

SEC Adopts New Rules Regulating Crowdfunding for Securities

On Oct. 30, 2015, the Securities and Exchange Commission (the “SEC”) adopted new rules to provide a registration exemption for issuers to offer and sell securities through crowdfunding. In order to implement the final requirements of Title III of the Jumpstart Our Business Startups Act (the “JOBS Act”), the SEC adopted rules to implement Regulation Crowdfunding under federal securities laws. The crowdfunding provisions of the JOBS Act are intended to help small businesses and startups by reducing the costs and burdens of raising new capital. An issuer using Regulation Crowdfunding will typically raise funds through a larger number of small individual investments, instead of from a smaller number of large investments. In order to protect crowdfunding investors, Congress established a number of protections, discussed below, including offering limits, investor limits, required offering and continuing disclosures, and intermediary requirements.

Eligible issuers may not raise, in the aggregate, more than \$1 million during any 12-month period. An issuer may make other offerings during the 12-month period without being integrated into the \$1 million crowdfunding maximum, so long as those other offerings comply fully with the conditions of the registration exemption that the issuer is relying upon for those other offerings.

Individual investors, during the course of any 12-month period, are permitted to invest in the aggregate in all Regulation Crowdfunding offerings:

- If the investor’s annual income or net worth is less than \$100,000, the greater of \$2,000 or 5 percent of the lesser of the investor’s annual income or net worth; or
- If the investor’s annual income and net worth is greater than \$100,000, 10 percent of the lesser of the investor’s annual income or net worth, up to a maximum of \$100,000.

Subject to limited exceptions, securities purchased in a Regulation Crowdfunding offering may not be transferred for a period of one year, upon which time the securities will become freely tradeable. Limited exceptions to the transfer restriction include transfers back to the issuer, in a registered offering, to accredited investors, or to certain family members.

While the goal of Regulation Crowdfunding is to make capital raising more affordable and less burdensome for small businesses and startups, no issuer should begin an offering process under Regulation Crowdfunding without recognizing the current and future disclosure obligations imposed on the issuer. The issuer must file publically required information in the offering documents and its subsequent annual reports, including:

- information about the issuer’s officers, directors and beneficial owners of 20 percent or more of the issuer’s voting securities;
- a business description and anticipated business plan;
- the stated purpose and intended use of proceeds;
- the targeted offering size;

November 9, 2015

- the offering price of the securities and method for determining the price;
- a description of the ownership and capital structure of the company; and
- the issuer's financial statements.

Financial statement requirements in connection with a Regulation Crowdfunding offering are tied to offering size:

- \$100,000 or less, the issuer must provide, in each case certified by the principal executive officer, (i) the amount of total income, taxable income and total tax, or the equivalent line items, as reported on the federal income tax returns filed by the issuer for the most recently completed year (if any), and (ii) financial statements of the issuer; reviewed or audited financial statements must be provided if available;
- more than \$100,000 and not more than \$500,000, the issuer must provide financial statements that have been reviewed by an independent public accountant; audited financials must be provided if available;
- more than \$500,000, the issuer must provide audited financial statements prepared by an independent public accountant except for first-time issuers that only need to provide reviewed financials, unless audited financials are available.

Certain issuers that are not eligible to use Regulation Crowdfunding include non-U.S. companies, companies that are subject to the Securities Exchange Act reporting requirements, certain investment companies or companies excluded from the definition of "investment company" under Sections 3(b) or (c) of the Investment Company Act, companies that have been disqualified under the rules of Regulation Crowdfunding, companies that failed to comply with the annual reporting requirements of Regulation Crowdfunding in the prior two years, and companies with either no specific business plan or purpose, or a business plan is to engage in a merger or acquisition with an unidentified company or companies.

Regulation Crowdfunding offerings must be made on an online platform through an intermediary broker-dealer or portal that is registered with the SEC. The issuer may only use one intermediary to conduct an offering in order to help foster the creation of a "crowd" and establish a meeting place for the crowd to obtain and share information. The role of the intermediary is to provide educational materials on the process of and the risks associated with a Regulation Crowdfunding offering, take measures to reduce risk of fraud, make information about the issuer and the offering public, provide communications to facilitate and permit "crowd" discussion, and facilitate the sale of the securities. Intermediaries may not solicit purchases, offer advice, compensate a promotor, or handle investor funds or securities.

This document is intended to provide you with general information regarding Regulation Crowdfunding. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

November 9, 2015

Jeffrey M. Knetsch

Shareholder

jknetsch@bhfs.com

303.223.1160

Ryan L. Nichols

Associate

rnichols@bhfs.com

303.223.1112

Rikard D. Lundberg

Shareholder

rlundberg@bhfs.com

303.223.1232