On October 23, 2013, the Securities and Exchange Commission ("SEC") formally proposed a comprehensive set of regulations entitled “Regulation Crowdfunding” to implement the crowdfunding offering provisions contained in Title III of the Jumpstart Our Business Startups Act of 2012 ("JOBS Act"), which many have viewed as the centerpiece of the legislative reform that is intended to facilitate capital formation in the United States and democratize an area of investment from which ordinary U.S. investors have been excluded.\(^1\) The comment period expires on February 4, 2014.

The SEC has described crowdfunding as "a new and evolving method to raise money using the Internet" where “[i]ndividuals interested in the crowdfunding campaign — members of the ‘crowd’ — may share information about the project, cause, idea or business with each other and use the information to decide whether or not to fund the campaign based on the collective ‘wisdom of the crowd.’” Crowdfunding offerings are in substance “public offerings” directed to the general investing public and absent the implementing regulations, would be required to be registered with the SEC under Section 5 of the Securities Act of 1933, as amended, (the “Securities Act”), and registered or qualified with the securities regulator of each state in which the offering is conducted. Simply stated, Title III created an SEC registration exemption (and
preempted state securities offering laws) which, when implemented will enable issuers and their intermediaries to engage in crowdfunding offerings to the general investing public.

Title III of the JOBS Act laid the foundation for the SEC to develop, implement and administer a regulatory structure that will allow startup, small business, and other ventures to raise capital from the general investing public through regulated securities offerings conducted over the Internet using crowdfunding methods. Such offerings must be conducted through publicly accessible Internet websites, which as many market observers expect, will enable innovators to use developing social media strategies to attract, educate and inform potential investors as permitted by the proposed regulation. On the investor protection front, all regulated crowdfunding offerings must be conducted through statutorily designated gatekeepers, i.e. broker-dealers and funding portals that are registered with the SEC and are members of the Financial Industry Regulatory Authority (“FINRA”) (which are referred to as “intermediaries” in the proposed regulation). Broker-dealers historically have been subject to registration with the SEC under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), but funding portals are a new type of intermediary created by Congress which also must register with SEC under new provisions of the Exchange Act added by Title III. These broker-dealer and funding portal gatekeepers are required to make available to investors prescribed disclosures and to employ other procedural protections prior to and at the point of sale.

Proposed Regulation Crowdfunding sets forth an extensive set of rules that govern the registration and regulation of funding portals, and, in a related action, on October 23, 2013, FINRA issued a regulatory notice soliciting public comment on a set of rules pursuant to which SEC registered funding portals may become members of FINRA pursuant the requirements of Title III. The comment period for the FINRA rulemaking expires on February 14, 2014.

Proposed Crowdfunding Regulation complements the SEC’s recently adopted regulations that eliminate, under certain conditions, the prohibition against general solicitation and advertising in connection with securities offerings made pursuant to Rule 506(c) of Regulation D and Rule 144A under the Securities Act. As discussed below, the SEC contemplates that issuers may engage in Rule 506(c) exempt offerings involving general solicitation and advertising to accredited investors while simultaneously engaging in public crowdfunding exempt offerings to ordinary investors. In the case of such side-by-side crowdfunding and Rule 506(c) offerings, crowdfunding investors can benefit from the “wisdom” of the more sophisticated accredited investors eligible to participate in Rule 506(c) offerings.

**Title III of the JOBS Act**

Title III of the JOBS Act added new Section 4(a)(6) to the Securities Act. Section 4(a)(6) provides an exemption from the public offering registration requirements of Section 5 of the Securities Act for crowdfunding offerings, provided that they satisfy the conditions set forth in the statute. Absent such an exemption, crowdfunding offerings would require registration under Section 5 and would trigger ongoing public company reporting with the SEC following the offering, a costly compliance burden that is not feasible for the small amount of capital raised in crowdfunding offerings. Section 4(a)(6) provides a registration exemption for the offer and sale of up to $1,000,000 aggregate amount of securities during the preceding 12 month period.
Eligible Issuers

As provided in the statute, the crowdfunding offering exemption is not available to foreign issuers, SEC reporting issuers, and certain investment companies. The proposed regulation excludes from eligibility any issuer that:

- is not organized under the laws of a state or territory of the United States or the District of Columbia;
- is subject to reporting requirements pursuant to Section 13 or 15(d) of the Exchange Act;
- is an investment company, as defined in Section 3 of the Investment Company Act of 1940 (the “Investment Company Act”); or
- is excluded from the definition of investment company by Section 3(b) or Section 3(c) of the Investment Company Act.

As a result, publicly traded companies (with the exception of those that have gone dark and ceased SEC reporting) may not engage in crowdfunding exempt offerings. Similarly, private funds excluded from regulation as an investment company under Section 3(c)(1) or 3(c)(7) of the Investment Company Act (whether formed as a pool investment vehicle or as a conduit formed for investment in a particular issuer) may not rely on the crowdfunding offering exemption.

The proposed regulation also excludes from eligibility any issuer that:

- has been disqualified as a “bad actor” under Rule 503(a) of Regulation Crowdfunding;
- has sold securities in crowdfunding exempt offerings and failed to file and provide to investors the annual reports required by Regulation Crowdfunding during the two years preceding the filing of the required offering statement; and
- is a “blank check/blind pool” type company without a business plan or with a business plan to engage in a merger or acquisition with an unidentified company or companies.

