



Title III Crowdfunding: Primer for Issuers and Funding Portals

NYS Small Business Development Center

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Agenda



The screenshot shows the U.S. Securities and Exchange Commission (SEC) website. The header includes the SEC logo and the text "U.S. Securities and Exchange Commission". Below the header is a navigation menu with links for "ABOUT", "DIVISIONS", "ENFORCEMENT", "REGULATION", "EDUCATION", "FILINGS", and "NEWS". The main content area is titled "PRESS RELEASE" and features a news item: "SEC Adopts Rules to Permit Crowdfunding Proposes Amendments to Existing Rules to Facilitate Intrastate and Regional Securities Offerings". Below this is a section for "FOR IMMEDIATE RELEASE 2015-249" dated "Washington D.C., Oct. 30, 2015". The text of the release states: "The Securities and Exchange Commission today adopted final rules to permit companies to offer and sell securities through crowdfunding. The Commission also voted to propose amendments to existing Securities Act rules to facilitate intrastate and regional securities offerings. The new rules and proposed amendments are designed to assist smaller companies with capital formation and provide investors with additional protections."

- What is Crowdfunding?
- Historical Impediments to Raising Capital
- Current equity “crowdfunding” alternatives
- Title III Crowdfunding
- Reform Efforts

What is Crowdfunding?

- Using internet/social media to raise funds from many people making small contributions.
- Originated w/ non-equity
 - Donation based
 - Rewards based
 - Pre-Order based



Help Farrah and family - CO theater tragedy



LITTLETON, CO MEDICAL

\$171,525 of 200k



Raised by 6,088 people in 25 months

[Donate Now](#)

[SHARE ON FACEBOOK](#)





The screenshot shows a web browser window displaying a GoFundMe page for the "Carson Palmer Thrust Fund" in Phoenix, AZ. The page features a video of Carson Palmer in a red jersey with the number 12, shouting. The fundraising progress shows \$2,216 raised out of a \$11.6k goal, with a progress bar and a note that it was raised by 226 people in 2 days. Social sharing buttons for Facebook, Twitter, and a "DONATE" button are visible at the top. The browser's taskbar at the bottom shows several open applications including "Carson Palmer T...", "151116ExemptOff...", "Search 1 - FileSite ...", "Microsoft Lync", "VidyoDesktop™ - L...", and "#5167759v1<Inte...".

Pebble: E-Paper Watch for iPhone and Android

by [Pebble Technology](#)

Home Updates **17** Backers **68929** Comments **7,818**

Palo Alto, CA Product Design

Funded! This project successfully raised its funding goal on May 18.



68,929
backers
\$10,266,846
pledged of \$100,000 goal
0
seconds to go



Project by
**Pebble
Technology**
Palo Alto, CA
Contact me

What is Equity Crowdfunding?

- Originated from two perceived needs:
 - start-ups lacked access to capital
 - non-accredited investors lacked access to early stage investment opportunities
- Non-accredited investors = 93% of U.S. population
- \$30 trillion investable personal savings
- Internet coming to capital formation industry

Historical Impediments to Raising Capital

- Any offer of securities must either register w/ SEC, or satisfy exemption
- Registration is expensive, time consuming
- Private offering exemptions
 - Section 4(a)(2): “...not involving any public offering”
 - Rule 506: safe harbor
 - Unlimited accredited investors, plus up to 35 non-accredited/sophisticated
 - “accredited investors” = annual income of \$200,000 or net worth of \$1 million, not including primary residence
- Biggest impediments: prohibition on general solicitation, accredited investor bias





