Sara Hanks
CEO
CrowdCheck, Inc.