

MIKE BEEBE  
GOVERNOR

A. HEATH ABSHURE  
COMMISSIONER



HERITAGE WEST BUILDING, SUITE 300  
201 EAST MARKHAM STREET  
LITTLE ROCK, ARKANSAS 72201-1692  
TELEPHONE: (501) 324-9260  
FACSIMILE: (501) 324-9268

## ARKANSAS SECURITIES DEPARTMENT

### ARKANSAS SECURITIES DEPARTMENT ISSUES ADVISORY ON CROWDFUNDING TO SMALL BUSINESSES

Little Rock – The Arkansas Securities Department today issued an advisory to spotlight concerns for small businesses and entrepreneurs seeking to raise investment capital through crowdfunding. The advisory is on the agency’s website at [www.securities.arkansas.gov](http://www.securities.arkansas.gov).

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. Through the Jumpstart Our Business Startups (JOBS) Act, small businesses and entrepreneurs will be able to tap into the “crowd” in search of investments to finance their business ventures.

The JOBS Act was signed into law in April. The legislation directed the Securities and Exchange Commission (SEC) to adopt rules within 270 days to implement a new exemption to allow entrepreneurs and small businesses to offer investments in their ventures through crowdfunding.

“Small businesses are important to the nation’s economic growth and the crowdfunding concept has the potential to provide legitimate small, innovative enterprises with access to capital that might not otherwise be available,” said Arkansas Securities Commissioner, A. Heath Abshure.

The advisory reminds small businesses to wait until the SEC’s crowdfunding rules are finalized before offering shares in their ventures for sale to the public. “Until that time, federal and state securities law prohibitions remain in place against publicly accessible Internet securities offerings,” the advisory said.

The advisory also notes that the JOBS Act only exempts crowdfunding equity offerings from securities law registration requirements. “The requirements of federal and state securities laws regarding disclosures, including disclosures of all material facts and risks to investors, remains in place,” the advisory said. “If you do not comply with these disclosure requirements, you and your business can be liable for securities fraud and subject to private lawsuits as well as administrative enforcement actions.”

Other topics covered in the advisory include the importance of choosing a proper broker or funding portals to assist with your crowdfunding offering and a reminder that state and federal laws provide additional methods for companies to raise money from a limited number of investors with little or no cost.

“Through our advisory, the Securities Department wants to help ensure that both small businesses and investors are protected as they explore the crowdfunding marketplace,” Commissioner Abshure said.

Before taking any actions, small business owners, entrepreneurs, and potential investors with questions about crowdfunding offerings should contact the Arkansas Securities Department at 501-324-9260.

# Small Business Advisory:

## Crowdfunding

On April 5, 2012, President Obama signed into law the Jumpstart Our Business Startups (JOBS) Act, a series of legislative provisions intended to facilitate capital formation in the United States. Part of this legislation included the CROWDFUND Act, which makes significant changes in current federal and state securities laws.

The CROWDFUND Act will allow entrepreneurs to raise capital by offering to sell interests in their businesses over the Internet. Under the CROWDFUND Act, a small business will be allowed to raise \$1 million in a 12-month period by selling its securities to investors without registering that offering with federal or state securities regulators. However, the Act places limitations on how and to whom a small business can sell its securities. The Act directed the Securities and Exchange Commission to adopt rules within 270 days to implement a new exemption to allow securities sales through crowdfunding.

### What is Crowdfunding?

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects.

The concept has recently been promoted as a way of assisting small businesses and start-ups looking for investment capital to help get their business ventures off the ground. Traditionally, investment opportunities are offered by professionals, such as broker-dealer firms and investment advisers, who must recommend investments that are based on their clients' investment objectives and levels of sophistication.

Through crowdfunding, individuals will be able to invest in entrepreneurial start-ups through an intermediary, such as a broker-dealer or a "funding portal." A funding portal is a website, also called a "platform," that advertises the investment opportunities and facilitates the payment from the investor to the issuer. Some portals advertise a variety of investment opportunities on one website, allowing investors to select one or more projects. By law, "funding portals" are not allowed to provide investment advice.

