

Article Information

Service: Corporate & Commercial, Information Technology, Intellectual Property

Australia to follow USA moving forward with Equity Crowdfunding regulations

While Australia is still in the process of finalising a regulatory framework for equity crowdfunding, the United States has moved forward.

On 30 October 2015, the Securities and Exchange Commission (SEC) passed rules to implement Title III of the Jobs Act in the United States. Title III was passed by Congress within the JOBS Act in 2012 however it specifically required SEC rules to implement its operation.

The new crowdfunding regulations will effectively allow “non-accredited investors”, being everyday people, to take part in equity crowdfunding in the US. The key elements of the proposed regulations implementing Title III include:

Investment Limits

- Start-ups and small businesses will be able to raise a maximum aggregate of \$1 million in any 12 month period. The offerings must be made via a broker-dealer or ‘portal intermediary’ (crowdfunding platform). Title III is not available to non-U.S. companies, Exchange Act reporting companies and certain other types of investment companies. However, as has been the case in the past foreign companies are not precluded from setting up US companies in order to access the market.
- Investors that earn less than \$100,000 per year can invest the greater of 5% of annual income or \$2000.
- Investors earning more than \$100,000 per year can invest up to 10% of their annual income.

Disclosure by Companies

Companies proposing to make a crowdfunding offer must file certain information with the SEC, provide it to investors and the relevant intermediary facilitating the crowdfunding offer, and make it available to potential investors. Importantly, this information must include:

- information about officers and directors as well as owners of more than 20% or more of the company
- a description of the company’s business and the use that the proceeds of the offering will be put to
- the price of the securities for the crowdfunding offer, the target capital raise, the deadline for reaching the target and whether the company will accept investments in excess of the target
- disclosure of certain related-party transactions
- a description of the financial condition of the company as well as financial statements of the company which in some cases will need to be reviewed or audited by an independent public accountant or auditor. In some cases the company may have to provide a copy of its tax returns.

Crowdfunding Platforms

The intermediary must be registered with the SEC as a broker-dealer or funding portal. Intermediaries can seek registration with the SEC from 29 January 2016. The SEC will require the intermediaries to comply with the following requirements:

- provide investors with educational materials. However, an intermediary must not offer investment advice or make recommendations
- take measures to reduce the risk of fraud
- make information about the issuer and the offering available
- provide a means for discussions about offerings on the platform (through a chat room facility)
- facilitate the offer and sale of crowdfunded securities. An intermediary must not solicit purchases, sales or offers to buy securities offered or displayed on its website. Further, it is proposed that intermediaries will be prohibited from

holding, possessing or handling investor funds or securities.

Further information on the SEC's implementation of Title III can be obtained from their website.

It will be interesting to monitor how equity crowdfunding continues to grow and develop in the United States. Australia will be implementing a regulatory framework shortly. We anticipate that, consistent with the Government's innovation agenda, that it will open and facilitate the market here. We will continue to remain abreast of developments and provide any major updates.