

# SEC proposes rules for crowd funding registration exemption

04 DECEMBER 2013

**CATEGORY:**  
ARTICLE

The U.S. Securities and Exchange Commission (SEC) has released long-awaited proposed rules under the crowd funding provisions of the Jumpstart Our Business Startups Act of 2012 (JOBS Act). The JOBS Act crowd funding provisions provide an exemption from registration for securities offerings under certain conditions. The recent proposed rules are not final, and the SEC is accepting comments on the proposed rules until 3 February 2014.

Issuers that are organized outside of the U.S. or that are already subject to periodic SEC reporting requirements may not rely on the crowd funding registration exemption.

The JOBS Act's crowd funding provisions are intended to give smaller issuers easier access to capital by lowering regulatory barriers to investment. However critics have noted that the SEC's proposed rules contain significant restrictions that, if adopted, would impose substantial compliance obligations on issuers and the online portals that act as intermediaries for crowd funding offerings.

The proposed rules permit companies to engage in crowd funding to offer and sell up to \$1 million of securities in any 12-month period, as long as each investor adheres to pre-determined maximum investment amounts and any such offering is conducted through an SEC-registered online portal. An investor with a net worth and annual income of less than \$100,000 may invest no more than \$2,000 or 5 percent of his or her net worth or annual income, whichever is greater. An investor with a net worth or annual income of \$100,000 or more may invest up to 10% of his or her net worth or annual income, up to a maximum of \$100,000.

The SEC's proposed disclosure and filing rules are onerous, particularly for smaller companies that otherwise stand to benefit most from crowd funding opportunities. If the SEC adopts the proposed rules in their current form, an issuer that conducts a crowd funding offering will be subject to, inter alia, financial reporting requirements, restrictions on how it promotes the offering and annual reporting requirements. Likewise, an online crowd funding portal will be required to register with the SEC using a form that contains disclosures similar to those made by a registered broker-dealer. Each crowd funding portal will also be required to play a role in guarding against fraud in connection with the transactions conducted on its website.


Business owners who think they may benefit from the ability to raise money through crowd funding should contact Withers' U.S. commercial team for further guidance.

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