Statutorily Designated Gatekeepers

Title III of the JOBS Act places significant responsibility on broker-dealer and funding portal intermediaries which are the statutorily designated gatekeepers through which crowdfunding offerings must be conducted. Consistent with the statutory mandate, proposed Rule 101(a)(3) of Regulation Crowdfunding provides that crowdfunding offerings must be conducted through a regulated intermediary exclusively through the intermediary’s “platform” (i.e. an Internet website or similar electronic medium) and otherwise precludes issuers from engaging more than one intermediary to conduct a crowdfunding exempt offering. The proposed regulation does not allow investors to effect investments directly with the issuer. Instead, investment commitments must be accepted on the issuer’s behalf by the broker-dealer or funding portal intermediary engaged by the issuer for the offering. Given this regulatory architecture, investors’ crowdfunding offered investments, in all cases, will be processed through the facilities of a platform overseen by an SEC registered and FINRA regulated intermediary.
**Required Communication Channels**

To give substance to the “wisdom of the crowd,” proposed Regulation Crowdfunding requires regulated intermediaries to maintain on its platform “communication channels” through which investors can communicate with each other and with the issuers’ representatives about the offerings available on the platform. The SEC anticipates that the communication channels will provide a forum for sharing information that will “help members of the crowd decide whether or not to fund the issuer.” Issuers are permitted to participate in these communications and respond to questions or even challenge or refute statements made by others. Funding portals (but not broker-dealers) are precluded from participating in such communications other than to establish communication guidelines and remove abusive or potentially fraudulent communications. The communication channel must provide for public access to the discussions made in the communication channels; however, the posting of commentary must be restricted to investors who have opened accounts with the intermediary. The intermediary must also require any person who posts a comment to clearly and prominently disclose "with each posting" whether he or she is a founder or employee of the issuer engaging in activities to promote the offering or is a promoter compensated to promote the offering.

**Account Opening and Electronic Delivery of Materials**

Pursuant to the proposed regulation, the intermediary engaged by an issuer must comply with detailed requirements as to how and when investors’ investment commitments in crowdfunding offerings can be accepted by the intermediary. No intermediary can accept an investment commitment until the investor has opened an account with the intermediary and the intermediary has obtained the investor’s consent to electronic delivery of materials. The proposed regulation maximizes the use of electronic communications technology and requires that all investor required information, including education materials, notices, and confirmations, be provided electronically through an electronic message that contains the information, a specific link to the information, or a notice providing direction as to the location of the information on the intermediary’s platform or the issuer’s website.

**Education Materials**

A key requirement of Title III of the JOBS Act centers on investor education as policy makers were concerned about the risks associated with investments in early stage and small business ventures. To address this concern, proposed Regulation Crowdfunding requires an intermediary to provide to investors and confirm investors understand prescribed education materials. Specifically, when an investor opens an account, the intermediary must provide the investor with educational materials that in plain language effectively and accurately explain:

- The process for the offer, purchase and issuance of the securities, and the risk associated with investments in crowdfunding offerings;
- The types of securities offered and sold in crowdfunding offerings available for purchase on the intermediary’s platform and the risks associated with each type of security, including limited voting power as a result of dilution;
- Resale restrictions applicable to securities sold in crowdfunding offerings;
- The types of ongoing information issuers are required to provide and frequency of the delivery of the information and the possibility that the reporting obligation may terminate in the future;
The investment limitations applicable to crowdfunding offerings;

The limitations on the investor’s right to cancel an investment commitment and the circumstances under which an investment commitment may be cancelled by the issuer;

The need for the investor to consider whether investing in crowdfunding offered securities is appropriate for the investor; and

That following the completion of the offering through the intermediary there may or may not be any ongoing relationship between the intermediary and the issuer.

The intermediary must at all times make available on its platform the current version of its educational materials, and any revised materials must be provided to investors prior to accepting any additional investment commitments or effecting any further transactions in crowdfunding offered securities. The intermediary is also required at the account opening stage to inform promoters, founders and employees of their disclosure obligations (discussed above) when they engage in communications through the communication channels maintained on the intermediary’s portal. In addition, the broker-dealer or funding portal intermediary must disclose how it is compensated in connection with crowdfunding offerings.

The intermediary must deny access to its platform if it has a reasonable basis to believe that the issuer or any of its officers, directors, and 20% beneficial owners is subject to “bad boy” disqualification under Rule 503 of Regulation Crowdfunding. The intermediary must, at a minimum, conduct a background and securities enforcement regulatory history check on the issuer and its officers, directors, and 20% beneficial owners in order to satisfy the requirement. Similarly, access to the intermediary’s platform must be denied if the intermediary believes that “the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection.” The SEC did not impose a standard that requires a reasonable basis for the issuer’s belief, but the proposed regulation does require that the intermediary promptly remove the offering from its platform if it becomes aware of information that gives rise to such belief.

Point of Sale Information Requirements

Before accepting an investment commitment made through its portal, the intermediary that has listed the issuer’s offering on its platform must comply with prescribed disclosure and investor education obligations. The intermediary is required to make the issuer’s “Form C: Offering Statement” (discussed below) publicly available on its platform. The Form C: Offering Statement must be accessible in a manner that allows an investor to save, download, or otherwise store the information. The Form C: Offering Statement must be publicly accessible for a minimum of 21 days before any securities are sold in the offering (i.e., before the intermediary accepts investment commitments on behalf of the issuer) and must remain accessible until the offering is completed or cancelled. An intermediary may not require any person to open an account in order to access the issuer’s offering statement. However, as noted above, any person (whether or not they ultimately have an interest in pursuing an investment) must open an account in order to provide commentary and engage in dialogue in the intermediary’s hosted communication channel. Thus, only those persons who identify themselves in new account documentation will be able to influence the collective development of the “wisdom of the crowd.”

Before accepting an investment commitment, an intermediary must also obtain from the investor a representation that he or she has reviewed the intermediary’s educational materials, understands that
the entire amount of his or her investment may be lost, and is in a financial condition to bear the loss of the investment. The intermediary must obtain from the investor a completed questionnaire that demonstrates the investor’s understanding:

- that there are restrictions on the ability to cancel an investment commitment and obtain a return of his or her investment;
- that it may be difficult for the investor to resell the securities; and
- that the investor should not invest any funds in a crowdfunding exempt offering unless he or she can afford to lose the entire amount of his or her investment.

