Wall Street LAWYER
Securities in the Electronic Age

March 2014 ■ Volume 18 ■ Issue 3

Equity Crowdfunding Exemption— Who Needs It?

BY TOM SHARBAUGH

Tom Sharbaugh is a partner in the Business and Finance Practice of Morgan Lewis & Bockius LLP, working out of the firm's Philadelphia office. Contact: tsharbaugh@morganlewis.com.

There is a surprising amount of media interest in the U.S. Securities and Exchange Commission's (SEC's) proposed investment crowdfunding rules, gaining mass media coverage in publications ranging from *The Huffington Post* to *USA Today*.[1] It seems, however, that most of the discussions about the pending rules have overlooked the simple fact that most startup companies can raise funds much more easily in the "crowd" through donation crowdfunding without worrying about compliance with the new crowdfunding rules or the other securities laws. Although structured as *donation* (as opposed to *investment*) crowdfunding, the practice has allowed many new companies to raise substantial amounts of seed capital through popular online funding platforms like Kickstarter, Indiegogo and RocketHub.[2] The most important factor in these offerings is that the companies are not selling securities.[3]

If you watched television at all since the beginning of January 2014, it would have been hard to miss the nostalgic Dell "Beginnings" advertisements about successful startups, set to the song "This Magic Moment." The ad describes the humble beginnings of a number of successful startups, including Dell ("in a little dorm room, Number 2713"), Skype ("modest first-floor bedroom in Tallinn, Estonia") and Shutterfly ("second floor above the strip mall at Roble and El Camino"). These companies and most of the others profiled in the Dell TV and print "Beginnings" ads could have raised their seed money online through Kickstarter, Indiegogo or one of the other online crowdfunding platforms by offering to provide contributors with initial versions of their products or services.

Most business people are fairly familiar with the crowdfunding concept and the SEC's proposed rules for investment crowdfunding, but a short history may be helpful. The JOBS Act of 2012, among

CONTINUED ON PAGE 4

Content HIGHLIGHTS

Complete Table of Contents listed on page 2.

WEST®

41500842

CONTINUED FROM PAGE 1

other provisions that were intended to promote job growth, created a new exemption from the requirement to register an offering of securities under the Securities Act of 1933, as amended (the "Securities Act"): Section 4(a)(6).[4] This new provision (in Title III of the JOBS Act) exempts certain crowdfunding transactions from the registration requirements (the "CF Exemption"). There are numerous requirements for the CF Exemption (which have been well debated during the comment period), including the following:

- offering is capped at $1 million in a 12-month period;
- individual investment is capped in a 12-month period relative to financial status of the investor:
  - a.) the greater of $2,000 or 5% of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and
  - b.) 10% of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more;
- transactions must be through a registered broker or "funding portal"; and
- certain information, including financial statements, must be provided to potential investors and then annually to investors after the sale.

The legislation directed the SEC to adopt rules to implement the new CF Exemption, and the SEC published the proposed rules in October 2013. The comment period regarding the proposed rules ended on February 3, 2014, and the SEC is expected to adopt final rules later in 2014. At the 41st Annual Securities Regulation Institute in January 2014, SEC Chair Mary Jo White stated with respect to pending small business projects: "[t]he final implementation of crowdfunding and an updated Regulation A is an important priority in 2014, and I expect that the Commission, after thorough consideration of all comments, will move expeditiously to finalize these rules."[5]

The SEC's voluminous October 2013 crowdfunding release (the "CF Release") acknowledged the online market for raising capital outside the securities context. It read, in part:

> **In the United States, crowdfunding in its current form generally has not involved the offer of a share in any financial returns or profits that the fundraiser may expect to generate from business activities financed through crowdfunding. Such a profit or revenue-sharing model—sometimes referred to as the "equity model" of crowdfunding—could trigger the application of the federal securities laws because it likely would involve the offer and sale of a security.**

