

Crowdfunding 2.0: Proposed Equity Crowdfunding Improvement Act of 2014

Article By:

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On October 24, 2013, the **Securities Exchange Commission** (the “**SEC**”) published proposed rules ([Release Nos. 33-9470; 34-70741](#)) to permit companies to offer and sell securities through “regulation” **crowdfunding** as proposed in the [Jumpstart Our Business Startups Act](#) (the “**JOBS Act**”), which we have written about [here](#). The 90-day comment period on the proposed rules ended January 23, 2014 but comments are still being submitted to the SEC’s website, with the [latest comment](#) submitted on June 3, 2014. There is no indication as to when the SEC will publish its final rules relating to crowdfunding.

Certain members of Congress have expressed dissatisfaction with the proposed rules published by the SEC. The concern expressed is that the overly burdensome requirements and restrictions under the JOBS Act and the proposed rules make “regulation” crowdfunding an unattractive and potentially unusable option for early stage companies looking to raise financing.

One such member of Congress is Representative Patrick McHenry, R-N.C., who is Deputy Republican Whip and member of the House Financial Services Committee. During his time on the House Financial Services Committee, Representative McHenry has become a major advocate for crowdfunding; he originally introduced the [Entrepreneur Access to Capital Act](#), which was eventually integrated into the JOBS Act in the legislation relating to “regulation” crowdfunding. However, when he noticed that the crowdfunding provisions he championed in the JOBS Act would not work in practice, he introduced the “[Equity Crowdfunding Improvement Act of 2014](#)” (the “**2014 Act**”) in the House Financial Services Committee.

The 2014 Act would amend the JOBS Act in the following ways:

- Raise crowdfunding limits from \$1 million to \$3 million (\$5 million if the company provides audited financial statements);
- Increase investment caps for non-accredited investors to the greater of \$5,000 or 10% of an investor’s annual income or net worth;
- Allow issuers to self-certify financials for offerings raising less than \$500,000 and independent accountant reviewed financial statements for offerings raising between \$500,000

and \$3 million;

- Eliminate annual reports of the results of operations and financial statements of the issuer;
- Remove the more onerous requirements for intermediaries, such as ensuring that each investor reviews investor-education information and positively affirms that the investor understands that investors risk the loss of their entire investment; and
- Remove the more arduous obligations for issuers, such as providing a description of the financial condition of the issuer and of the stated purpose and intended use of the proceeds of the offering.

What's Next?

The 2014 Act has only been introduced to the House Financial Services Committee and would need to be approved by the committee before being sent to either the House or Senate. In addition, we continue to wait to see when (and if, based on these developments) the SEC will adopt final rules regarding “regulation” crowdfunding.

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