**Gatekeeper Due Diligence Obligations**

Proposed Regulation Crowdfunding imposes substantive due diligence obligations on the broker-dealer and funding portal intermediaries engaged by the issuers. The intermediary must have a reasonable basis to believe that the issuer’s offer and sale of the securities through the intermediary’s platform complies with the requirements of Section 4(a)(6) and Regulation Crowdfunding. The intermediary must also have a reasonable basis for believing that the issuer has established means to keep accurate records of the holders of the crowdfunding offered securities. The intermediary can rely on issuer representations unless it has reason to question the reliability of those representations.

**Confirmation of Investor Investment Limit**

The limit on the amount of crowdfunding investments that any individual investor can invest is central to the investor protection goals of Title III. Proposed Regulation Crowdfunding advances this goal by requiring the intermediary, prior to the acceptance of any investment commitment, to have a reasonable basis for believing that the investor’s investments do not exceed the prescribed investment limitations (discussed below). The SEC acknowledged the difficulty likely to be encountered in monitoring or independently verifying whether an investor remains within his or her investment limit and therefore the proposed regulation expressly provides that an intermediary may rely on an investor’s representations concerning compliance with the investment limitation requirements. The intermediary may rely, for example, on representations concerning the investor’s annual income and net worth and the amount of the investor’s other investments in securities sold in crowdfunding exempt offerings through other intermediaries unless the intermediary has reason to question the reliability of the representations.

**Investment Commitment and Confirmations**

The proposed regulation provides procedural protections that regulate how investment commitments are processed, investors’ investment funds are maintained and investment commitments are accepted and confirmed. Upon receipt of an investment commitment, the intermediary must acknowledge the commitment by promptly providing the investor with a notification that discloses (i) the dollar amount of the investment commitment, (ii) the price of the securities, if known, (iii) the name of the issuer, and (iv) the date and time by which the investor may cancel the investment commitment. A broker-dealer intermediary must comply with the requirements of Rule 15c2-4 under the Exchange Act, which requires that investors’ funds received by the broker-dealer be promptly deposited in a separate bank account, as agent or trustee for the investors, until the offering period has terminated and the cancellation period has lapsed, whereupon the funds would be promptly transmitted to the issuer or returned to investors depending on whether or not the target offering amount is reached. Alternatively, all such investors’ funds received by the broker-dealer must be promptly transmitted to
a bank, which has agreed in writing to hold such funds in escrow for the investors and issuer and to transmit or return such funds directly to the persons entitled thereto based on whether or not the target offering amount is reached. Since funding portal intermediaries are not subject to Rule 15c2-4, the proposed regulation imposes substantially similar regulation pursuant to which the funding portal must direct investors to transmit their funds directly to a bank that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled thereto. The funding portal must promptly direct the bank to (a) transmit the investors’ funds to the issuer when the aggregate amount of investment commitments from all investors reaches the target offering amount and the cancellation period has lapsed (provided that, the offering satisfies the minimum 21-day offering period requirement), (b) return funds to any investor who has cancelled his or her investment commitment and (c) return funds to all investors when the issuer does not complete the offering.

Consistent with Title III, proposed Regulation Crowdfunding provides investors with a cancellation right exercisable at any time until 48 hours prior to the scheduled deadline of the offering. Once the cancellation period has lapsed, an investor’s investment commitment may not be cancelled except in the case of a material change to the terms of the offering or the information provided by issuer. In cases where there has been any such material change, the intermediary is required to provide investors with a notice that discloses the material change and advises the investors that investment commitments will be cancelled unless reconfirmed within five business days following receipt of the notice. If any investor fails to reconfirm the investment during the five-day reconfirmation period, the intermediary must within five days thereafter (i) notify the investor of the cancellation of the investment commitment, the reason for the cancellation and the amount of the refund that the investor should expect to receive and (ii) direct the refund of the investor’s funds. If the target offering amount is reached prior to the offering deadline, the issuer may close an offering prior to the deadline provided that the offering has satisfied the 21-day minimum offering period requirement and the investors have been provided with five days advance notice of the new deadline and their right to cancel their investment commitments until 48 hours prior thereto. If the issuer fails to complete the offering, the intermediary must (a) provide each investor a notification of the cancellation, disclosing the reason for the cancellation, and the amount of the refund that the investor is expected to receive, (b) direct the refund of investors’ funds, and (c) prevent investors from making investment commitments with respect to that offering on its platform.

An intermediary must, at or before the completion of a crowdfunding exempt offering send to each investor a notification disclosing:

- The date of the transaction;
- The type of security that the investor is purchasing;
- The identity, price, and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold;
- If a debt security, the interest rate and the yield to maturity calculated from the price paid and the maturity date;
- If a callable security, the first date that the security can be called by the issuer; and
The source and amount of any remuneration received or to be received by the intermediary in connection with the transaction, including the amount and form of any remuneration that is received, or will be received, by the intermediary from persons other than the issuer.

An intermediary that complies with foregoing transaction notification requirement is exempt from the written confirmation provisions of Rule 10b-10 under the Exchange Act.

**Gatekeeper Compensation**

Proposed Regulation Crowdfunding does not regulate the methods by which issuers may compensate broker-dealer and funding portal intermediaries for the services they provide to the issuers. Issuers are free to compensate the intermediaries with transaction-based compensation such as commissions and success fees related to the amount of capital raised. However, the proposed regulation also has conflict of interest rules that preclude a broker-dealer or funding portal intermediary and its directors, officers or partners, or any person occupying a similar status or performing a similar function, from having any financial interest in an issuer that uses its platform for a crowdfunding exempt offering. The SEC has not only proposed to prohibit them from having such a financial interest, but the proposed regulation would also specifically prohibit them from receiving a financial interest in the issuer as compensation for the services provided to or for the benefit of the issuer in connection with the offering. This restriction would preclude the payment of an equity kicker such as a warrant exercisable for the issuer’s securities. This is one of the areas for which the SEC has requested comment. The SEC questioned whether it should permit an intermediary to receive a financial interest in an issuer as compensation for the intermediary’s services.