The Cost of Seeking the CF Exemption

Although there is widespread interest in the new CF Exemption, many commentators have reacted negatively to the cost of conducting an exempt offering.[6] The basic complaint is that the costs imposed by the new rules are disproportionate to the $1 million cap under the exemption. The most significant expenses will likely relate to compliance with the disclosure requirements. New Form C prescribes detailed narrative disclosure topics that are typical for any securities offerings: the offering, capitalization, use of proceeds, the business, management, existing stockholders and so on. A company may be able to put together much of this information internally, but it is likely that a lawyer would be involved at some point in the process. The SEC estimates that a crowdfunder would spend $6,000 on outside professional fees for nonfinancial compliance, regardless of the size of the offering and assuming that the issuer would perform 75% of the work.[7]

The disclosure requirements regarding financial statements have probably provoked the most discussion with respect to expenses. The requirements vary with the amount of the offering. For an offering of under $100,000, a company is required to provide income tax returns for the most recently completed year (if any) and financial statements that are certified by the principal executive officer to be true and complete in all material respects. For the next tier, $100,000 to $500,000, the company must provide financial statements that are reviewed by an independent public accountant. For any offering of more than $500,000, the financial statements must be audited. The company must also provide a narrative discussion of the company's financial condition. The SEC estimates that it would cost a crowdfunder $14,350 for reviewed financial statements and $28,700 for audited financial statements.[8]

Although there is widespread interest in the new CF Exemption, many commentators have reacted negatively to the cost of conducting an exempt offering.

An investment crowdfunding event under the CF Exemption would also incur costs for the third-party intermediary through which the offering must be conducted. The JOBS Act requires a party acting as an intermediary to register with the SEC as a broker or as a funding portal.[9] In addition to distributing information regarding the issuer, the intermediary would be required to hold subscription funds (or, in the case of a non-broker-dealer portal, arrange for a bank to hold them) in escrow until the targeted offering amount is achieved. The SEC estimated in the CF Release that the cost of the third-party intermediaries will vary from 5% to 15% of the offering.[10]

Although the holders of securities sold under the CF Exemption would not be included in the determination of whether a company had hit the reporting threshold under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), a company that uses the CF Exemption would have annual reporting requirements on Form C-AR that would be similar to the disclosure requirements for an offering on Form C. The postoffering requirements would be the same as the offering requirements except for the offering-specific information on Form C.[11] The SEC estimates that the external cost of preparing the narrative portion of Form C-AR would be $4,000, while the cost of the financial statements should be the same under Form C and Form C-AR ($14,350 for reviewed statements, and $28,700 for audited statements).[12] The company would need to comply with the annual reporting requirements for so long as the securities sold in the exempt offering are outstanding or until the company becomes a reporting company under the Exchange Act, regardless of how few investors hold the securities or the amount of the company's assets.

The SeedInvest Letter

A comment letter from equity crowdfunding platform SeedInvest, dated January 21, provides detailed estimates of the costs that a company would likely incur with a crowdfunding under the CF Exemption.[13] SeedInvest's estimates cover not only the obvious legal, accounting and funding portal fees, but also likely expenses for a company having numerous stockholders, such as transfer agent fees (about $3,000 annually) and directors and officers (D & O) liability insurance premiums (about $1,200 annually).[14]

SeedInvest questions many of the SEC's estimates but its major problem is with the annual reporting requirements:

> **Based on our research, we believe the largest obstacle to making crowdfunding a viable option for startups and small businesses is the post-offering ongoing annual reporting obligations, including the annual disclosure and financial statement requirements. Issuers would be required to effectively become mini-public companies with reporting obligations potentially extending indefinitely. These items create a cost structure that is out of proportion with the amounts proposed to be raised, particularly for smaller offerings under $350,000.[15]**

