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CROWDFUNDING – UPDATE

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After months of sitting on the sidelines, the United States Senate (“Senate”) passed an amended version of the Entrepreneur Access to Capital Act (“EACA”). Although the passage of the amended bill moves crowdfunding one step closer to reality, the House is still required to approve the changes that were made based on Senator Brown’s and Senator Merkely’s original crowdfunding bills. The Senate version, the Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2011 (the “CROWDFUND Act”), has several substantial changes to EACA. First, the CROWDFUND Act requires that the Securities and Exchange Commission (the “SEC”) approve all crowdfunding platforms that act as intermediaries. Second, the CROWDFUND Act limits fundraising to \$1 million; whereas EACA allowed issuers to raise between \$1 million and \$2 million if issuers provided audited financial statements to investors. Finally, while EACA limited individual investments to the lesser of \$10,000 or 10% of the investor’s annual income, the CROWDFUND Act creates more graduated investment limitations based on salary. For people with an income of less than \$100,000 a year, investments are capped at the greater of \$2,000 or 5% of the investor’s annual income. For investors with an income of greater than \$100,000, investors are capped at the lesser of 10% of their annual income or \$100,000.

It should be noted that the costs of the amendment to EACA may be substantial to intermediaries and issuers. First, requiring SEC approval for intermediaries will likely bring intermediaries under the fold of periodic SEC inspections. This may increase expenses for both the intermediaries and, consequently, issuers seeking to raise capital through crowdfunding. In addition, while the SEC conducts its rulemaking to determine the minimum registration requirements for intermediaries, opportunities to raise capital through crowdfunding will be placed on hold. SEC Chairman Mary Schapiro has already signaled that this may take up to 18 months. Furthermore, once the SEC has the opportunity to conduct rulemaking, they may create rules and regulations that further limit the effectiveness of crowdfunding or overregulate to the point where crowdfunding may become cost prohibitive for some issuers seeking to do seed round microfinancing. Although the Senate’s passage of the bill should be celebrated as a set forward for the crowdfunding movement, this form of capital raising will not truly be ready for market until the SEC has had its input.

If you have any questions regarding this press release, please contact Steven J. Thayer at (312) 641-2100.



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