Funding portals may compensate broker-dealers with transaction-based compensation for services rendered in connection with crowdfunding exempt offerings. Funding portals may be similarly compensated by broker-dealers for providing such services to broker-dealers. However, the SEC made clear that funding portals are not permitted to receive transaction-based compensation for referrals of potential investors in other types of offerings being effected by a broker-dealer such as offerings conducted under 506(c) of Regulation D.

**Offering and Investment Limitations**

Proposed Rule 100(a)(1) of Regulation Crowdfunding conforms to the JOBS Act statutory provisions and limits the amount of capital that may be raised in any 12-month period to $1,000,000. Similarly, the proposed regulation limits how much an investor may invest based on the investor’s annual income or net worth and includes rules which govern how to calculate the total limit for all crowdfunding exempt investments made in the 12-month period preceding the investment in question. Investors must aggregate all crowdfunding investments made during the previous 12-month period each time they intend to make a crowdfunding offered investment. Under proposed Rule 100(a)(2), the aggregate amount of securities of any issuer sold to any investor shall not exceed:

- $2,000 or 5% of the investor’s annual income or net worth, whichever is greater, if both the investor’s annual income or net worth is less than $100,000; and
- 10% of the investor’s annual income or net worth, whichever is greater, not to exceed $100,000, if either the investor’s annual income or net worth is equal to or greater than $100,000.
In defining the investment limits, the SEC clarified certain ambiguities that exist in the JOBS Act statutory text. The proposed regulation provides that annual income and net worth are to be calculated in the manner provided in Rule 501 of Regulation D and the investor's annual income and net worth may be calculated jointly with that of the investor's spouse. Since the investment limit is calculated with reference to the securities of all issuers sold to the investor in reliance on Section 4(a)(6), each issuer must confirm the amount of other crowdfunding investments made by the investor in other crowdfunding exempt offerings. The proposed regulation provides that the issuer may rely on the efforts of the intermediary in satisfying this requirement.

There is no limit on the number of investors that can invest, and in fact, as discussed below, investors that become securityholders through crowdfunding exempt offerings are excluded when calculating the 2,000 “holders of record” threshold for registration under Section 12(g) of the Exchange Act.

**Form C: Offering Statement and Offering and Disclosure Regime**

The SEC's proposed Regulation Crowdfunding sets forth an extensive set of disclosure rules that prescribe the specific offering, management, business, and financial statement related information required to be included in a crowdfunding issuer's offering materials. See Appendix A attached hereto for an outline of the disclosures to be included in the issuer's offering materials.

The SEC's proposal to implement the financial statement requirements is consistent with Title III. As detailed in Appendix A hereto, if the target offering amount is $100,000 or less, the offering materials must include the income tax returns filed by the issuer for the most recently completed year and financial statements, which must be certified by the issuer's principal executive officer. If the target offering amount is between $100,000 and $500,000, financial statements reviewed by an independent accountant must be included. If the target offering amount exceeds $500,000, the proposed regulation would require audited financial statements. The financial statements must cover the shorter of the two most recently completed fiscal years or the period since inception and must include a balance sheet, income statement, statement of cash flows, and statement of changes in owners’ equity and notes to the financial statements prepared in accordance with U.S. generally accepted accounting principles. The proposed regulation also requires MD&A-lite type disclosure of the issuer's financial condition that addresses period to period material changes, including changes in reported revenue or net income.

The offering materials must be filed with the SEC as part of a “Form C: Offering Statement” prior to the commencement of the offering. The Form C: Offering Statement must be filed electronically through the SEC’s EDGAR filing system, but the proposed regulation does not require the offering statement to be reviewed or cleared by the SEC prior to publication and use upon the commencement of the offering. The proposed regulation requires substantial portions of the required disclosure be filed in the extendible markup language (XML) format. The offering statement (and the compliant offering materials included therein) to investors and the intermediary engaged for the offering and are required “to make available” the offering statement to prospective investors. Issuers will satisfy this requirement by providing a copy of the offering statement filed on EDGAR to the intermediary and by referring the investors and prospective investors to offering statement on the intermediary's platform by means of a posting on the issuer’s website or by email.

Form C is a universal form that serves several other disclosure purposes. Amendments to the information contained in the offering materials that reflect material changes, additions or updates
must be electronically filed through EDGAR on “Form C-A: Amendment” and must be provided to investors through the intermediary’s platform if the offering has not been completed or terminated. In the case of such material revisions, the issuer is obligated to check a box on the form indicating that investors must reconfirm their investment commitments within five business days or the investors’ commitment will be considered withdrawn. The issuer is required to provide to investors and the intermediary, and make available to prospective investors, updates on the progress of the offering. The progress updates must be electronically filed through EDGAR on “Form C-U: Progress Update” within five business days after the issuer reaches one-half and 100% of its target offering amount. If the issuer proposes to accept proceeds in excess of the target offering amount, a Form C-U: Progress Update must be filed and provided to the investors and intermediary no later than five business days after the offering deadline to disclose the total offering amount.

Following completion of the offering, the issuer is obligated to comply with ongoing annual reporting requirements. The issuer must electronically file through EDGAR and post on its website a “Form C-AR: Annual Report” no later than 120 days after the end of the fiscal year covered by the report. The annual report must contain the MD&A-lite type disclosure of the issuer’s financial condition discussed above and the financial statements required for the highest target offering amount previously provided in connection with crowdfunding exempt offerings. The annual report must also include several of the offering, business and management related disclosures required to be included in the issuer’s offering statement. See Appendix A hereto for an outline of the disclosures required to be included in the issuer’s annual report. Portions of the annual report are also required to be filed in the XML format.8

These ongoing reporting obligations will continue until:

- the issuer becomes a reporting company required to file reports under Section 13(a) or Section 15(d) of the Exchange Act;
- the issuer or another party repurchases all of the securities issued in the crowdfunding exempt offerings including any payment in full of debt securities or any complete redemption of redeemable securities; or
- the issuer liquidates or dissolves its business in accordance with state law.

