



Crowdfunding and the JOBS Act

Crowdfunding is the pooling of financial resources by a network of investors to support the initiatives of other people or organizations.¹ These initiatives can be aimed at any number of ends, including disaster relief, artistic endeavors, and business enterprise. In contrast to more traditional fundraising mechanisms, crowdfunding offers a streamlined approach to raising capital.² This fluidity is further enhanced in the context of the Internet, where investors can lend practically instant support to any number of worthy initiatives.

The passage of the JOBS Act (Jumpstart Our Business Startups) this past April significantly altered the dynamic of crowdfunding platforms.³ In particular, title III of the Act, “Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012,” or the “Crowdfund Act”⁴ allows smalls companies to raise up to \$1 million in any twelve month period without having to register the offering under the Securities Act registration requirements.⁵ Additionally, the Act explicitly allows for crowdfunding on the Internet via “funding portals,” which are defined as a “person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to [the crowdfunding exemption].”⁶ The ability of these intermediaries to connect investors with companies who need their capital is crucial to crowdfunding’s success.⁷ However, the new regulations, which have not yet been finalized by the SEC, may limit the ways in which “funding portals” can operate, and some fear may inhibit their success.⁸ The foregoing is just one of the various criticisms being directed at the Act’s crowdfunding provision, although many remain optimistic.⁹ Other concerns about the Act’s loosening of securities law relate to fraud risk and a funding portal’s ability to protect investors. Nevertheless, the consequences of the Act and its resultant crowdfunding liberalization remain to be seen.

¹ See <http://voices.mckinseysociety.com/the-crowdfunding-landscape/> (discussing the crowdfunding sector generally).

² <http://crowdfunding.pbworks.com/w/page/10402176/Crowdfunding>

³ <http://www.forbes.com/sites/tanyaprive/2012/11/06/inside-the-jobs-act-equity-crowdfunding-2/>

⁴ <http://www.lexisnexis.com/community/corpsec/blogs/vent-cap-blog/archive/2012/05/02/crowdfunding-under-the-jobs-act-the-bottom-line-impact-on-private-equity-issuers-and-market-intermediaries.aspx>

⁵ <http://ipjournal.law.wfu.edu/2012/04/crowdfunding-in-jobs-act-poses-risks-for-entrepreneurs/>

⁶ <http://www.govtrack.us/congress/bills/112/hr3606/text> (Text of the Act).

⁷ <http://thenetwork.berkeleylawblogs.org/2012/11/07/funding-portals-caught-in-transition/>

⁸ See *Id.* (“The success or failure of the crowdfunding model will depend heavily on funding portals being able to connect investors with companies who could use their capital. Those connections will be made far stronger if funding portals attain clear guidance on what is and is not ‘investment advice or recommendations.’”).

⁹ See <http://www.forbes.com/sites/devinthorpe/2012/10/15/get-ready-here-it-comes-crowdfunding-will-explode-in-2013/> (discussing the promise of crowdfunding under the JOBS Act).