



CORPORATE

ALERT

EQUITY CROWDFUNDING — JUST A MYTH OR A SOMEDAY REALITY?

By Michael S. Harrington

New Year's Eve came and went the same as it does every year. Some partied. Some slept. For all it was the end of one year and the beginning of another. But for those of us who are paying a lot of attention to the world of equity Crowdfunding, December 31, 2012, represented an important date.

The JOBS Act was enacted by Congress and signed into law by the President on April 5, 2012. The legislation requires the SEC to issue final regulations regarding the Crowdfunding portion of the JOBS Act within 270 days of the law's enactment. That date was December 31, 2012. The legislation further provides that equity Crowdfunding is illegal until final regulations are issued by the SEC. The SEC missed this deadline and isn't even close to issuing final regulations to allow Crowdfunding to become legal.

To be fair, Congress gave the SEC a monumental task with limited time to complete it. The Crowdfunding legislation as it was enacted back in April of 2012 is a complicated statutory scheme that imposes significant disclosure and compliance requirements on issuers and funding portals who participate in Crowdfunding offerings. The legislation lacked much-needed specific direction to the SEC in terms of implementing the Crowdfunding provisions of the Act.

To those of us who are paying a lot of attention to Crowdfunding and the SEC process, the fact that the SEC

missed its recent deadline does not come as a significant surprise and, in fact, is not unprecedented. The Dodd-Frank Act, which became law on July 21, 2010, was initially scheduled to be enforced no later than April 15, 2011. Now, more than a year and a half after that deadline, the SEC is still working on final rulemaking for that Act. I, and many other commentators on this subject, have routinely pointed to this fact over the past several months as we have been telling our clients and others not to expect final rulemaking from the SEC on the Crowdfunding legislation before the December 31st deadline.

Crowdfunding remains illegal until final rulemaking is issued by the SEC. It is anyone's guess when this will finally occur. Many are saying this will not happen until the beginning of 2014. It would be unfortunate if yet another New Year's Eve passes without equity Crowdfunding becoming a reality and an intended source of much needed early stage capital for companies. In the meantime, we can only sit and watch as European equity Crowdfunding deals are being completed. European funding portals are already very successful in France, Germany and other countries. These dollars could be coming into American funding portals and flowing into American companies.

Without question the most difficult capital for any early stage company to raise is its first capital. This

capital needs to be raised at a time when it generally cannot attract capital from organized capital sources such as venture capital and private equity firms. Instead, these companies must turn to individuals, angel groups, government and pseudo-government programs and the like, none of which are easy sources of capital for early stage opportunities. While equity Crowdfunding as it is contemplated in the JOBS Act is not the absolute solution

to this funding issue, it is a welcomed additional tool for early stage companies seeking capital. The SEC needs to take account of this and act in 2013.

If you have questions about this Alert, please contact Michael S. Harrington, chair of Fox Rothschild's Corporate Department, at 610.458.4957 or mharrington@foxrothschild.com.



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