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**Title III of the JOBS Act - FAQs**

**When did it become legal to raise money under Title III of the JOBS Act?**

The regulations went into effect in May 2016.

**What are some other names for Title III of the JOBS Act?**

You may hear it referred to as "Regulation Crowdfunding" or the federal investment crowdfunding exemption.

**How much can you raise?**

You can raise up to $5,000,000 per year.

**Do you have to use an online crowdfunding platform?**

Yes. You can only raise money under Title III by posting your offering on an online platform that has been licensed by the Securities and Exchange Commission. In fact, communications with potential investors about your offering must take place through the platform (there are very limited things you can say about your offering outside of the platform – see below). Here is a list of all of the current platforms: https://www.finra.org/about/funding-portals-we-regulate (there may also be broker-dealers that host platforms that aren't on this list).

**How much can each investor invest?**

There are no investment caps for accredited investors.

The limitation on how much a nonaccredited investor can invest during a 12-month period depends on his or her net worth and annual income and may not exceed $107,000.

Individual investors are limited to:

- The greater of $2,200 or five percent of the greater of the investor's annual income or net worth, if either of an investor's annual income or net worth is less than $107,000: or

- Ten percent of the greater of his or her annual income or net worth, if both annual income and net worth are equal to or more than $107,000

Spouses are allowed to calculate their net worth and annual income jointly.

Note that these caps apply to the total amount an investor invests under Regulation Crowdfunding in a given year. So if someone invests the maximum in one campaign and then six months later wants to invest in another campaign, this would not be allowed.

You can rely on the efforts of the crowdfunding intermediary to ensure that the aggregate amount of securities purchased by an investor will not cause the investor to exceed the limits, provided that you don't know that the investor has exceeded the investor limits or would exceed the investor limits as a result of purchasing securities in your offering.

**What regulatory filings are required?**

You have to file Form C with the Securities and Exchange Commission.

Under Title III, there are no state level filings required so you can raise from residents of all 50 states without having to worry about state-by-state compliance. However, under the law, the state of your principal place of business and the state where more than 50% of your investment comes from *can* require a notice filing and a fee. To date, very few states are requiring any filings from resident companies raising money under Title III.

**What information do you have to provide?**

When you set up your offering on a platform, you have to provide detailed information about your company and your offering. If you're raising more than $107,000 you have to provide financials reviewed by a CPA. It can cost several thousand dollars to prepare the financials required under Title III. This is also the step that can make the process take longer. The rest of the process can be completed very quickly.

If you're raising more than $1,070,000, you need audited financials.

The second time you raise money under Title III, if you're raising more than $535,000, you have to provide audited financials.

**When can you get the money?**

Before you start your campaign, you'll set a minimum amount that you want to raise and a target amount. You'll also set a length of time for the offering to be open. You generally will not collect the money until your offering ends, but it is possible to collect funds after you've reached your minimum and then continue to raise additional funds.

If the offering ends before you've reached the minimum, the funds will be returned to the investors. It is possible to extend your offering beyond the originally planned end date. Investors are required to be informed that they have the right to change their mind about an investment right up until two days before the close.

**Do you have to do reports after you complete the raise?**

You have to file an annual report (including financial information) which is required to be posted on your web site. Under certain circumstances, the requirement for filing the annual report terminates after the first year. The annual report requires that your financials be prepared in accordance with Generally Accepted Accounting Principles.

**Can the investors sell their securities to someone else?**

Securities purchased under Title III can be re-sold one year after the initial purchase as long as the resales are compliant with state law.

**Do you have to have a U.S. company?**

Yes, only U.S. companies can take advantage of the crowdfunding exemption.

**Can you be raising in a different way at the same time or close in time to an offering under Title III?**

Yes! Unlike many other capital raising strategies, you are allowed to raise money under the crowdfunding exemption at the same time that you are raising money in another way, such as through a different kind of direct public offering or an offering to all accredited investors under Rule 506(c). You can also switch immediately from a private offering to a Title III offering – there is no requirement of a six-month quiet period between a private offering and a Title III offering.

However, keep in mind that if you meet a potential investor through a public solicitation, you may not later solicit them to invest in a private offering UNLESS between the time you solicited them publicly and the time you ask them to invest in a private offering, you have developed a substantial relationship with them. You cannot publicly solicit potential investors with the intention of later soliciting them for a private investment.

