Via E-mail

February 17, 2017

Mark Stewart, Counsel
NASAA Legal Department
NASAA
750 First Street, NE, Suite 1140
Washington, DC 20002

RE: Comments of CrowdCheck, Inc. on the Proposed NASAA Model Statute, Proposed Model Rule, and a Proposed Solicitation of Interest Form to Permit Testing the Waters in Regulation A – Tier 1 Offerings

Dear Mr. Stewart:

CrowdCheck, Inc. appreciates the opportunity to comment on a Proposed NASAA Model Statute, Proposed Model Rule, and a Proposed Solicitation of Interest Form to Permit Testing the Waters in Regulation A – Tier 1 Offerings ("Proposed Rule").

Before we comment on the Proposed Rule, we would like to commend the efforts of NASAA and NASAA members in recognizing that testing the waters can be a valuable exercise for issuers that are interested in conducting an offering. Testing the waters often provides issuers with information about whether anyone is interested in investing in its securities, what the appropriate pricing of those securities may be, and where interested investors may reside.

However, the Proposed Rule presents an unworkable solution for issuers. In particular, the requirement to file materials 15 days prior to use, as well as the waiting/quiet period after a full application has been filed, present challenges for issuers that are inconsistent with the processes on which issuers relying on the Regulation A – Tier 1 exemption rely.

Further, the fact that an issuer may begin its process of testing the waters intending to rely on Regulation A – Tier 2, and later changing to Tier 1 means that the Proposed Rule may easily be avoided.

This letter will address and comment on each aspect of the Proposed Rule as outlined by NASAA in its request for public comment.

1. **The Proposed Rule should not require that an issuer already exist as a business entity organized under the law of and with a principal place of business in the United States or Canada.**

While the location of organization and doing business in the United States and Canada is a requirement to utilize the exemption provided by Regulation A for an offering, it should not be a requirement to engage in testing the waters for a proposed offering of securities.

2. **Filing solicitation materials prior to use is inconsistent with the practices of most issuers when preparing to test the waters.**

In the process of developing testing the waters materials, issuers often only finalize those materials immediately prior to their desired use. Requiring that a filing be made ahead of time presents a challenge to small issuers for whom the securities offering may be the difference between continuing/starting operations, or winding up.

Instead, the Proposed Rule should require that an issuer to identify whether it is testing the waters when filing its application with state regulators, and be required to file the testing the waters materials with that application. Should any regulator find the testing the waters materials to be objectionable, they may demand that the issuer correct their materials and notify investors that have been solicited.

3. **The requirement that issuers and agents may not solicit or accept commitments is at odds with the purpose of testing the waters.**

While it is reasonable to require that issuers and agents may not solicit or accept money or subscriptions during the testing the waters period, issuers should be able to solicit and accept commitments or indications of interest that are non-binding in nature.

4. **The Offeree Holding Period and Waiting/Quiet period present conflicting requirements for communication with prospective investors.**

Ideally, any rule allowing for testing the waters in a Regulation A – Tier 1 offering would be coordinated with existing rules that allow for communications with investors after an offering statement has been filed, but prior to qualification. Instead, the Proposed Rule creates a parallel communication regime that presents conflicting requirements.

It is unclear why the Offering Holding Period is necessary under the Proposed Rule. State laws currently include requirements for distribution of a qualified offering circular or prospectus prior to any sales being made.

With regard to the Waiting Period, there again appears to be conflict with existing state rules regarding communications about offering after filing with the state regulator, but before such offering is qualified. Most issuers will be using the same materials during that period as they

were doing the testing the waters phase and may interpret this requirement to be an absolute quiet period, when that may not be the case.

5. **The presence of the legends in the offering materials put prospective investors on notice that the offering is not qualified and may not receive funds, eliminating the need for state filings prior to filing of the particular state application applicable to Regulation A.**

We agree that legends are very important and must be included. Further, the presence of the legends effectively put prospective investors on notice that no investment maybe made, minimizing the need for filing the testing the waters materials with state regulators.

Again, we very much appreciate the opportunity to comment on the Proposed Rule and look forward to working with the NASAA to address the comments set forth herein.

Respectfully submitted,

Andrew Stephenson
VP of Product Management and Strategy
CrowdCheck, Inc.

cc: William Beatty, Chair of the Corporation Finance Section
Faith Anderson, Chair of the Small Business/Limited Offerings Project Group
Anya Coverman, NASAA Deputy Director of Policy and Associate General Counsel