An issuer eligible to terminate its ongoing reporting obligations must file a “Form C-TR: Termination of Reporting” within five business days of the date it becomes eligible to terminate its reporting obligation.

Advertising and Promotion of the Crowdfunding Offerings

Proposed Regulation Crowdfunding places significant restrictions on the ability of issuers and others to advertise and promote the issuers’ crowdfunding offerings. While the proposed regulation requires the issuer to engage an intermediary that must provide unrestricted access to the offering materials maintained on the intermediary’s publicly accessible platform, issuers and others are precluded from engaging in any form of general advertising of the offering. Issuers may only publish “tombstone” type notices that direct investors to the intermediary’s portal. Permissible notices may include no more than the following:

- a statement that the issuer is conducting a crowdfunding exempt offering, the name of the intermediary engaged for the offering, and a link directing potential investors to the intermediary’s platform;
• the terms of the offering; and

• factual information about the legal identity and business location of the issuer, which must be limited to the issuer’s name, the address, phone number and website of the issuer, the email address of a representative of the issuer, and a brief description of the issuer’s business.

An issuer may compensate, directly or indirectly, any person to promote its offering on an intermediary’s communication channel provided that it takes reasonable steps to ensure that such person clearly discloses the receipt of such compensation with each such communication. An issuer is not otherwise permitted to compensate any person to promote its offering except through compliant “tombstone” type notices. The proposed regulation also precludes an intermediary from compensating any person for providing the intermediary with personally identifying information of any investor or prospective investor. An intermediary is permitted to compensate other persons for directing issuers or potential investors to the intermediary’s platform, but is precluded from paying transaction based compensation for sales of crowdfunding offered securities on its platform unless the payable to a registered broker-dealer.

**Restrictions on Resales of Crowdfunding Offered Securities**

Securities sold in crowdfunding exempt offerings are not transferable by the purchaser for a one-year period beginning on the date of purchase, except such securities may be transferred:

• to the issuer;

• to an accredited investor;¹⁹

• as part of an offering registered with the SEC; or

• to a member of the purchaser’s family or the equivalent¹⁰, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or equivalent or in connection with the purchaser’s death or divorce or other similar circumstance.

In connection with the sale of securities to accredited investors during the one-year lock-up period, the seller need only reasonably believe that the person acquiring the securities is an accredited investor. No verification of income or net worth is required.

**Crowdfunding Investors Not Counted Towards Public Reporting Triggers**

Section 12(g) of the Exchange Act and Rule 12g-1 thereunder prior to the enactment of the JOBS Act required private issuers with 500 or more holders of record of a class of their equity securities and more than $10 million in assets to register as public reporting issuer and comply with ongoing SEC periodic reporting requirements. Other provisions of the JOBS Act raise the holders of record threshold triggering public reporting requirements to either 2,000 or 500 (counting only non-accredited investors) and exclude from the threshold’s calculation any employees holding only securities issued under equity compensation plans.

Title III amends Section 12(g) to require the SEC to exempt from Section 12(g), conditionally or unconditionally, securities acquired in crowdfunding exempt offerings. The SEC has proposed new Rule 12g-6 which permanently exempts holders of securities issued in crowdfunding exempt offerings from
counting towards the holders of record threshold. The SEC has shown flexibility; the proposed rule not only exempts the initial holder of the securities, but also any other holders of the securities who acquired them in resale transactions. As a result, issuers will not need to restrict resales of crowdfunding offered securities out of a concern that subsequent holders who are not accredited investors will cause the issuer to surpass the lower 500 holders of record threshold that triggers public reporting.

**Preemption of State Blue Sky Securities Regulation**

State blue sky securities registration, documentation, and offering requirements that would otherwise apply to crowdfunding exempt offerings are preempted. Title III amends Section 18(b)(4) of the Securities Act to add to the list of “covered securities” for which preemption applies securities that are the subject of crowdfunding exempt offerings conducted under Section 4(a)(6) of the Securities Act. However, this amendment does not affect any state’s enforcement authority over an issuer, broker, dealer, or funding portal for fraud or deceit or unlawful conduct in crowdfunding exempt offerings or the filing or fee requirements of the securities regulator of the state in which the issuer maintains its principal place of business or in which purchasers of 50% or greater of the aggregate amount of the securities issued are residents.

In addition, the JOBS Act preempts state blue sky regulation of registered funding portals, except that the state where the funding portal maintains its principal place of business will retain enforcement and examination authority, but only to the extent any law, rule, regulation, or administrative action is not in addition to or different from the requirements established by the SEC for registered funding portals.

**Side-By-Side Crowdfunding and Regulation D Offerings**

Under the SEC’s historical integration doctrine criteria, one or more exempt offerings could be aggregated into one public offering. When separate offerings are integrated into one single offering, that integrated offering, unless exempt from the registration, must be registered under the Securities Act.

New Section 4A(g) of the Securities Act states that nothing in Section 4A or Section 4(a)(6) of the Securities Act will be construed as preventing an issuer from raising capital through methods not described under Section 4(a)(6). The SEC concluded that in light of Section 4A(g) and the policy purposes underlying Title III, crowdfunding exempt offerings should not be integrated with another exempt offering, provided that each offering complies with the requirements of the applicable exemption relied upon. An issuer could engage in a crowdfunding exempt offering that occurs simultaneously with, or is preceded by or followed by another exempt offering. As a result of the SEC’s interpretive position, issuers will be able to conduct side-by-side crowdfunding exempt offerings and offerings conducted with general solicitation and advertising under Rule 506(c) of Regulation D.

**Crowdfunding Exempt Offerings Liability Regime**

Issuers and their intermediaries participating in crowdfunding exempt offerings will be subject to a liability regime that imposes a private right of action which is nearly identical to that provided in Section 12(a)(2) of the Securities Act. Proposed Regulation Crowdfunding does not alter this statutory liability regime. New Section 4A(c)(2) of the Securities Act provides that an “issuer” will be subject to liability if it:

- by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by any means of any written or oral communication, in the
offering or sale of a security in a transaction exempted by the provisions of section 4(a)(6), makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of such untruth or omission; and

- does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.