**What can you offer?**

Even though some people call this "equity crowdfunding," you can offer any type of security – you don't have to offer equity.

**What can you say about your Title III Crowdfunding campaign before you file your Form C?**

You are allowed to "test the waters" which means you can tell people that you are thinking about raising money using Regulation Crowdfunding before you do any regulatory filings. You should only do this if you are pretty certain you will be using Regulation Crowdfunding to raise money.

Any time you conduct a "testing the waters" communication (i.e. telling people about your intention to raise money using Regulation Crowdfunding before you file Form C), you must include the following in your communications:

(1) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;
(2) State that no offer to buy the securities can be accepted and no part of the purchase price can be received until the offering statement is filed and only through an intermediary's platform; and
(3) State that a person's indication of interest involves no obligation or commitment of any kind.

**What can you say during your Title III Crowdfunding campaign?**

One way to think about this is that every time you are getting ready to publicly advertise the offering, you have to decide whether or not you want to talk about the terms. What are the terms?

- the amount of securities offered, i.e. how much you're raising
- the nature of the securities, i.e. equity versus debt and details about the economic and governance rights of the investors
- the price of the securities, and
- the closing date of the offering period
- planned use of proceeds
- progress toward meeting funding target

If you *do* want to talk about any of the terms listed above, you are very limited in what you can say – you can't go on and on talking about how great your company is, how it's better than the competition, etc. You can only do a very abbreviated advertisement known as a "tombstone."

If you don't feel the need to mention the terms in your advertising, you can say whatever you want and just direct people to the intermediary platform for more information.

So, basically, there are two types of allowable public communications outside of the platform (you can say whatever you want on the platform):

Type 1: Non-terms communication

You can talk publicly about the offering however you want as long as you don't mention the terms.

This means you can make any kind of public communication or advertising in which you say you are doing an offering (although not WHAT you are offering; that would be a "term") and include all sorts of information about the company, its track record, its mission, what it will use the money for, etc.  Of course, you can link to your fundraising page on the crowdfunding platform.

Whether you are identifying a "term" of the offering can be pretty subtle. "We are making an offering so that all our fans can be co-owners," might indirectly include a term because it's hinting that you are offering equity.  Try to avoid hints as to what you are offering, and just drive investors to the intermediary's site to find out more.

Type 2: Communication that includes the terms (aka tombstone advertisement)

If you want to talk about the terms publicly, you have to limit what you say to a short list of permitted items (the terms, the issuer's name and contact information, a brief description of the business, a statement that you're conducting the offering pursuant to Section 4(a)(6) of the Securities Act, and a link to your page on the platform).

"Brief description of the business of the issuer" means that you should not say more than just a general description of your principal products and services.

An advertisement that includes terms should not be included with other communications because that will likely mean that you are including more information than you are supposed to.  For example, if you have a notice that includes terms on your web site and your web site has all kinds of detailed information about your company, the whole communication taken together will have way too much information to be counted as a tombstone ad.

A tombstone ad should not contain any links other than the link to your crowdfunding page.

Here is some more useful information from CrowdCheck:

Interviews with the media can be thorny because participation with a journalist makes the resulting article a communication of the company.  In fact, the SEC Staff have stated that they don't see how interviews can easily be conducted, because even if the company personnel stick to the tombstone information (which would make for a pretty weird interview), the journalist could add non-tombstone information later, which would result in the article being a notice that didn't comply with the tombstone rule.

The same thing could happen with interviews where the company tries to keep the interview on a non- terms basis. The company personnel could refrain from mentioning any terms (again, it's going to be pretty odd saying, "Yes, we are making an offering of securities but I can't say what we are offering"), but the first thing the journalist is going to do is get the detailed terms from the company's campaign page on the platform's site, and again the result is that the article becomes a non-complying notice.

These rules apply to all articles that the company "participates in." This means that if you (or your publicists) tell the press, "Hey, take a look at the Company X crowdfunding campaign" any resulting article is probably going to result in a violation of the rules. By you.

If you link to an article, [it is basically the same as if you made all of the statements in the article yourself]. If the article mentions the terms of the offering then you can't link to it from a non-terms communication (such as your website) and if it includes soft non-terms information, then you can't link to it from a tombstone communication. And if it includes misleading statements, you are now making those statements.

In general, if you (or your publicists) didn't participate in or suggest to a journalist that he or she write an article, it's not your problem. You aren't required to monitor the media or correct mistakes.