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## Regulation Crowdfunding

The U.S. Securities and Exchange Commission (SEC) adopted Regulation Crowdfunding in October 2015 to address evolving methods of raising capital through the Internet. These rules, which will become effective on May 16, 2016, allow individuals to invest in securities through crowdfunding transactions, subject to certain investment limits. The rules also limit the amount of funds an issuer can raise using the crowdfunding exemption, require issuers to disclose certain information about their business and securities offerings, and create regulatory frameworks for the broker-dealers and funding portals that facilitate the crowdfunding transactions.

Unlike the regulatory regime for crowdfunding in Canada, the U.S. regime explicitly prohibits issuers from raising funds via crowdfunding if they are required to file reports with the SEC under sections 13(a) or 15(d) of the *Securities Exchange Act of 1934*, as amended (Exchange Act). Thus, while the U.S. regime may be attractive to non-reporting companies, publicly listed companies will not be eligible to crowdfund in the United States. In addition, non-U.S. companies and companies that have no specific business plan or have indicated that their business plan is to engage in a merger or acquisition with an unidentified company will not be eligible to crowdfund in the United States.

### **New Regulation Crowdfunding: Section 4(A)(6)**

Under Regulation Crowdfunding, an issuer can raise a maximum aggregate amount of US\$1 million through crowdfunding offerings in a 12-month period. There are no restrictions on the type of securities that can be crowdfunded. Securities sold under other federal securities law exemptions do not count toward the cap of US\$1 million per 12 months. An offering made under Regulation Crowdfunding would not be integrated with another exempt offering made by the issuer, such as an exempt offering made in reliance on Rule 506(c) of Regulation D, if each offering meets the requirements of the applicable exemption that is being used for that offering.

Individual investors, over a 12-month period, may invest in the aggregate across all crowdfunding offerings up to either (i) if their annual income or net worth is less than US\$100,000, the greater of US\$2,000 or 5% of the lesser of their annual income or net worth; or (ii) if both their annual income and net worth are equal to or more than US\$100,000, then 10% of the lesser of their annual income or net worth. Furthermore, during the 12-month period, the aggregate amount of securities sold to an investor through all crowdfunding offerings may not exceed US\$100,000.

Securities purchased in a crowdfunding offering generally cannot be resold for one year, unless they are transferred to the issuer; to an accredited investor; as part of a registered offering; or to certain members of the purchaser's family, to the purchaser's trust (or a family trust) or in connection with the purchaser's death or divorce. The resale restrictions apply to any purchaser

during the one-year period beginning when the securities were first issued and not only to the initial purchaser.

## **Reporting and Disclosure Requirements**

In addition, issuers have annual reporting obligations and must also make certain disclosures to the SEC and to their prospective investors relating to the offering and the issuer. All filings under Regulation Crowdfunding are made under the new Form C. Notable required disclosures include the price of the securities and/or the method used to calculate the price of the securities, the issuer's financial condition and financial statements (with varying requirements for certification or audit depending on the size of the offering), the issuer's business and proposed purpose for the proceeds of the offering, information on the officers and any owners holding 20% or more of the equity of the issuer, and related-party transactions.

## **Funding Portals**

Regulation Crowdfunding also provides for the creation of so-called funding portals that can facilitate crowdfunding offerings without registering with the SEC as broker-dealers. Under the final rules, funding portals must take measures to reduce the risk of fraud in the offerings they host and are subject to various disclosure requirements. Funding portals organized or domiciled outside the United States may participate in crowdfunding offerings but are subject to additional restrictions.

Holders of crowdfunded securities will not count toward the threshold that requires an issuer to register its securities under Exchange Act section 12(g) if the issuer is current in its annual reporting obligations, retains the services of a registered transfer agent and has less than US\$25 million in total assets as of the end of its most recently completed fiscal year.

*If you have any questions regarding the foregoing, please contact [Scott D. Fisher](#) (212.588.5596) or [Jennifer Liu](#) (212.588.5543) in our New York office.*

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