

Jumpstart Our Business Startups Act Frequently Asked Questions About Crowdfunding Intermediaries

Division of Trading and Markets

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In these Frequently Asked Questions (FAQs), the Division of Trading and Markets is providing guidance on the implementation of the crowdfunding intermediary provisions of the [Jumpstart Our Business Startups Act \(JOBS Act\)](#). These FAQs are not rules, regulations or statements of the SEC. The SEC has neither approved nor disapproved these FAQs.

The Division may update these questions and answers periodically. In each update, the questions added after publication of the last version will be marked with “MODIFIED” or “NEW.” In addition, the SEC is soliciting [public comments](#) on regulatory initiatives under the JOBS Act.

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Background

These FAQs address questions about the crowdfunding intermediary provisions in Title III of the JOBS Act.

Crowdfunding issuers. Title III of the JOBS Act amends Section 4 of the Securities Act to create a new exemption for offerings of “crowdfunded” securities. Specifically, the JOBS Act amends Section 4 of the Securities Act to exempt issuers from the requirements of Section 5 of that Act when they offer and sell up to \$1 million in securities, provided that individual investments do not exceed certain thresholds and the issuer satisfies other conditions in the JOBS Act, some of which will [require rulemaking by the SEC](#).

One of these conditions is that issuers use the services of an intermediary that is either a broker registered with the SEC or a “funding portal” registered with the SEC.

Funding portals. Title III of the JOBS Act adds new Section 3(h) to the Exchange Act which requires the SEC to exempt, conditionally or unconditionally, an intermediary operating a funding portal from the requirement to register with the SEC as a broker. The intermediary, though, would need to register with the SEC as a funding portal and would be subject to the SEC’s examination, enforcement, and rulemaking authority. The funding portal also must become a member of a national securities association that is registered under Section 15A of the Exchange Act.

A funding portal is defined as a crowdfunding intermediary that does not: (i) offer investment advice or recommendations; (ii) solicit purchases, sales, or offers to buy securities offered or displayed on its website or portal; (iii) compensate employees, agents, or others persons for such

solicitation or based on the sale of securities displayed or referenced on its website or portal; (iv) hold, manage, possess, or otherwise handle investor funds or securities; or (v) engage in such other activities as the SEC, by rule, determines appropriate.

The JOBS Act directs the SEC to adopt rules to implement Title III within 270 days of enactment of the Act. The President signed the JOBS Act into law on April 5, 2012.

Responses to Frequently Asked Questions

Question 1.

I would like to operate a crowdfunding intermediary. Am I required to register with the SEC before doing so?

Answer:

Yes. You must register with the SEC either as a broker or as a funding portal.

Please keep in mind that the SEC still has to write rules to implement the crowdfunding provisions of the JOBS Act. Until the SEC has completed this rulemaking, you cannot act as a crowdfunding intermediary, even if you are already a registered broker. The Division of Corporation Finance also has reminded issuers that any offers or sales of securities purporting to rely on the crowdfunding exemption would be unlawful under the federal securities laws until the SEC's rulemaking is complete.

Question 2.

How do I register with the SEC as a funding portal?

Answer:

The SEC must adopt rules governing funding portals before permitting anyone to register with the SEC as a funding portal. These rules will address the form and process needed to register with the SEC as a funding portal.

Funding portals also must become members of a national securities association that is registered under Section 15A of the Exchange Act. Today, FINRA is the only national securities association in existence that is registered under Section 15A of the Exchange Act.

Question 3.

I would like to operate as a funding portal. Do I need to register with the Financial Industry Regulatory Authority (FINRA)?

Answer:

All funding portals must become members of a national securities association that is registered under Section 15A of the Exchange Act, in addition to registering with the SEC. Today, FINRA is the only national securities association in existence that is registered under Section 15A of the Exchange Act.

Question 4.

Are there any limitations on what a funding portal can do?

Answer:

Among other things, the JOBS Act imposes several restrictions on the activities of a registered funding portal. A funding portal is *not* permitted to:

- provide investment advice or make recommendations;
- solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;
- compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;
- hold, manage, possess, or otherwise handle investor funds or securities; or
- engage in any other activities the SEC determines to prohibit in its crowdfunding rulemaking.

In addition, each funding portal and each crowdfunding broker is prohibited from:

- compensating promoters, finders, or lead generators for providing the intermediary with the personal identifying information of any potential investor; or
- allowing its directors, officers, or partners (or any person occupying a similar status or performing a similar function) to have a financial interest in any issuer using the services of the intermediary.

