



Newsletter October 2015

The U.S. allows ordinary investors to invest in startups through crowdfunding platforms.

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MobileSolve is a boutique investment bank providing M&A, capital raising and financial advisory services to companies in the Telecom, Wireless, Internet, Networking and Semiconductor industries.*

Each month we present a short article on an industry or transaction topic of current interest, and notable transactions in our industries completed during the prior month.

This month's newsletter is about the SEC's new rules allowing crowdfunding for capital raises and unaccredited retail investor participation, in private company offerings, which opens up a new source of financing for startups. We welcome your questions or comments.

To comment or subscribe, email steve.gaynor@mobilesolve.com

EQUITY CROWDFUNDING

A Potential Revolution in Financing Startups

By: Steve Gaynor, Neeraj Baghel and Mansi Srivastava

We delayed publication of October's newsletter to cover this new development in funding startups in the U.S. For the first time in the 82-year history of regulation of the securities markets, "retail investors" (i.e., ordinary individuals deemed "unaccredited") will be able to directly purchase shares in private businesses. This new source of financing has the potential to substantially enlarge the pool of money available to startups.

Until now, unaccredited retail investors were barred from directly investing in private companies. To invest in a private business, an investor had to be a qualified institutional buyer, an "accredited investor" (\$1 Million net worth or \$200,000 in annual income), participate in an intrastate offering (if state law allows), or be one of 35 unaccredited investors in an offering to accredited investors.

Otherwise, a retail investor had to wait until the private company went public through the registration process. Of course, by that time early stage professional investors were exiting the investment. In today's world where private companies such as Uber wait until they receive multi-billion dollar valuations before going public, the retail investor has essentially been locked out of the current technology boom and other potentially desirable private companies.

This has changed with the adoption by the Securities and Exchange Commission (the "SEC") of Regulation CF, which gives effect to the long-awaited Title III of the JOBS Act. The "Jumpstart Our Business Act" became law on April 5, 2012, and was meant to loosen decades-old rules around raising capital. The SEC has since promulgated many new rules governing offerings that have made it easier to go public in the U.S., and to raise private capital.

But approving crowdfunding with the participation of unaccredited investors was the most difficult for them because it meant opening up offerings to investors the SEC has long deemed "unsophisticated" and in need of protection through the securities registration process. This is why it has taken more than three years for the rules to be developed and to become effective, and why they are deemed a radical departure from past practice.

Of course, it remains to be seen how this new development will evolve with time. But every U.S.-based startup should consider a crowdfunding offering as an option to raise early stage capital.

The following covers the basic rules for an equity crowdfunding offering. It does not purport to be complete. Contact us if you would like more information.

Eligibility Requirements

A company must be organized in the U.S., privately-owned, and have an ongoing commercial business. Blank-check and passive investment companies are explicitly excluded.

Limit on Capital Raised

An issuer may sell up to \$1 million of securities in any twelve-month period to investors. The offering may be conducted with another offering not requiring registration (such as under Regulation A+; see our May, 2015 newsletter), but the amounts will be aggregated for purposes of meeting regulatory limits. The rules do not limit the types of securities that may be offered, and may include preferred stock and debt.

Offering Through an Intermediary

The offering must be through a registered broker-dealer or a specially-designated funding portal. Only one intermediary may be used at a time for particular or concurrent offerings. The selected intermediary's online platform must be exclusively used so potential investors have access to information, and there is a forum for an exchange of information among potential investors

Communications with potential investors must also occur through the intermediary's online platform. Offline advertising is limited to information that would be contained on a tombstone.

Disclosure Requirements

Company disclosures are set out on "Form C," which the intermediary would post on its website for potential investors, and which would be filed with the SEC. The Form C requirements resemble those of a prospectus; or more specifically, those mandated in current Regulation A offerings

They include a description of the business; backgrounds of officers, directors and shareholders owning 20% or more of the stock; use of proceeds; related party transactions, capital structure and financial results. In addition to factual information, management must provide its "Discussion and Analysis" of the company's

performance, and material trends affecting the business.

In addition to the initial disclosure about the offering, amendments to report material changes in the offering or the company, periodic updates on the offering (such as when half the securities have been sold), and, after the offering, ongoing annual filings, are also required.

Financial Statement Requirements

Much consideration was given to the financial data that must be provided. The SEC was mindful not to burden young companies with expensive reporting requirements, but nevertheless had to require useful, accurate and objective financial data to aid the investment decision.

The type of financial reports that must be provided depends on the amount to be raised as described below. Financial statements must be prepared in accordance with U.S. GAAP.

