

April 11, 2012

Dear SEC Staff:

The text of the JOBS Act indicates a legislative intent to allow crowdfunding portals to take closing fees (which could be a set fee or a percentage of the financing raised) on financings closed on its site.

(80) FUNDING PORTAL.--The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not--

- (A) offer investment advice or recommendations;
- (B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;
- (C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;
- (D) hold, manage, possess, or otherwise handle investor funds or securities; or
- (E) engage in such other activities as the Commission, by rule, determines appropriate."

Item (C) prohibits a funding portal from "compensating employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal." This language bans commissions to employees, agents or others, **but does not ban the portal itself from receiving compensation.**

The legislation could easily have clearly said that a funding portal "**shall not receive compensation** nor compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal," but it didn't. It also could have clearly said that a funding portal cannot receive compensation based on the success or closing of a particular investment, but it didn't.

Item (D) does not apply because once the transaction closes, the funds belong to the issuer (not the investors).

I also note that Title II of the Act (which provides for general solicitation to accredited investors under Reg D) does explicitly prohibit "**such person and each person associated with that person [from receiving] compensation** in connection with the purchase or sale of security" unless they are a registered broker-dealer.

The fact that this same prohibitive language was not included in the definition of a funding portal indicates a legislative intent to allow these type of closing fees for crowdfunding transactions (but not accredited investor, general solicitation transactions for a non-registered broker/dealer).

Without the ability to charge closing fees, funding portals will be hard pressed to survive. A significant number of the type of companies that the legislation is intended to help will not have money for these type of upfront fees and will only be able to pay upon closing of a round.

I would love the opportunity to discuss further in person. For further thoughts, see my blog on the JOBS Act at www.1billionangels.com.

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