



CORPORATE

ALERT

CROWDFUNDING — THE NEW LANDSCAPE OF RAISING CAPITAL IN THE SOCIAL NETWORKING WORLD IN WHICH WE LIVE

By Michael S. Harrington

*Crowdfunding—the collective cooperation, attention and trust by people who network and pool their money and other resources together, usually via the Internet, to support efforts initiated by other people or organizations. Crowdfunding occurs for a variety of purposes from disaster relief to citizen journalism to artists seeking support from fans, to political campaigns, to **funding a startup company**, movie or small business or creating free software.*

From Wikipedia, the free encyclopedia

Breaking news — crowdfunding is going to become law.

The only question this week was whether the House or Senate version of the bill would make its way into President Obama's hands. As of this Tuesday afternoon (March 27), an overwhelming majority of the House voted to accept the Senate amendment, setting the stage for adoption of the bill by President Obama.

A quick recent history lesson may be helpful to those who are not current on crowdfunding. On March 8, 2012, the House passed the JOBS bill (H.R. 3606), which includes a so-called “crowdfunding” proposal allowing small businesses to raise small amounts of money from large groups of small investors. Backed by the President and many high-profile entrepreneurs and interest groups, the bill is viewed by many as the marriage of the Internet and the world of financing for start-ups and emerging businesses — and a long-awaited advance in the world of raising capital for these companies.

In crowdfunding, companies can raise capital from individual investors either by offering stock for sale through their own websites or through third-party

intermediaries. In the philanthropic realm, companies such as Kickstarter and RocketHub already serve as crowdfunding intermediaries. Businesses use these platforms to raise donations that finance expansions or new products. In Europe, there are already a number of intermediaries that help small companies raise equity capital online.

Under the House bill, companies can raise up to \$1 million a year through crowdfunding, or \$2 million if the company provides prospective investors with audited financial statements. Each investor would be limited to \$10,000 or 10 percent of its annual income, whichever is less.

The Senate bill (S. 2190) takes a different approach in determining the permitted investment amount. The Senate bill is more restrictive for investors with incomes or net worth under \$100,000 — they can invest only 5 percent of their annual income or \$2,000, whichever is greater. The bill is less restrictive for wealthier investors — they can invest 10 percent of either net worth or income, up to \$100,000.

Securities law experts and others who worry about

the potential for defrauding investors favor the Senate bill because it further differs from the House bill on the issue of disclosures. The Senate bill requires meaningful disclosure to investors and gives the Securities and Exchange Commission much wider latitude to regulate and oversee crowdfunding platforms and issuers. Even if the House version prevailed, stock issuers would not simply be able to defraud investors. Key fundamental concepts of the current securities laws will remain, including the restriction against affirmatively misstating or misrepresenting information about the issuer or omitting material information.

The full JOBS Act passed the Senate on March 22, 2012, and was sent back to the House. As reported

above, the House accepted the Senate version of the JOBS Act and it passed the House on March 27. President Obama stated in early March that he would pass the JOBS Act as soon as he received it from Congress.

This is exciting news for companies raising capital and will change the landscape in dramatic ways. We will continue to monitor this important development and provide periodic updates as progress occurs.

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



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