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Crowdfunding Update

SEC Announces Final Rules for Offerings

On October 30, the Securities and Exchange Commission (SEC) approved final rules permitting qualifying small companies to raise up to $1 million in a 12-month period through securities offerings to the general public. Securities issued in a crowdfunding offering will be considered "restricted securities" and, subject to some exceptions, may not be resold by a purchaser for at least one year. The rules will take effect on May 16, 2016.

A person whose net worth and annual income is $100,000 or more may invest up to 10% of the lesser of his/her annual income or net worth per year (up to a $100,000 maximum). A person whose net worth or annual income is less than $100,000 may invest up to the greater of $2,000 or 5% of the lesser of his/her annual income or net worth.

A company seeking to raise capital through crowdfunding will be required to disclose certain information to potential investors by filing an offering statement on Form C with the SEC prior to commencing the offering. The Form C must provide a description of the company's business, information on the amount of money to be raised through crowdfunding, the use of the offering proceeds, and the officers, directors and shareholders owning 20% or more of the company. If the offering is for $100,000 or less, the company must provide its tax returns and financial statements certified by its own financial officer. Between $100,000 and $500,000, an outside accounting firm must review the company's financial statements. For an offering greater than $500,000, the company must provide audited financial statements, provided, that the company may provide financial statements that have been reviewed by an outside accountant, rather than audited, if the company has not previously raised capital through crowdfunding and does not have audited financial statements available. Crowdfunding companies will also have post-offering SEC filing requirements.

Crowdfunding must take place through SEC-regulated funding portals or broker-dealers. Funding portals will be able to register with the SEC through an online form beginning on January 29, 2016. These intermediaries will act as "gatekeepers" that will, among other things, provide investors with information about a company, conduct background checks on companies and ensure that each investor complies with the investment limits. No intermediary may invest in a company that conducts an offering through it, except as compensation for its services (subject to certain conditions).

Conducting an offering through crowdfunding has pros and cons and each company must consider if crowdfunding is the right platform for it to raise capital. For a more in-depth discussion about crowdfunding, please contact Michael J. Weiner.