SeedInvest submitted as part of its comments a detailed model for estimating total expenses. In contrast to the SEC's estimates, SeedInvest takes into account the net present value of the future annual reporting cost in order to compute the total cost of capital, or "load," for a particular offering size. SeedInvest assumes that the life of a typical startup is about five years and, therefore, includes the cost of annual reporting for four years. SeedInvest used this methodology to determine that the SEC's estimates would result in significant loads for any offering size; *e.g.* $300,000—42%; $500,001—41%; $750,000—30% and $1,000,000—24%.[16] SeedInvest suggested that the costs were actually a few percentage points higher at each level because certain of the SEC's estimates were understated.[17]

A comment letter from equity crowdfunding platform SeedInvest, dated January 21, provides detailed estimates of the costs that a company would likely incur with a crowdfunding under the CF Exemption.

Before getting into the merits of using one of the online platforms for a donation crowdfunding, it should be noted that a company can also avoid much of the expenses of an investment crowdfunding under the CF Exemption by offering securities under new Rule 506(c). As part of the JOBS Act, the traditional prohibitions on advertising and general solicitation were relaxed for a Rule 506(c) offering. As with the proposed CF Exemption, a company could use social media to find investors, but a Rule 506(c) offering is not traditional crowdfunding because a company could not sell its securities to anyone[18]—Rule 506(c) retained the Rule 506 limitation that a company can only use this exemption for sales to accredited investors.[19]

There are a number of advantages to a Rule 506(c) offering compared to an offering under the CF Exemption. There are no specified disclosure requirements, so the company is free to use whatever form of disclosure it chooses. To the extent that a company may choose to provide financial statements, there is no mandate that they be audited or reviewed. In contrast to the $1 million cap under the CF Exemption, there is no limit on the amount that may be sold, nor any limitation on the amount that any investor may invest. In addition, unlike Rule 506(c) offerings that are only subject to liability for false or misleading statements or omissions under the scienter-based antifraud provisions in an action for damages,[20] an offering under the CF Exemption is subject to the negligence-type liability standard in an action for rescission—the same liability applicable to offers and sales pursuant to a statutory prospectus.[21]

SeedInvest suggested that the costs were actually a few percentage points higher at each level because certain of the SEC's estimates were understated.

One of the bigger advantages of a Rule 506(c) offering is that there is no annual reporting obligation after the sale. As described above, this may be the biggest cost hurdle for an offering under the CF Exemption.[22] One advantage of the CF Exemption, however, is that the holders of the securities acquired under the exemption do not count towards the threshold that triggers reporting under the Exchange Act.[23] Therefore, a company using Rule 506(c) for a broad solicitation would want to limit the number of purchasers so that the total of the new investors plus existing security-holders did not exceed the trigger level of 2,000 security-holders.[24]

Going the Donation Route

After taking all of the foregoing into account, many startups may do much better by raising capital through a donation (non-security) crowdfunded offering on one of the many available online platforms. As mentioned in the CF Release, companies have avoided the registration requirements of the Securities Act by not offering "a share in any financial returns or profits."[25] The items given in exchange for donations, often called "rewards," generally bear little resemblance to an investment and vary as broadly as the "gifts" in a fund drive on National Public Radio. However, at least at the higher range of donations, the reward usually consists of one or more variations of the product being developed by the entrepreneur.

There are many well-known choices for raising funds through a donation crowdfunding, including Kickstarter, Indiegogo[26] and Rocket Hub. There are also many specialized sites for such segments as technology, healthcare, musicians, artists and nonprofits. The magazine *Inc.* published a useful map last year that directs the user to different platforms depending on the purpose (*e.g.*, starting a company, funding an invention and supporting a nonprofit), the type of product or service (*e.g.*, media, software, music or science-related) and other factors.[27]

After taking all of the foregoing into account, many startups may do much better by raising capital through a donation (non-security) crowdfunded offering on one of the many available online platforms.