Question 5.

I would like to operate a crowdfunding intermediary. In addition to registering with the SEC and a national securities association, what should I know?

Answer:

There are many considerations in determining whether to operate a crowdfunding intermediary. At a minimum, you should understand the legal obligations that the JOBS Act assigned to crowdfunding intermediaries. For example, crowdfunding brokers and funding portals have significant duties under the JOBS Act to provide information to investors, reduce the risk of fraud and, where required under the Act, ensure that investors and issuers satisfy the requirements outlined in Title III of the JOBS Act.

The JOBS Act requires these intermediaries to, among other things:

- provide disclosures that the SEC determines appropriate by rule, including regarding the risks of the transaction and investor education materials
- ensure that each investor: (1) reviews investor education materials; (2) positively affirms that the investor understands that the investor is risking the loss of the entire investment, and that the investor could bear such a loss; and (3) answers questions that demonstrate that the investor understands the level of risk generally applicable to investments in startups, emerging businesses, and small issuers and the risk of illiquidity;
- take steps to protect the privacy of information collected from investors;
- take such measures to reduce the risk of fraud with respect to such transactions, as established by the SEC, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person;
- make available to investors and the SEC, at least 21 days before any sale, any disclosures provided by the issuer;

- ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, and allow all investors to cancel their commitments to invest;
- make efforts to ensure that no investor in a 12-month period has purchased crowdfunded securities that, in the aggregate, from all issuers, exceed the investment limits set forth in section Title III of the JOBS Act; and
- any other requirements that the SEC determines are appropriate.

In addition, under the JOBS Act, an intermediary should be aware of the prohibited activities listed in response to Question 4.

<https://www.sec.gov/divisions/marketreg/tmjjobsact-crowdfundingintermediariesfaq.htm>,
(Accessed 3/20/15)

SEC Compliance and Disclosure Interpretations:

Question 141.03

Question: If an issuer plans to conduct an intrastate offering pursuant to the Section 3(a)(11) exemption, may the issuer engage in general advertising or a general solicitation?

Answer: Securities Act Rule 147 does not prohibit general advertising or general solicitation. Any such general advertising or solicitation, however, must be conducted in a manner consistent with the requirement that offers made in reliance on Section 3(a)(11) and Rule 147 be made only to persons resident within the state or territory of which the issuer is a resident. [April 10, 2014]

Question 141.04

Question: An issuer plans to use a third-party Internet portal to promote an offering to residents of a single state in accordance with a state statute or regulation intended to enable securities crowdfunding within that state. Assuming the issuer met the other conditions of Rule 147, could it rely on Rule 147 for an exemption from Securities Act registration for the offering, or would use of an Internet portal necessarily entail making offers to persons outside the relevant state or territory?

Answer: Use of the Internet would not be incompatible with a claim of exemption under Rule 147 if the portal implements adequate measures so that offers of securities are made only to persons resident in the relevant state or territory. In the context of an offering conducted in accordance with state crowdfunding requirements, such measures would include, at a minimum, disclaimers and restrictive legends making it clear that the offering is limited to residents of the relevant state under applicable law, and limiting access to information about specific investment opportunities to persons who confirm they are residents of the relevant state (for example, by providing a representation as to residence or in-state residence information, such as a zip code or residence address). Of course, any issuer seeking to rely on Rule 147 for the offering also would have to meet all the other conditions of Rule 147. [April 10, 2014]

Question 141.05

Question: Can an issuer use its own website or social media presence to offer securities in a manner consistent with Rule 147?

Answer: Issuers generally use their websites and social media presence to advertise their market presence in a broad and open manner so that information is widely disseminated to any member of the general public. Although whether a particular communication is an "offer" of securities will depend on all of the facts and circumstances, using such established Internet presence to convey information about specific investment opportunities would likely involve offers to residents outside the particular state in which the issuer did business.

We believe, however, that issuers could implement technological measures to limit communications that are offers only to those persons whose Internet Protocol, or IP, address originates from a particular state or territory and prevent any offers to be made to persons whose IP address originates in other states or territories. Offers should include disclaimers and restrictive legends making it clear that the offering is limited to residents of the relevant state under applicable law. Issuers must comply with all other conditions of Rule 147, including that sales may only be made to residents of the same state as the issuer. [October 2, 2014]

<http://www.sec.gov/divisions/corpfm/guidance/securitiesactrules-interps.htm>, (Accessed 3/20/15.)