Investors in crowdfunding exempt offerings may institute actions for rescission or damages. Significantly, as is the case with liability under Section 12(a)(2) of the Securities Act for public offerings, defendants can defeat liability if they can demonstrate an adequate due diligence defense, i.e., that they have conducted a reasonable investigation as has been developed by the federal courts in their interpretation of Section 12(a)(2) of the Securities Act.\(^{12}\)

Section 4A(c)(3) of Securities Act contains an expansive definition of the term “issuer” for purposes of the liability provisions. The term “issuer” includes any person who is a director or partner of the issuer, and the principal executive officer or officers, principal financial officer, and controller or principal accounting officer of the issuer (and any person occupying a similar status or performing a similar function) that offers or sells a security in crowdfunding exempt offering, and any person who offers or sells the security in such offering. With respect to the latter, the SEC noted that it appears likely that intermediaries, including funding portals, would be considered statutory issuers for purposes of this liability provision. The SEC believes in this respect that the steps an intermediary could take in exercising reasonable care would include establishing policies and procedures that are reasonably designed to achieve compliance with the requirements of Regulation Crowdfunding, and conducting a review of the issuer’s offering materials, before posting them to the intermediary’s platform, to evaluate whether they contain materially false or misleading information.

Since crowdfunding offerings are expressly exempt from registration, issuers and their intermediaries will not be subject to liability under Section 11 of the Securities Act for any disclosure defects contained in a registration statement. As is the case with any securities transaction, crowdfunding exempt offerings also will be subject to the general anti-fraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

**Conclusion**

The SEC’s proposed regulation conforms substantially to the statutory provisions of Title III. In soliciting comment, the SEC has raised numerous questions for the public’s input, but given the highly prescriptive nature of the statute, it is unlikely the final regulation will depart measurably from the proposed regulation set forth in the SEC’s proposing release.

\*\*\*
Michael Zuppone is the chair of the Paul Hastings Securities & Capital Markets practice. If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings attorneys:

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1.212.318.6906
michaelzuppone@paulhastings.com
For the full text of the SEC Release, see http://www.sec.gov/rules/proposed/2013/33-9470.pdf.


Disqualification results from:

- Criminal felony or misdemeanor convictions within ten years before the Form C filing (or five years, in the case of the issuer, its predecessors and affiliated issuers) or court or injunctions or restraining orders within five years before the Form C filing:
  - in connection with the purchase or sale of a security;
  - in connection with making a false SEC filing; or
  - arising out of the conduct of certain types of financial intermediaries.

- Final orders from state securities, insurance, banking, savings association, or credit union regulators or federal banking agencies, the CFTC or the National Credit Union Administration that bar the person, at the time of the Form C filing, from:
  - associating with a regulated entity;
  - engaging in the business of securities, insurance, or banking; or
  - engaging in savings association or credit union activities.

- Final orders from state securities, insurance, banking, savings association or credit union regulators or federal banking agencies, the CFTC or the National Credit Union Administration that are based on fraudulent, manipulative or deceptive conduct and are issued within ten years before the Form C filing.

- Certain SEC disciplinary orders relating to brokers, dealers, municipal securities dealers, investment companies, and investment advisers and their associated persons, that are in effect at the time of the Form C filing.

- SEC cease-and-desist orders entered within five years before the Form C filing arising out of any scienter-based anti-fraud violation or violation of Section 5 of the Securities Act in effect at the time of such filing.

- Suspension or expulsion from membership in a self-regulatory organization in effect at the time of the Form C filing.

- SEC stop orders and orders suspending a Regulation A exemption issued within five years before the Form C filing, or pending stop order or suspension proceedings at the time of the Form C filing.

- US Postal Service false representation orders issued within five years before the proposed offering.

The SEC observed that an issuer may need to establish means to perform a range of functions in order to keep accurate records of the securities issued to investors depending on the nature of the issuer and its securities. Such functions could include, for example, the ability to (1) monitor the issuance of the securities the issuer would offer and sell through the intermediary’s platform, (2) maintain a master security holder list reflecting the owners of those securities, (3) maintain a transfer journal or other such log recording any transfer of ownership, (4) effect the exchange or conversion of any applicable securities, (5) maintain a control book demonstrating the historical registration of those securities, and (6) countersign or legend physical certificates of those securities.

A financial interest in the issuer means a direct or indirect ownership of, or economic interest in, any class of the issuer’s securities.

The following information must be included in the offering statement in XML format:

- Name of issuer:
- Legal status of issuer (form, jurisdiction and date of organization):
- Physical address of issuer:
- Website of issuer:
- Name, Commission file number and CRD number (as applicable) of intermediary through which the offering will be conducted:
- Amount of compensation paid to the intermediary, including referral and other fees:
- Type of security offered:
• Number of securities to be offered:
• Price (or method for determining price):
• Target offering amount:
• Maximum offering amount (if different from target offering amount):
• Oversubscriptions accepted: [ ] Yes [ ] No If yes, disclose how oversubscriptions will be allocated: [ ] Pro-rata basis [ ] First-come, first-served basis [ ] Other – provide a description
• Deadline to reach the target offering amount:
• Current number of employees:
• Total Assets: Most recent fiscal year: Prior fiscal year:
• Cash & Cash Equivalents: Most recent fiscal year: Prior fiscal year:
• Accounts Receivable: Most recent fiscal year: Prior fiscal year:
• Short-term Debt: Most recent fiscal year: Prior fiscal year:
• Long-term Debt: Most recent fiscal year: Prior fiscal year:
• Revenues/Sales: Most recent fiscal year: Prior fiscal year:
• Cost of Goods Sold: Most recent fiscal year: Prior fiscal year:
• Taxes Paid: Most recent fiscal year: Prior fiscal year:
• Net Income: Most recent fiscal year: Prior fiscal year:

