

# Bringing Crowdfunding to Corporate America – Securities and Exchange Commission Weighs Regulations.

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Over the last few years a number of crowdfunding websites have popped up providing individuals and small businesses, in other countries, the opportunity to raise money for new projects or ventures in exchange for equity interests in the venture. But what exactly is crowdfunding? The idea is to use the internet and social media to take advantage of easy access to potential investors or donors, allowing an individual or startup to raise capital through small amounts of investments or donations from a large number of individuals.

Because of existing restrictions in U.S. securities laws, however, current crowdfunding campaigns in the U.S. primarily involve contributions by interested individuals, often in exchange for a perk or reward, but do not result in the donor or “backer” receiving any kind of ownership interest in the business.

Equity or investment crowdfunding, which would allow start-ups and entrepreneurs to sell shares or membership interests in their companies to small unaccredited investors as a means of raising capital, is stuck in a kind of regulatory holding pattern. On April 5, 2012, President Obama signed the JOBS Act into law creating an exemption to the securities registration requirements that permits the sale of securities via crowdfunding, pending the issuance of regulations by the

Securities and Exchange Commission. While the JOBS Act technically required the SEC to issue the regulations no later than January 1, 2013, the SEC has yet to propose rules and it appears doubtful that any will be issued and effective before the end of the year.

While we await the SEC's issuance of regulations implementing the crowdfunding exemption, the JOBS Act does lay out some of the basics:

- The aggregate amount of securities sold by the issuer may not exceed \$1 million in any 12-month period.
- Additionally, the aggregate amount sold to any single investor by an issuer during the 12-month period preceding the date of the investment may not exceed:
  - The greater of \$2,000 or 5% of the annual income or net worth of such investor, if either the annual income or the net worth of the investor is less than \$100,000; or
  - 10% of annual income or net worth of such investor, not to exceed a maximum aggregate amount sold of \$100,000, if either the annual income or net worth of the investor is equal to or more than \$100,000.
- Transactions must be made through a "funding portal" or a registered broker. Several additional requirements will apply to companies raising money under the crowdfunding exemption, which requirements will be more fully developed in the SEC rules. Funding portals will also be subject to additional regulations to be implemented by the SEC.
- Securities sold under the crowdfunding exemption may not be sold again or transferred by the investor for one year unless the securities are being resold back to the issuer, sold to an accredited investor, sold as part of an offering registered with the SEC, transferred to a family member of the investor, or transferred in

connection with the death or divorce of the investor.

Unlike the donation or reward-based crowdfunding currently being seen on sites like Kickstarter and Indiegogo, equity crowdfunding will give startups the ability to trade an equity interest in the company in exchange for an investment from an individual investor, and will allow the individual investor to obtain a percentage of ownership in the startup. Such equity crowdfunding has the potential to expand the pool of investors and capital available to startups beyond the traditional avenues currently in place, thus fostering increased entrepreneurial activity. However, we'll have to continue to wait on the SEC to see if regulatory restrictions will allow equity crowdfunding to get off the ground in the U.S.