The platforms differ on whether the promoter must achieve a certain level of donations before receiving anything, so-called "all-or-nothing" sites, such as Kickstarter,[28] or whether the promoter gets to keep whatever is raised, such as Indiegogo.[29] Kickstarter explains on its site that its all-or-nothing policy is "less risk for everyone," motivates people to "spread the word" and has a higher success rate.[30] Indiegogo gives a promoter the choice of "fixed funding" or "flexible funding."[31] With flexible funding, the promoter chooses a goal, but if the funds raised fall short of the goal, the promoter can keep all of the funds raised, but at a higher cost, as explained below. With fixed funding, the promoter only receives the funds if the fundraising goal has been achieved.

The requirement to achieve a goal is similar to the escrow feature of the CF Exemption.[32] From a contributor's standpoint, Kickstarter's policy appears to make sense in that most contributors would probably not want to donate their money unless the promoter obtains sufficient funds to move forward with the designated project. For the sites that do not have an all-or-nothing policy, it appears that the promoter who falls short of the stated goal is nevertheless free to do whatever the promoter wants with the donated cash, subject to fraud and consumer protection laws. One commentator has observed that "[t]his is perhaps the most overlooked component on Indiegogo."[33]

The fees differ on the major platforms. For successful projects, Kickstarter charges a fee equal to 5% of the funds raised, and there is a payment processing fee of 3% to 5%.[34] For Indiegogo, the fees vary depending on the choice of fixed vs. flexible, and for flexible, whether a specified goal is achieved. Under the fixed funding choice, if the goal is achieved, Indiegogo charges 4% of the funds raised plus a PayPal processing fee of about 3%.[35] With the flexible funding choice, if the goal is achieved, Indiegogo charges the same 4% and 3% fees plus a 3% credit card fee. However, under the flexible funding option, if the goal is not achieved, the fee to Indiegogo increases to 9% while the other fees (3% and 3%) remain constant.[36] Neither Kickstarter nor Indiegogo charge any fees for a failed campaign that returns the donations to the contributors.

Although there are donation crowdfundings of all sizes,[37] it is certainly possible to raise an amount that would cover a seed financing, which is "typically less than $1.5 million."[38] Kickstarter updates its fundraising statistics daily, and as of February 23, promoters on its site have raised $990 million through 56,665 projects, of which the largest category was music with 14,918 projects. The design and technology categories had 2,501 and 1,245 projects, respectively. In all categories, there have been 1,080 fundings between $100,000 and $999,999, and 58 of at least $1 million. In the design and technology categories, there have been, respectively, 257 and 242 funded projects of $100,000 to $999,999, and 9 and 12 of at least $1 million.

The Pebble watch is an excellent example of a tech project that raised significant funds through a donation crowdfunding on Kickstarter.[39] The promoter, Pebble Technology, described the design features for the smartphone-linked wristwatch in a simple video, and then announced that production was about to start, but that "we need help to get Pebble onto your wrist." The project set a goal of $100,000 and the rewards for donations of $100 and up consisted of one or more Pebble watches (with a $150 retail price) of various models. The top donation level of $10,000 yielded the Mega Distributor pack of 100 Pebble watches in various colors. The total amount raised exceeded the goal by over 10,000,000%—$10,266,845 from 68,929 backers in 37 days.[40]

Although there are donation crowdfundings of all sizes, it is certainly possible to raise an amount that would cover a seed financing, which is "typically less than $1.5 million."

The Form 1 high-resolution 3D printer by Formlabs was another very successful technology project on Kickstarter.[41] The project set a goal of $100,000 to begin manufacturing, and the promoter raised a total of $2,945,885 from 2,068 backers in just 30 days. Although a backer had to contribute at least $2,299 for the full printer package, the rewards included a "virtual high five" for a minimal donation (276 backers), a Form 1 team t-shirt for $29 (149 backers) and a private dinner for two with the production team, an invitation to the launch party and the full printer package for $10,000 (3 backers).