The following information must be included in the annual report in the XML format:
• Name of issuer:
• Legal status of issuer (form, jurisdiction and date of organization):
• Physical address of issuer:
• Website of issuer:
• Current number of employees:
• Total Assets: Most recent fiscal year: Prior fiscal year:
• Cash & Cash Equivalents: Most recent fiscal year: Prior fiscal year:
• Accounts Receivable: Most recent fiscal year: Prior fiscal year:
• Short-term Debt: Most recent fiscal year: Prior fiscal year:
• Long-term Debt: Most recent fiscal year: Prior fiscal year:
• Revenues/Sales: Most recent fiscal year: Prior fiscal year:
• Cost of Goods Sold: Most recent fiscal year: Prior fiscal year:
• Taxes Paid: Most recent fiscal year: Prior fiscal year:
• Net Income 501(c): Most recent fiscal year: Prior fiscal year:

As defined in Rule 501(c) of Regulation D, accredited investors include any of the following:
• Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer.
• Any individual whose net worth, or joint net worth with that person's spouse, at the time of purchase exceeds $1 million. In calculating a person's net worth (the amount of assets in excess of liabilities):
  o The value of the person's primary residence is not included as an asset.
  o The amount of debt secured by the primary residence, up to its estimated fair market value, is not included as a liability, unless the person incurred debt within 60 days before buying securities in the unregistered offering for the purpose of buying those securities and not for buying the residence. In that situation, the amount of debt borrowed during that 60-day period must be included as a liability. Any debt secured by the primary residence in excess of the estimated fair market value of the home is included as a liability.
  o These additions and subtractions to the definition of net worth do not apply to a person exercising a right to buy securities if the person held that right to buy those securities, as well as other securities of the same issuer, on July 20, 2010, and met the net worth test in effect at the time the person acquired the right.
• Any individual who had an income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.
• Any bank; any savings and loan association, whether acting in its individual or fiduciary capacity; any registered broker or dealer; any insurance company; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; any Small Business Investment Company licensed by the US Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, with total assets in excess of $5 million; or any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 where investment decisions are made by a plan fiduciary that is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5 million or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors.
• Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.
• Any organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5 million.
• Any trust, with total assets in excess of $5 million, not formed for the specific purpose of acquiring the securities offered.
• Any entity in which all of the equity owners are accredited investors.

10 The term member of the family of the purchaser or the equivalent is defined to include a child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships. The term spousal equivalent is defined as a cohabitant occupying a relationship generally equivalent to that of a spouse.

11 SEC Release No. 33-4552 establishes a five-factor test to determine whether two or more separate offerings should be integrated. Those five factors are:
• whether the offerings are part of a single plan of financing;
• whether the offerings involve issuance of the same class of securities;
• whether the offerings are made at or about the same time;
• whether the same type of consideration is to be received by the issuer; and
• whether the offerings are for the same general purpose.

12 By contrast, Section 11 of the Securities Act does not provide issuers with a due diligence defense for material misstatements or omissions in a registration statement and therefore issuers are subject to strict liability for defective disclosure. Crowdfunding exempt offering issuers will not be subject to any such strict liability standard.
## APPENDIX A

