LOEB & LOEB LLP

# Capital Markets


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## SEC Crowdfunding Rules to Become Effective May 16

Securities and Exchange Commission rules authorizing equity crowdfunding become effective May 16, 2016. Under the crowdfunding rules, an eligible company may raise up to $1 million on the internet in a 12-month period, through either a broker or a crowdfunding portal registered with the SEC.

To raise funds under the crowdfunding rules, a company must file with the SEC and provide to investors and the intermediary broker or crowdfunding portal a form disclosing the terms of the offering; the use of proceeds; information about the company's directors, officers and principal stockholders; and information about the company's business, including risk factors and a discussion of liquidity and results of operations. The form must include two years of financial statements either certified by the company's CEO or reviewed or audited by an independent public accountant, depending on the size of the offering. The SEC provides an optional Q&A format for furnishing the required information.

This information must be available on the intermediary's platform at least 21 days before the offering closes. The company must also give the intermediary reasonable basis to believe that the company will keep accurate records of holders of securities sold through the intermediary's platform.

For at least one year following the offering, depending on the number of company stockholders or the amount of the company's assets, the company must file with the SEC and post on the company's website an annual report, including financial statements.

An investor earning or having net worth less than $100,000 may invest no more than (a) the greater of $2,000 or (b) 5 percent of the lesser of the investor's income or the investor's net worth in all crowdfunding offerings in a 12-month period. An investor having net worth and income greater than $100,000 may invest no more than (a) $100,000 or, if less, (b) 10 percent of the lesser of the investor's income or the investor's net worth in all crowdfunding offerings in a 12-month period. An issuer generally may rely on an intermediary to determine whether an investor's crowdfunding investments are within these limits. Crowdfunding securities may not be resold for one year, except to accredited investors.

Except for a tombstone ad, no solicitation of a crowdfunding offering is permitted outside the intermediary's platform, and an offering can be conducted on only one intermediary's platform. A crowdfunding offering will not be integrated with other offerings but could impact whether conditions to a concurrent exempt offering have been satisfied. For example, a company conducting a private placement and crowdfunding offering concurrently would have to determine that private placement investors hadn't been solicited by the crowdfunding.

An intermediary must conduct a background check, including regulatory enforcement history, on each company offering securities on the intermediary's platform and on each company's directors, officers and principal stockholders. The intermediary must also deliver educational materials to investors regarding conduct of offerings, investment risks and related matters, and provide communication channels for investors to discuss offerings on the intermediary's platform. Because a crowdfunding portal is not registered as a broker-dealer, it cannot solicit securities purchases, offer investment advice, or handle investor funds or securities. Other rules prescribe, in detail, activities and compensation permitted to intermediaries and to crowdfunding portals, in particular.



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