Some companies have gone to the donation-crowdfunding well more than once. Adonit raised $26,823 from 216 backers on Kickstarter in connection with the rollout of its iPad keyboard, the "Writer," in 30 days.[42] Adonit returned to Kickstarter to produce its Jot precision stylus and raised $168,532 from 4,975 backers in 30 days.[43]

Donation crowdfunding appears to be a viable capital-raising option for many startups that are seeking seed financing. The costs are dramatically lower than the costs of an investment crowdfunding under the CF Exemption. However, donation crowdfunding will likely be available only in those situations where the backers can use the product being developed. It is much easier to project a donation funding for a clever smartphone or computer gadget than for development of a drug that will treat one of the common maladies for which drugs are routinely advertised on television.

NOTES

1. *See* Matt Krantz, *SEC Moves Towards Allowing Crowdfunding Stock Offerings*, USA TODAY, Oct. 23, 2013, http://www.usatoday.com/story/money/business/2013/10/23/crowdfunding-ipo-sec-jobs-act/3169395; Marcy Gordon, *Crowdfunding to Take a Leap by Seeking Investors*, THE HUFFINGTON POST, Oct. 23, 2013, http://www.huffingtonpost.com/huff-wires/20131023/us--crowdfunding.
2. *See* Larry Downes, *Crowdfunding's Big-Bang Moment*, HBR BLOG NETWORK, Oct. 28, 2013, in which the author describes the disruptive potential of Internet-based investment and concludes that donation crowdfunding "has proven wildly successful."
3. The definition of a "security" for regulatory purposes includes equity and debt securities, such as those offered on some peer-to-peer lending sites, as well as other arrangements that satisfy the case law definitions, such as an "investment contract" and a "participation in a profit-sharing arrangement." *See* Joan M. Hemingway, *What is a Security in the Crowdfunding Era*, 7:2 THE OHIO STATE ENTREPRENEURIAL JOURNAL 335 (2012). Some microfinance sites have avoided offering securities by excluding any return to the online lenders. See the Kiva business model at http://www.kiva.org.
4. Jumpstart Our Business Startups Act, H.R. 3606, 112th Cong. (2012).
5. Mary Jo White, Chair, Sec. Exch. Comm'n, Keynote Address at the 41st Annual Securities Regulation Institute (Jan. 27, 2014), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370540677500.
6. *See, e.g., Kim Wales, Is Financial Disclosure for Crowdfunding Too Expensive?,* CROWDFUND INSIDER, Dec.18, 2013, http://www.crowdfundinsider.com/2013/12/28428-is-financial-disclosure-for-crowdfunding-companies-too-expensive ("This level of financial disclosure for raises of more than $500,000 seems brutal for small business."). *See also* Kiran Lingam, *Crowdfunding Costs Are Too High. Tell the SEC Today!*, CROWDFUND INSIDER, Jan. 22, 2014, http://www.crowdfundinsider.com/2014/01/30569-crowdfunding-costs-high-tell-sec-today ("Since the proposed

crowdfunding rules were released on October 23, 2103, the top concern for many in the industry has been that the total costs of compliance would make crowdfunding too expensive to be useful.") *and* Robb Mandelbaum *What the Proposed Crowdfunding Rules Could Cost Businesses*, THE NEW YORK TIMES, Nov. 14, 2013, http://boss.blogs.nytimes.com/2013/11/14/what-the-proposed-crowdfunding-rules-could-cost-businesses ("[A] company hoping to raise $100,000 could end up paying more for capital than it would be borrowing money with a credit card.").

