



SEC Adopts Equity Crowdfunding Rules

Securities Law Update with Lance Kimmel October 30, 2015

Friday, October 30, 2015

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On October 30, 2015, the Securities and Exchange Commission adopted the final rules for equity crowdfunding under Title III of the JOBS Act. The crowdfunding rules will not go into effect for 180 days, an unusually long lead time, to allow newly-created funding portals adequate time to register with FINRA or another similar self-regulatory organization. The SEC also amended Rules 147 and 504 to coordinate with intrastate equity crowdfunding exemptions now permitted in more than half the states.

Key components of the new rules include the following:

Crowdfunding will be limited to raises of not more than \$1 million in a 12-month period. All such offerings must be conducted through intermediaries, either registered broker/dealers or newly-created funding portals, which themselves must be registered with both the SEC and an SRO, such as FINRA.

The issuer must provide basic information about itself and the offering on new Form C, as well as financial information for the most recent two years or such shorter period of time that the issuer has been in business. In a change from the proposed rules, the offering information can be provided in a question- and-answer format or be freely written.

For offerings under \$100,000, only issuer-certified financial statements need be provided. For offerings between \$100,000 and \$500,000, the financial statements required auditor review. Offerings between \$500,000 and the \$1,000,000 limit require full audit; however, in a crucial change from the proposed rules, a first-time issuer can use reviewed financial statements, unless they already have audited financial statements, thereby reducing the transaction costs of such an offering.

In another significant change from the proposed rules, the SEC tightened individual investor limits. Investors will be limited to the lesser of \$2,000 or 5% of annual income or net worth, if both annual income and net worth are less than \$100,000; or the lesser of 10% of annual income or net worth, if either annual income or net worth is greater than \$100,000, with a maximum \$100,000 total investment in all crowdfunding offerings in a 12-month period, regardless of net worth or net income. It may be very difficult, if not impossible, to enforce these limits on private investors.

An issuer will have an annual reporting obligation to the SEC post-offering. However, the financial information to be provided need not be audited or reviewed, unless such financial statements already exist. The annual reporting obligation will continue until the issuer becomes a full reporting company, has de minimis shareholders and/or assets, fully redeems the offering or dissolves.

As noted, all crowdfunding offerings must be conducted through an intermediary, either a broker/dealer or newly-registered funding portal. FINRA has already proposed registration rules to register new funding portals, which rules await SEC action.

As regulated gatekeepers, funding portals will be required to provide information about posted offerings as well as general information about Title III crowdfunding. Funding portals will also be required to conduct background checks on the issuer and its affiliates.

Offerings must be posted for at least 21 days before sales can be made, allowing time for investors to review and reflect on the offering.



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