### Crowdfunding Concerns for Small Businesses and Entrepreneurs

- **Don't rush in.** Do not start using any Internet resources to raise capital for your business under the crowdfunding exemption until the SEC rulemaking is complete, which won't be for at least several months. Until that time, federal and state securities law prohibitions remain in place against publicly accessible Internet securities offerings.
- **Don't discount disclosure.** The crowdfunding exemption is only an exemption from securities law registration requirements. It does not change the securities law disclosure requirements. The requirements of federal and state securities laws regarding disclosures, including disclosures of all material facts and risks to investors, remains in place.

If you do not comply with these disclosure requirements, you and your business can be liable for securities fraud and subject to private lawsuits as well as administrative enforcement actions. Existing federal and state registration laws are specifically designed to protect small businesses soliciting investments by ensuring that the key terms and risks of their offerings are disclosed on brief, short-form filings. This is a huge benefit for entrepreneurs and other

**To learn more or for help with these or other investment products, contact:**

Arkansas Securities Department

201 East Markham Street, Suite 300 Little Rock, AR 72201

Phone: 501-324-9260 or 800-981-4429 | Fax: 501-324-9268

[www.securities.arkansas.gov](http://www.securities.arkansas.gov)



# The North American Securities Administrators Association

unsophisticated businesses that may be unaware of the legal pitfalls that await them when such disclosures are not made.

In light of statistics showing that roughly 50 percent of all small businesses fail within the first five years, the next generation of small businesses could quickly find themselves facing multi-million dollar civil and criminal fraud claims simply because those businesses were no longer prompted on the need to disclose the risks typically associated with start-ups.

- **Carefully choose a broker or funding portal.** Be aware of unscrupulous persons offering to take fees from you now to help you raise capital over the Internet.

Because the CROWDFUND Act is not implemented yet, such offers could be a scam, preying upon those entrepreneurs less familiar with the Act's requirements. A premature offer could also indicate that the individual making the offer is unfamiliar with the intricacies of the new laws and is perhaps less sophisticated than would be desired.

If your broker or funding portal does not comply with the SEC's rules on the CROWDFUND Act, your exemption may be voided, subjecting you to liability for an unregistered offering. When you do select one, be sure that the broker or funding portal thoroughly complies with the requirements of the CROWDFUND Act and its rules.

It is your business, after all, so ask questions to ensure that the broker or funding portal is thoroughly familiar with the act and is motivated to see that your business properly and legally get off the ground. For example, since small businesses will be held responsible for making misrepresentations to investors or failing to disclose important information, you should be wary of crowdfunding platforms that seem careless about making adequate disclosures to investors.

- **Don't go it alone.** The crowdfunding exemption is meant to lower your capital-raising costs by exempting \$1 million or less capital formation efforts from registration.

However, a small business using this exemption still needs legal guidance as to how to comply with the CROWDFUND Act's requirements as well as the general federal and state securities laws. During the time until you can use the crowdfunding exemption, consider speaking with a licensed and experienced securities law attorney to help you in your offering.

- **Avoid distractions.** Having hundreds of "owners" may distract the company's management from devoting the time and energy that is necessary to run a successful business. Venture capital companies or private equity funds may be less inclined to invest in a company that already has a crowd of small investors.
- **Consider your funding alternatives.** Crowdfunding may be less expensive than doing a public offering of securities, but it will be more expensive than other alternatives. Federal and state laws provide other ways for a company to raise money from limited numbers of investors with little or no cost. Contact your state securities regulator to learn the different options for raising capital.

## The Bottom Line



Get advice from a competent professional to determine the appropriate course of action for your particular circumstances. Be sure to guard your company's reputation by avoiding disreputable crowdfunding platforms.

For more information on offering securities and raising capital, contact the Arkansas Securities Department at 501-324-9260 or 800-981-4429 or visit online at [www.securities.arkansas.gov](http://www.securities.arkansas.gov).

This **Small Business Alert** is brought to you by the Arkansas Securities Department, a member of the North American Securities Administrators Association. For more investor alerts and advisories, visit the NASAA website at [www.nasaa.org](http://www.nasaa.org).