7. Crowdfunding; Proposed Rule, SEC Release Nos. 33-9470; 34-70741, 358, 358 n.920 (Nov. 5, 2013).
8. Crowdfunding; Proposed Rule, at 359.
9. Securities Act of 1933 § 4A(a)(1), 15 U.S.C.A. § 77a-77mm (2012).
10. Crowdfunding; Proposed Rule.
11. Crowdfunding; Proposed Rule, at 374.
12. Crowdfunding; Proposed Rule, at 359.
13. Comment Letter from Kiran Lingham, Jan. 21, 2014, http://www.sec.gov/comments/s7-09-13/s70913-134.pdf, (Lingham Letter).
14. Lingham Letter, at 4.
15. Lingham Letter, at 1.
16. Lingham Letter, at 4.
17. Lingham Letter, at 6.
18. EXEMPTION FOR LIMITED OFFERS AND SALES WITHOUT REGARD TO DOLLAR AMOUNT OF OFFERING, 17 C.F.R. § 230.506. Although Rule 506(c) uses the same definition of "accredited investor" as Rule 506(b), the procedure is different in that Rule 506(b) permits a company to rely upon self-certification by potential investors. New Rule 506(c) requires a company to examine the basis for potential investors' claims that they are accredited investors.
19. Certain existing platforms are devoted to accredited-investor-only offerings. *See, for example*, Crowdfunder.com, which is currently offering investment crowdfunding to accredited investors. It lists among recently funded deals an offering of $7.2 million by Monster Digital, a California-based manufacturer of memory storage products.
20. Securities Act of 1933 § 17(a), 15 U.S.C.A. §§ 77a-77mm; Securities Exchange Act of 1934 § 10(b), 15 U.S.C.A. 78a-78kk, (2012); 17 C.F.R. § 240.10b-5.
21. Crowdfunding; Proposed Rule, *supra* note 7, at n. 745.
22. Lingham Letter.
23. Crowdfunding; Proposed Rule, *supra* note 7, at 358, 358 n.920.
24. Securities Exchange Act of 1934 § 12(g), 15 U.S.C.A. §§ 78a-78kk. This could also limit flexibility for the future as a company would hesitate to admit new investors if doing so would cause it to exceed the 2,000 security-holder line.
25. Crowdfunding; Proposed Rule, *supra* note 7, at 8.
26. Indiegogo was recently in the news when it announced the closing of its $40 million round of venture financing, which increased its total venture backing to $56.5 million. Indiegogo aims to create a mobile app so that people could contribute to a campaign whenever they see it. Lora Kolodny, *Indiegogo Raises $40M in Largest Venture Investment Yet for Crowdfunding Startup*, WALL STREET JOURNAL, Jan. 28, 2014, http://blogs.wsj.com/venturecapital/2014/01/28/indiegogo-raises-40m-in-largest-venture-investment-yet-for-crowdfunding-startup.
27. Eric Markowitz, *22 Crowdfunding Sites (and How To Choose Yours!)*, INC., June 5, 2013, http://www.inc.com/magazine/201306/eric-markowitz/how-to-choose-a-crowdfunder.html.
28. KICKSTARTER, https://www.kickstarter.com (last visited Feb. 5, 2014).
29. INDIEGOGO, http://www.indiegogo.com (last visited Feb. 5, 2014).
30. *Kickstarter Basics: Kickstarter 101; "Why is funding all-or-nothing?"*, KICKSTARTER, https://www.kickstarter.com/help/faq/kickstarter+basics?ref=faq_subcategory#Kick (last visited Feb. 5, 2014).
31. *How Pricing Works on Indiegogo*, INDIEGOGO, http://www.indiegogo.com/how-pricing-works-on-indiegogo (last visited Feb. 5, 2014).
32. Crowdfunding; Proposed Rule, *supra* note 7, at 181-87.
33. Charles Luzar, *Most Indiegogo Campaigns Fail, And Thank Goodness*, CROWDFUND INSIDER, August 10, 2013, http://www.crowdfundinsider.com/2013/08/20429-most-indiegogo-campaigns-fail-and-thank-goodness/.
34. *Supra* note 28 at "What are the fees?".
35. *Types of Fees*, INDIEGOGO, http://support.indiegogo.com/entries/20492953-Fees-Pricing (last visited Feb. 5, 2014).
36. RocketHub is another well-known site that varies its fees depending on whether the specified goal is achieved. A promoter can keep whatever funds are raised irrespective of whether the promoter hits the goal, but the fees are 8% for RocketHub plus a 4% credit card fee. If the promoter achieves the goal, the fees are 4% and 4%. *FAQs—How much does it cost?*, ROCKETHUB, http://www.rockethub.com/education/faq#cost (last visited Feb. 5, 2014).
37. Kickstarter updates its fund raising statistics daily at https://www.kickstarter.com/help/stats. The site reports the statistics by size and type of

project and other factors, including successful and unsuccessful.

