

Regulation Crowdfunding

Presented by
Chris Russell

Leveraging Crowdfunding to Fuel Your Tech Startup

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REGULATION CROWDFUNDING

- JOBS Act of 2012 added Section 4(a)(6) of the Securities Act of 1933, as amended.
 - the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, is not more than \$1,000,000;
 - the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption provided under this paragraph during the 12-month period preceding the date of such transaction, does not exceed —
 - (i) the greater of \$2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than \$100,000; and
 - (ii) 10 percent of the annual income or net worth of such investor, as applicable, 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; and
 - the transaction is conducted through a broker or funding portal.

REGULATION CROWDFUNDING

- The SEC adopted Regulation Crowdfunding on October 30, 2015 to implement Section 4(a)(6), which became effective on May 16, 2016.
- Key Components to use Section 4(a)(6) Exemption under Regulation Crowdfunding:
 - Types of issuers
 - How much can companies raise
 - What kind of information is required
 - Who can be Investors and how much they can invest
 - How to conduct the offering

TYPES OF ISSUERS

- The following companies **cannot** use the crowdfunding exemption:
 - Companies subject to the reporting requirements
 - Non-US Companies
 - Investment Companies
 - Companies that have no specific business
- Lose the right to use the 4(a)(6) exemption if:
 - Fail to meet the reporting requirements for 2 years
 - Disqualified

HOW MUCH CAN YOU RAISE

- \$1 million per 12 month period
 - aggregate all affiliates
 - includes capital raised under Regulation Crowdfunding
- Excludes capital raised under other exemptions, including Regulation D
 - Issues of concurrent offering under Regulation 506(b)

REQUIRED INFORMATION

- **Must File Form C: Offering Statement**
 - Information about officers, directors and principal shareholders
 - Description of Business
 - Use of Proceeds
 - 2 Years of Financial Information prepared in accordance with GAAP

Less than or at \$100k	<ul style="list-style-type: none">• Total income, taxable income and tax as reflected in the issuer's federal income tax return, and• Financial statements certified by principal executive officer
\$100k to \$500k	<ul style="list-style-type: none">• Financial statements reviewed by independent public accountant
More than or at \$500k	<ul style="list-style-type: none">• Financial statements reviewed by independent public accountant for first offering, and audited financial statements thereafter

Issuers must provide higher level financials where available, e.g., must provide any available audited financials even if offering less than \$500k in 12 month period.

Financial statement are not permitted to be more than 18 months old.

REQUIRED INFORMATION

- Form C must be filed prior to start of offering electronically via EDGAR
- Progress updates on meeting target offering amount within 5 business days after reaching 50% and 100% of its target offering amount.
 - These updates are filed on Form C-U.
 - If the intermediary provides frequent updates on its platform regarding the progress of meeting the target offering amount, then the issuer will need to file only a final Form C-U to disclose the total amount of securities sold in the offering.
 - If the issuer will accept proceeds over the target offering amount, it also must file a final Form C-U reflecting the total amount of securities sold in the offering.

REQUIRED INFORMATION

- Post-Closing Disclosures
 - Must file information with the SEC and post it on their websites on an annual basis.
 - The annual filing must be made within 120 days of the issuer's fiscal year-end.
 - The information included in the annual report is similar to that required in the initial filing, except that no accountants' audit or review of the financial statements is required.

REQUIRED INFORMATION

- Termination of Disclosure Requirements
 - The issuer is required to file reports under Exchange Act;
 - The issuer has filed at least one annual report and has fewer than 300 holders of record;
 - The issuer has filed at least three annual reports and has total assets that do not exceed \$10 million;
 - The issuer or another party purchases or repurchases all of the securities issued pursuant to Regulation Crowdfunding, including any payment in full of debt securities or any complete redemption of redeemable securities; or
 - The issuer liquidates or dissolves in accordance with state law.

WHO CAN BE INVESTORS

- An investor is limited in the amount he or she may invest in crowdfunding securities in any 12-month period:
 - If either the annual income or the net worth of the investor is less than \$107,000, the investor is limited to the greater of \$2,200 or 5% of the lesser of his or her annual income or net worth.
 - If the annual income and net worth of the investor are both greater than \$107,000, the investor is limited to 10% of the lesser of his or her annual income or net worth, to a maximum of \$107,000.
(Amounts adjusted for inflation as of March 2017)
- Spouses are allowed to calculate their net worth and annual income jointly.
- Net worth is determined in the same manner as Reg. D.

HOW TO CONDUCT THE OFFERING

- Offering must be made through “intermediaries”
 - A registered broker-dealer; or
 - Funding Portal
- Funding Portals may not
 - Compensate others for finding investors;
 - Provide investment advice;
 - Solicit purchases or offers to purchase securities or compensating others to do so;
 - Hold or manage investor funds; or
 - Funding portal or its officers, partners or directors have a financial interest in an issuer.

HOW TO CONDUCT THE OFFERING

- An issuer may “not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker.”
- Under the new rules, an issuer may publish a limited notice (sometimes called a “tombstone”) that advertises the terms of an offering so long as the notice includes the address of the intermediary’s platform on which information about the issuer and offering may be found.
- The rules do not place restrictions on how the issuer distributes these notices, the format of the notice, or its medium. Issuers can use social media, audio, video or street theater, so long as only the permitted content is included.

RESALE RESTRICTIONS

- Securities issued pursuant to Crowdfunding Regulations are not freely transferrable by the purchaser for one year after the date of purchase.
- However, prior to the end of one year, transfers may be made:
 - To the issuer of the securities;
 - To an accredited investor;
 - As part of an offering registered with the SEC; or
 - To a member of the family of the purchaser, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser, or in connection with the death or divorce of the purchaser.

REGISTRATION UNDER THE EXCHANGE ACT

- Companies with over \$10 million assets must become reporting companies under the Exchange Act if their shares are held of record by 2,000 persons or 500 persons who are not accredited investors.
- JOBS Act exempts securities sold pursuant to Section 4(a)(6) from this count if:
 - The issuer is current in its ongoing reporting obligations;
 - The issuer does not have assets of more than \$25 million; and
 - The issuer engages a transfer agent registered with the SEC to keep its books.
- SEC grants them a two-year period in which to transition to full reporting status.

QUESTIONS?