<table>
<thead>
<tr>
<th>Rule 201</th>
<th>Description of Disclosure Requirement</th>
<th>Offering Statement</th>
<th>Annual Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>The name, legal status (including its form of organization, jurisdiction in which it is organized and date of organization), physical address, and website of the issuer.</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
| (b)      | The names of the directors and officers (and any persons occupying a similar status or performing a similar function) of the issuer, all positions and offices with the issuer held by such persons, the period of time in which such persons served in the position or office, and their business experience during the past three years, including:  
  o Each person’s principal occupation and employment, including whether any officer is employed by another employer; and  
  o The name and principal business of any corporation or other organization in which such occupation and employment took place. | ✓                  | ✓            |
<p>| (c)      | The name of each person, as of the most recent practicable date, who is a beneficial owner of 20 percent or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power. | ✓                  | ✓            |
| (d)      | A description of the business of the issuer and the anticipated business plan of the issuer. | ✓                  | ✓            |
| (e)      | The current number of employees of the issuer. | ✓                  | ✓            |
| (f)      | A discussion of the material factors that make an investment in the issuer speculative or risky. | ✓                  | ✓            |
| (g)      | The target offering amount and the deadline to reach the target offering amount, including a statement that if the sum of the investment commitments does not equal or exceed the target offering amount at the offering deadline, no securities will be sold in the offering, investment commitments will be cancelled and committed funds will be returned. | ✓                  |              |
| (h)      | Whether the issuer will accept investments in excess of the target offering amount and, if so, the maximum amount that the issuer will accept and whether oversubscriptions will be allocated on a pro-rata, first come-first served, or other basis. | ✓                  |              |</p>
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<tbody>
<tr>
<td>(i)</td>
<td>▪ A description of the purpose and intended use of the offering proceeds.</td>
<td>✓</td>
<td></td>
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</tbody>
</table>
| (j)     | ▪ A description of the process to complete the transaction or cancel an investment commitment, including a statement that:  
  o Investors may cancel an investment commitment until 48 hours prior to the deadline identified in the issuer’s offering materials;  
  o The intermediary will notify investors when the target offering amount has been met;  
  o If an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early if it provides notice about the new offering deadline at least five business days prior to such new offering deadline (absent a material change that would require an extension of the offering and reconfirmation of the investment commitment); and  
  o If an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering and the investor will receive securities in exchange for his or her investment. | ✓                  |               |
| (k)     | ▪ A statement that if an investor does not reconfirm his or her investment commitment after a material change is made to the offering, the investor’s investment commitment will be cancelled and the committed funds will be returned. | ✓                  |               |
| (l)     | ▪ The price to the public of the securities or the method for determining the price, provided that, prior to any sale of securities, each investor shall be provided in writing the final price and all required disclosures. | ✓                  |               |
| (m)     | ▪ A description of the ownership and capital structure of the issuer, including:  
  o The terms of the securities being offered and each other class of security of the issuer, including the number of securities being offered and/or outstanding, whether or not such securities have voting rights, any limitations on such voting rights, how the terms of the securities being offered may be modified and a summary of the differences between such securities and each other class of security of the issuer, and how the rights of | ✓                  | ✓              |
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<td></td>
<td>the securities being offered may be materially limited, diluted, or qualified by the rights of any other class of security of the issuer;</td>
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<td></td>
<td>o A description of how the exercise of the rights held by the principal shareholders of the issuer could affect the purchasers of the securities being offered;</td>
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<td></td>
<td>o The name and ownership level of each person, as of the most recent practicable date, who is the beneficial owner of 20 percent or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power;</td>
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<td></td>
<td>o How the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions;</td>
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<tr>
<td></td>
<td>o The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions including additional issuances of securities, issuer repurchases of securities, a sale of the issuer or of assets of the issuer or transactions with related parties; and</td>
<td></td>
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<td></td>
<td>o A description of the restrictions on transfer of the securities, as set forth in Rule 501 of Regulation D (i.e., regarding their treatment as “restricted securities”).</td>
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</tr>
<tr>
<td>(n)</td>
<td>▪ The name, SEC file number, and Central Registration Depository (CRD) number (as applicable) of the broker-dealer or funding portal intermediary through which the offering is being conducted.</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>(o)</td>
<td>▪ The amount of compensation paid to the intermediary for conducting the offering, including the amount of referral and any other fees associated with the offering.</td>
<td>✓</td>
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<tr>
<td>(p)</td>
<td>▪ A description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date, and any other material terms.</td>
<td>✓️</td>
<td>✓️</td>
</tr>
<tr>
<td>(q)</td>
<td>▪ A description of exempt offerings conducted within the past three years, which must disclose the following:</td>
<td>✓️</td>
<td>✓️</td>
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<tr>
<td></td>
<td>o The date of the offering;</td>
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<td>o The offering exemption relied upon;</td>
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<td>o The type of securities offered; and</td>
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<td></td>
<td>o The amount of securities sold and the use of proceeds.</td>
<td></td>
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<tr>
<td>(r)</td>
<td>▪ A description of any transaction since the beginning of the issuer’s last full fiscal year, or any currently proposed transaction, to which the issuer or any entities controlled by or under common control with the issuer was or is to be a party and the amount involved exceeds five percent of the aggregate amount of capital targeted by the issuer in the current crowdfunding exempt offering, plus the amount raised in such offerings during the preceding 12-month period, in which any of the following persons had or is to have a direct or indirect material interest:</td>
<td>✓</td>
<td>✓</td>
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<td></td>
<td>o Any director or officer of the issuer;</td>
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<tr>
<td></td>
<td>o Any person who is, as of the most recent practicable date, the beneficial owner of 20 percent or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power;</td>
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<tr>
<td></td>
<td>o If the issuer was incorporated or organized within the past three years, any promoter of the issuer;</td>
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<tr>
<td></td>
<td>o Any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the person, and any persons (other than a tenant or employee) sharing the household of the person.</td>
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<tr>
<td>(s)</td>
<td>▪ An MD&amp;A-lite type description of the financial condition of the issuer, including a discussion, to the extent material, of the issuer’s historical results of operations, liquidity and capital resources, that addresses among other things the financial milestones and operational, liquidity and other challenges for issuer’s without an operating history, and expectations concerning historical earnings and cash flows, current liquidity and the adequacy of capital resources for issuers without an operating history.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(t)</td>
<td>▪ The following financial statements calibrated to the amount of capital targeted by the issuer in the current crowdfunding exempt offering, plus the amount raised in such offerings during the preceding 12-month period:</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
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<td>o <strong>Offerings of $100,000 or less</strong>: Income tax returns filed by the issuer for the most recently completed year (if any) and financial statements, certified by the principal executive officer of the issuer to be true and complete in all material respects.</td>
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<td>o <strong>Offerings of more than $100,000, but not more than $500,000</strong>: Financial statements reviewed by a public accountant who is independent of the issuer (pursuant to Rule 2-01 of Regulation S-X), using the Statements on Standards for Accounting and Review Services issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants.</td>
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<tr>
<td></td>
<td>o <strong>Offerings of more than $500,000</strong>: Financial statements audited by a public accountant who is independent of the issuer (pursuant to Rule 2-01 of Regulation S-X), using auditing standards issued by either the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board.</td>
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<tr>
<td></td>
<td>▪ The financial statements must include a balance sheet, income statement, statement of cash flows and statement of changes in owners’ equity and notes to the financial statements prepared in accordance with U.S. generally accepted accounting principles.</td>
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<tr>
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<td>▪ The financial statements must cover the shorter of the two most recently completed fiscal years or the period since inception.</td>
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<tr>
<td></td>
<td>▪ The financial statements for the fiscal year prior to the most recently completed fiscal year may be used provided that if more than 120 days have passed since the end of that completed fiscal year, the issuer must use the financial statements for the most recently completed year.</td>
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<tr>
<td></td>
<td>▪ An MD&amp;A-lite type discussion of any material changes in the financial condition of the issuer during any time period subsequent to the period for which financial statements are provided, including changes in reported revenue or net income.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(u)</td>
<td>▪ Disclosure of any matters that would have triggered “bad boy” disqualification under Rule 503(a) of Crowdfunding Regulation had they occurred on or after effective date of final rule (subject to a reasonable care due diligence requirement obligating</td>
<td>✓</td>
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<tr>
<td>Rule 201</td>
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<tr>
<td></td>
<td>the issuer make factual inquiry into whether any disqualifications exist, the nature and scope of which will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>Updates regarding the progress of the issuer in meeting the target offering amount to be provided on Form C-U: Progress Update.</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>