38. *Seed Investment Report—Startup Orphans and the Series A Crunch*, CB INSIGHTS, Dec. 19, 2012, http://www.cbinsights.com/blog/trends/seed-investing-report. The law firm Fenwick & West LLP also reported in its Seed Finance Survey that in 2012 the median sizes for seed financings were $1,360,000 for preferred stock and $918,000 for convertible note. BARRY J. KRAMER & STEVEN S. LEVINE, FENWICK & WEST LLP, SEED FINANCE SURVEY 2012 (2013), *available at* http://www.fenwick.com/publications/Pages/Seed-Finance-Survey-2012.aspx.
39. *Pebble: E-Paper Watch for iPhone*, KICKSTARTER, https://www.kickstarter.com/projects/597507018/pebble-e-paper-watch-for-iphone-and-android?ref=live (last visited Feb. 5, 2014).
40. *Pebble: E-Paper Watch for iPhone*. Pebble has also secured additional VC funding. Matt Burns, *Pebble Nabs $15M In Funding, Outs PebbleKit SDK And Pebble Sports API To Spur Smartwatch App Development*, TECHCRUNCH, May 16, 2013, http://techcrunch.com/2013/05/16/pebble-nabs-15m-in-funding-outs-pebblekit-sdk-and-pebble-sports-api-to-spur-smartwatch-app-development.
41. *FORM 1: An affordable, professional 3D printer*, KICKSTARTER, https://www.kickstarter.com/projects/formlabs/form-1-an-affordable-professional-3d-printer?ref=discovery (last visited Feb. 5, 2014).
42. *Adonit Writer: iPad Case + Keyboard*, KICKSTARTER, https://www.kickstarter.com/projects/531383637/adonit-writer-ipad-case-keyboard?ref=live (last visited Feb. 5, 2014).
43. *Jot: Capacitive Touch Stylus by Adonit!*, KICKSTARTER, https://www.kickstarter.com/projects/531383637/jot-capacitive-touch-stylus?ref=live (last visited Feb. 5, 2014).

Sidebar: Three Challenges Equity Crowdfunding Platforms Will Face with Title III

BY JUDD HOLLAS

Judd Hollas is founder and chief inventor of EquityNet which has raised more than $210 million in equity crowdfunding. EquityNet was one of the first Title II crowdfunding platforms for accredited investors and will soon be adding Title III nonaccredited investor capabilities to the site. Mr. Hollas has more than 20 years of experience as an independent technology analyst and investment manager in the private and public domains. Contact: jhollas@equitynet.com.

The landscape of the equity crowdfunding industry will experience a major shakeup by next spring. The U.S. Securities and Exchange Commission (SEC) has recently proposed rules for Title III of the JOBS Act, which would give unaccredited investors the ability to help fund businesses by utilizing equity crowdfunding platforms. Currently, only high net-worth individuals, or accredited investors, can invest in businesses that post their need for funding on equity crowdfunding platforms (ECPs). The Title III rule change would mean these sites will potentially see a massive increase of entrepreneurs and investors registering for their services once the average investor is allowed to participate. Title III presents several challenges for ECPs, however, and they only have a few months to prepare for its implementation. Below are three of the challenges that these sites will face in the months to come.

1. Sufficient member population

Accumulating a substantial member population is a challenge for any marketplace, and the crowdfunding industry is no exception. Metcal-

