



# New Crowdfunding Laws Go into Effect May 2016

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Pursuant to the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), the Securities and Exchange Commission (the “SEC”) recently finalized a new equity crowdfunding exemption, which will go into effect in May of 2016, and can be found at Section 4(a)(6) of the Securities Act of 1933. The rules enacted by the SEC focus on “equity fundraising,” and relax typical requirements related to solicitation and the accreditation of investors. While crowdfunding will ultimately provide a meeting point for those companies that typically struggle to find investment with those investors who are typically disqualified from investing due to their lack of accreditation, it is important to point out that such investing comes with a laundry list of requirements including, but not limited to the following:

## Capital Limits

Companies may only use crowdfunding as a source of capital for a maximum aggregate amount of \$1 million in any 12-month period. Capital raises relying on other securities exemptions, however, shall not be counted toward the \$1 million cap.

## Investors

An individual investor is limited to the following level of investment in any given 12-month period:

1. The greater of \$2,000 or five percent (5%) of the investor’s annual income or net worth, provided that the investor’s net worth is less than \$100,000; or
2. Ten percent (10%) of the investor’s annual income or net worth, provided that the investor’s annual income or net worth exceeds \$100,000, and that such investment shall not exceed \$100,000 in a 12-month period.

## Increased Disclosure

Companies engaging in crowdfunding will be required to make specific financial disclosures to prospective investors and the SEC via a third-party broker or funding portal at the time of the offering. Those disclosures include, but are not limited to:

- The identity of all directors, officers, and persons holding more than twenty percent (20%) of the shares of the company;
- A discussion of the company’s financial condition;

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- Financial statements of the company that, depending on the amount offered and sold during a 12-month period, are accompanied by information from the company's tax returns, reviewed by an independent public accountant, or audited by an independent auditor. A company offering more than \$500,000 but not more than \$1 million of securities relying on these rules for the first time would be permitted to provide reviewed rather than audited financial statements, unless financial statements of the company are available that have been audited by an independent auditor;
- The target offering amount, the deadline to reach the target offering amount, and regular updates on the company's progress in meeting those targets;
- A narrative related to the potential use of the investment funds; and
- Information concerning related-party transactions.

### **Intermediaries and Portals**

Crowdfunding offerings will need to be conducted through a broker or funding portal. The funding portal must register with the Commission on new Form Funding Portal, and must be FINRA registered. A company is required to conduct its offering through only one intermediary at a time.

### **Limitations**

Those excluded from the use of the new exemption are: Non-U.S. companies, Exchange Act reporting companies, certain investment companies, companies that have failed to comply with the annual reporting requirements under the new law during the two (2) years immediately preceding the filing of the offering statement, and companies that have no specific business plan or have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies.

### **Reporting**

The new rules also require the filing of annual reports with the SEC and to the company's investors. The annual report will need to disclose information about the company's financial condition similar to the information required in the original offering statement. Annual reports will be due within 120 days after the end of the company's most recent fiscal year and will also need to be posted on the company's website.

### **Contact Us**

Do not worry. We are here to help you jump through the hoops and bring capital into your small business. Please contact us for further assistance at [startupteam@devinemillimet.com](mailto:startupteam@devinemillimet.com).

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