



Crowdfunding Update **Up to \$1 Million Could be Raised Annually**

On October 23, the Securities and Exchange Commission ([SEC](#)) issued [proposed rules](#) to permit companies to offer and sell securities over the Internet through crowdfunding. A 90-day public comment period is now underway. Unless the SEC extends the comment period, the rules could be finalized in early 2014, paving the way for qualifying companies to sell stock over the Internet, through registered brokers or funding portals.

Crowdfunding is a key feature of the [Jumpstart Our Business Startups Act \("JOBS Act"\)](#), which was enacted into law in April 2012. Under the proposed rules, if a company meets certain conditions, it would be able to sell its stock and raise a maximum of \$1 million through crowdfunding offerings in any 12-month period. The amount that investors would be able to invest will also have limits. Individual investments in a 12-month period will be limited to: (i) the greater of \$2,000 or five (5) percent of an investor's annual income or net worth if both are less than \$100,000 in all crowdfundings in which he/she participates, and (ii) up to ten (10) percent of an investor's annual income or net worth if either is at least \$100,000 (with a hard cap of \$100,000 in securities purchases through crowdfunding).

Companies will be required to comply with a variety of disclosure requirements, which must be filed with the SEC and made available to potential investors. Many of the proposed disclosures are basic (names of company officers, number of employees, nature of the business, use of proceeds and company ownership), but other disclosure requirements are more onerous. For example, if the company's proposed offering is \$100,000 or less, the disclosure must include the income tax returns filed by the issuer for the most recently completed year and financial statements of the issuer, which must be certified by the principal executive officer of the company. If the proposed offering amount is \$100,000 - \$500,000, financial statements reviewed by an independent accountant must be disclosed. If the proposed offering amount exceeds \$500,000, the proposed rules would require the company to provide audited financial statements, which is a costly undertaking. Additionally, the proposed rules require that crowdfunding transactions take place through an SEC-registered intermediary – either a broker-dealer or a funding portal. This requirement will add additional costs to the process.

While there is excitement about the potential benefits of crowdfunding for start-up ventures, complying with all of the requirements will be far from easy. In addition, crowdfunding may be too costly to gain widespread use. Once the rules become final, companies interested in raising capital using this method are advised to consult with their advisors before officially joining the crowd.

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