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MEMORANDUM

Privileged and Confidential

FROM: Duane L. Berlin, Managing Principal, Lev & Berlin, P.C

DATE: October 16, 2013

RE: Crowdfunding v. Rule 506(c) Offerings

Many people are confused about the SEC's repeal of the ban on general solicitation and how it relates to crowdfunding.

The SEC's repeal of the ban on general solicitation relates to accredited investor-only offerings under Rule 506(c) of Regulation D. Accredited investors are generally individuals with a greater than $1M net worth. This is excluding their primary residence, taking into account debt on that residence in excess of its Fair Market Value (FMV). This includes individuals with incomes in excess of $200,000 in the last two years, with the expectation of the same in the current year, or $300,000 with spouse.

Rule 506(c) allows issuers to raise an unlimited amount of money from accredited investors (subject to the other conditions of the rule). Under SEC new rules, companies can generally solicit their offerings under Rule 506(c) (subject to conditions and requirements).

Rule 506(c) offerings are not crowdfunding offerings under the JOBS Act. Crowdfunding is embodied in Title III of the JOBS Act. The repeal of the ban on general solicitation in all accredited investor Rule 506 offerings appears in Title II of the JOBS Act. So, the SEC's repeal of the ban on general solicitation is not what is referred to as crowdfunding under the JOBS Act.

Crowdfunding

Crowdfunding under Title III of the JOBS Act will allow sales of securities to both accredited and non-accredited investors, in small amounts (there are individual investor caps), with an aggregate total fund raise capped at $1M during any 12 month period.

Crowdfunding is not yet legal.

The JOBS Act provides that it will not be legal until the SEC issues regulations allowing it. We don't know when this will happen. Ironically, once crowdfunding becomes legal, companies that engage in crowdfunding won't be able to generally solicit their offerings. Instead, under the JOBS Act, they will not be able to "advertise the terms of the offering, except for notices which direct investors to the funding portal or broker."

The key differences between Rule 506(c) offerings and crowdfunding offerings are:

- Rule 506(c) offerings are legal now; an unlimited fund raise is possible, but only from accredited investors. There is no cap on the amount an individual investor can invest or the total all investors may invest collectively. General solicitation is allowed. Other conditions apply. (For example, there is an obligation to take reasonable steps to verify the accredited investor status of the investors, and to keep records; such as reviewing Forms W-2, etc.) Companies engaged in Rule 506 offerings are not required to use an intermediary, like a registered broker-dealer.

- Crowdfunding under Title III of the JOBS Act is not legal yet; it won't be legal until the SEC issues regulations and it's unclear when that will happen. When it does become legal, companies will be able to raise money from both accredited and non-accredited investors, but there will be limits on the amount each investor can invest, and a cap on the overall amount all investors can invest during any 12 month period. No advertising will be allowed. Companies that crowdfund will have to use a registered broker or registered funding portal.

The following is a helpful chart that distinguishes the features and requirements of private placements under Rule 506(c) and Crowdfunding under the JOBS Act:

	Rule 506(c)	**Crowdfunding**
Legal Yet?	Yes	No
Individual Investor Limits?	No	Yes
Aggregate Fund Raise Cap?	No	Yes
Advertising Allowed?	Yes. Companies can use any type of media they like.	No, once legal, issuers will not be able to "advertise the terms of the offering, except for notices which direct investors to the funding portal or broker."
Investors Eligible?	Accredited Investors Only	Both accredited and nonaccredited investors can participate.
Broker or Intermediary Required?	No	Yes