- Up to \$100,000: Statements prepared by an outside professional are not required, allowing management to use its own financial statements. They must be certified by the CEO. If reviewed or audited financial statements are available, however, they must be provided instead.
- \$100,000 to \$500,000: financial statements must be prepared by a public accountant, but may be reviewed rather than audited. If audited financial statements are available, they must be provided instead.
- \$500,000 to \$1 Million: audited financial statements are required except for first-time issuers, who may use financial statements reviewed by a public accountant. If audited statements are available, they must be provided instead.

Issues Related to Potential Investors

There are limitations as to how much of their income and net wealth retail investors may invest in crowdfunded offerings. The intermediary is responsible for calculating an investor's limit, but it is important to know them.

An investor will be limited to investing over a 12-month period in crowdfunded offerings:

- If both annual income and net worth are more than \$100,000, then 10% of the lesser amount, not to exceed \$100,000, and
- If either annual income or net worth is less than \$100,000, then the greater of \$2,000 or 5% of the lesser amount of income or net worth.

With some exceptions, an investor may not transfer her shares for one year. The exceptions are transfers to the issuer; an accredited investor; a family member; an estate; and third parties in a registered offering.

With the release, finally, of the much anticipated crowdfunding rules, a grand experiment begins. It remains to be seen how useful equity crowdfunding as currently designed will prove for raising small amounts of capital. Despite the SEC's efforts to simplify reporting, startups may nevertheless find the procedural and informational requirements too significant so as to make the scheme impracticable.

Nevertheless, the new rules allowing online platforms to sell stock and unaccredited investors to participate are exciting new developments that depart from past norms. The Rubicon has been crossed and while the new rules may evolve with practice, they are unlikely to be reversed. Crowdfunding for capital raises and unaccredited retail investor participation in private company offerings are likely here to stay.

Sources: SEC Website; SEC Press Release 2015-249; MobileSolve Analysis

Note: This newsletter is for informational purposes only, and not for the purpose of providing legal, financial or other advice

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Comments and Questions on the above articles are welcome.
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Transactions

The following are notable M&A transactions and capital financings announced or completed in the last month.

Notable M&A Transactions

Target	Target Industry	Acquirer	Transaction Value (in \$ millions)	Transaction Highlights
BetaGlide	Mobile app churn prediction platform	Inshorts	-	BetaGlide is the world's 1st uninstall intelligence platform for mobile apps.
Boxer	Mobile Messaging	VMWare	-	Boxer Inc., develops a mobile e-mail application to access various e-mail accounts

Jibe Mobile	Mobile Messaging	Google	-	Jibe is a leading provider of RCS services, helping carriers to easily deploy RCS to their users
Longtail Studio	Mobile gaming	Ubisoft	-	Longtail Studios is a company which has develops gaming applications
Perceptio	Mobile Technology Developer	Apple	-	Perceptio is a startup developing technology to let companies run advanced artificial intelligence systems on smartphones
Phigital	Mobile, Location Based Services	Gimbal	-	Phigital specializes in Contextual Computing, Content Discovery, Mobile, LBS, Consumer Engagement
Pikato	Mobile Marketing Automation	RetailNext	-	Pikato specializes in Mobile Marketing, Mobile coupons, Mobile Marketing Automation, Mobile Personalization, Mobile Recommendation Engine, LBS
RoboVM	Software Development	Xamarin	-	RoboVM specializes in java on ios, cross-platform mobile development, java on mobile
Zwitch	Mobile Payment Platform	Citrus Pay	-	Zwitch is a full-stack payment platform that enable developers to accept online & mobile payments.

Notable Capital Financings

Company Name	Industry	Amount Raised (in \$ millions)	Total Amount Raised (in \$ millions)	Business Description
CardFlight	Mobile Payments	\$4.2	\$6.55	CardFlight enables app developers to easily incorporate card-present payment acceptance into mobile apps.
Citrus Pay	Mobile Payments	\$25	\$32.3	Citrus Pay provides web & mobile payment solutions for merchants
Flex Logix	Semiconductors	\$7.4	-	Flex Logix Technologies specializes in designing flexible semiconductor chips.
Koukoi Games	Mobile Gaming	\$1	-	Koukoi Games develops mobile games with high production value and broad experiences
Mobilengine	Mobile Software Tool	\$5	\$9.5	Mobilengine is the world's best mobile field workflow solution and mobile form technology software as a service.
Mubble	Mobile Marketing & Advertizing	-	-	Mubble specializes in Consumer Segmentation, Mobile Marketing & Advertising, Segmentation Analytics, Telco Utility, Telco Analytics, Smartphone Apps, Big Data, Consumer Analytics, Android
TinyOwl Technology	Mobile food ordering app	\$7.67	\$27.67	TinyOwl Technology Pvt Ltd is producing a mobile food ordering app.
Triad Semiconductor	Semiconductors	\$10	-	Triad Semiconductor develops configurable analog & digital technology & prototypes for mixed-signal ASIC market

STAY CONNECTED

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