



April 2012

## NEW LAW ON CROWD-FUNDING

On April 5, 2012, President Obama signed the Jump-start Our Business Start-ups (JOBS) Act, which authorizes so-called "crowd-funding" which permits a company to raise small amounts of funds from a large number of investors over the internet. The new crowd-funding law is called the "Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012" or the "CROWDFUND Act."

### **How much money can be raised?**

The aggregate amount of stock sold by a company cannot exceed \$1 million in any 12-month period.

### **Does the investor need to be an "accredited" investor under the securities laws?**

No, the investor does not need to be an "accredited" investor, but there are limits on how much the investor can invest.

### **How much can an investor invest?**

If either the annual income or the net worth of the investor is less than \$100,000, the maximum amount of stock sold to any investor in any 12-month period cannot exceed the greater of \$2,000 or 5 percent of the annual income or net worth of such investor.

If either the annual income or net worth of the investor is equal to or more than \$100,000, the maximum amount of stock sold to any investor in any 12-month period cannot exceed 10 percent of the annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of \$100,000.

### **How is the offering conducted?**

The offering is conducted through a broker or funding portal registered with the Securities and Exchange Commission. The intermediary must provide such disclosures, including disclosures related to risks and other investor education materials, as the Securities and Exchange Commission will determine to be appropriate.

The intermediary is required to take such measures to reduce the risk of fraud with respect to such transactions as will be established by the Securities and Exchange Commission, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of the company.

The intermediary is required to ensure that each investor understands the level of risks generally applicable to investments in startups, emerging and small issuers, including the risk of loss of the entire investment.

The intermediary is required to make available to investors specified information not later than 21 days prior to the first day on which securities are sold to any investor.

The intermediary is not permitted to offer investment advice or recommendations.

**Can the company use the proceeds immediately?**

No, the intermediary must ensure that the offering proceeds are only provided to the company when the aggregate capital raised equals or exceeds a target offering amount. The intermediary must allow all investors to cancel their commitments to invest pursuant to rules determined by the Securities and Exchange Commission.

**What type of information must be provided?**

- The Company must provide the following information to investors and the broker or funding portal:
- the name, legal status, physical address, and website address of the issuer;
- the names of the directors and officers, and each person holding more than 20 percent of the shares of the issuer;
- a description of the business of the issuer and the anticipated business plan of the issuer;
- a description of the stated purpose and intended use of the proceeds of the offering with respect to the target offering amount;
- the target offering amount, the deadline to reach the target offering amount, and regular updates regarding the progress of the issuer in meeting the target offering amount;
- the price to the public of the securities;
- a description of the ownership and capital structure of the issuer;
- the terms of the securities being offered, and each other class of security of the issuer, and a summary of the differences of such securities;
- the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer;
- how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future;
- the risks to purchasers of the securities relating to minority ownership;
- the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties;
- a description of the financial condition of the issuer; and
- such other information as the Securities and Exchange Commission may, by rule, prescribe, for the protection of investors and in the public interest.

**What type of financial information must be provided?**

If the offering is for less than \$100,000, the company must provide the income tax returns for the most recently completed year (if any), and financial statements certified by the principal executive officer of the issuer to be true and complete in all material respects.

If the offering is more than \$100,000, but not more than \$500,000, the financial statements must be reviewed by an independent public accountant.

If the offering is for more than \$500,000, the company must provide audited financial statements.

**Can the securities be resold?**

Investors who acquire a company's securities pursuant to a crowd-funding exemption will be restricted from reselling those securities for a period of one year from the date of purchase, unless the sale is to an accredited investor, a family member, or the company.

**When will the Securities and Exchange Commission issue rules for the crowd-funding law?**

The Securities and Exchange Commission is to issue rules for the protection of investors within 270 days.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*

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