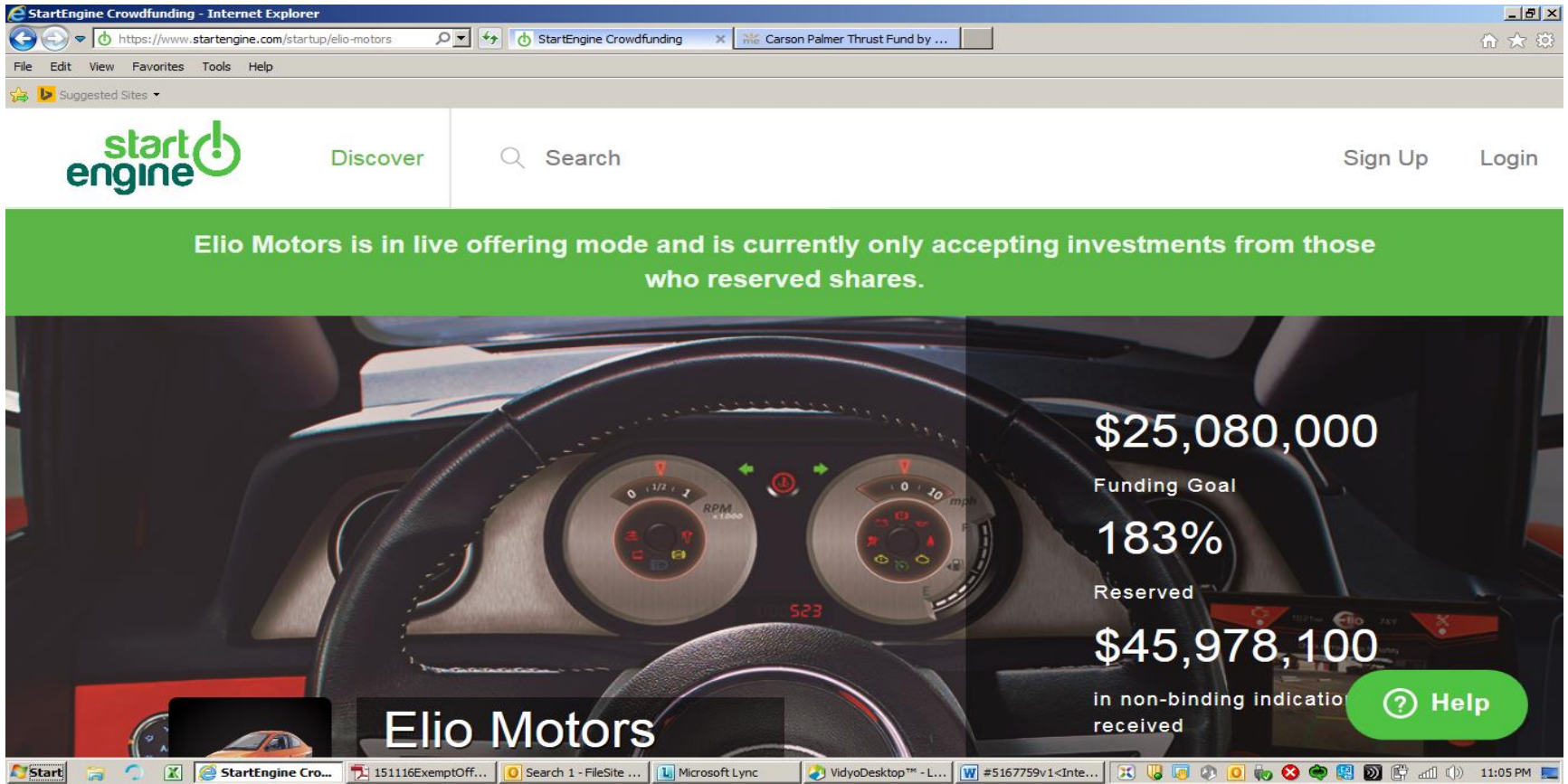
JOBS Act 2012

- Title II: “accredited crowdfunding”
 - Rule 506(c): allows general solicitation, so long as sell only to accredited investors and take reasonable steps to verify all purchasers are accredited
- Title III: non-accredited, unregistered crowdfunding
- Title IV/Reg A+: “registered crowdfunding” (Mini-IPO)
 - Tier I: Up to \$20 million in 12-mo. period
 - Tier II: Up to \$50 million in 12-month period
 - Enhanced investor protections; state preemption

Existing “Crowdfunding” Alternatives

- Accredited Crowdfunding
 - General solicitation? 506(b) vs. 506(c)
 - Broker-dealer vs. Investment fund model
- Registered crowdfunding: Title IV/Reg A+
- Intrastate Crowdfunding
- Foreign Crowdfunding





The screenshot shows a web browser window displaying the StartEngine Crowdfunding page for Elio Motors. The browser's address bar shows the URL <https://www.startengine.com/startup/elio-motors>. The website header includes the StartEngine logo, a 'Discover' button, a search bar, and 'Sign Up' and 'Login' links. A prominent green banner at the top of the page reads: "Elio Motors is in live offering mode and is currently only accepting investments from those who reserved shares." Below this banner is a large image of a car's dashboard. Overlaid on the right side of the dashboard image is a semi-transparent box containing the following information:

- \$25,080,000** (Funding Goal)
- 183%** (Reserved)
- \$45,978,100** (in non-binding indication received)

A green 'Help' button with a question mark icon is located at the bottom right of this information box. The name 'Elio Motors' is displayed in a white box at the bottom left of the dashboard image. The browser's taskbar at the bottom shows several open applications, including StartEngine Crowdfunding, a file explorer, Microsoft Lync, and VidyoDesktop.



The First Ever IPO for an Equity Crowdfunded Company is Complete - alt fi news - Internet Explorer

http://www.altfi.com/articles/0461_the_first_ever_ipo_for... | The First Ever IPO for an Equ...

File Edit View Favorites Tools Help

Suggested Sites



The rise of mobile finance

UBIQUITOUS

FINANCE 2016

27th JANUARY 2016 @ RSA, LONDON

SUPER EARLY BIRD TICKETS AVAILABLE

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The First Ever IPO for an Equity Crowdfunded Company is Complete

3rd October 2014

ReWalk Robotics has now etched its name into the equity crowdfunding history books.

in Share + Share 1 Tweet



WTF:CRUDE(OIL) 94.08 -0.64%

Start | http://ww... | SEC adopt... | The First E... | _Document... | Microsoft L... | VidysDesk... | #5167759... | #5188623... | 11:46 AM

Title III Crowdfunding

- Dollar Limits - during any rolling 12 month period:
 - Issuer Limit: \$1 million
 - Investor Limit:
 - If investor's annual income or net worth is less than \$100,000, may invest the greater of:
 - \$2,000; or
 - 5% of the lesser of annual income or net worth
 - If investor's annual income and net worth are both at least \$100,000, may invest the lesser of:
 - \$100,000; or
 - 10% of the lesser of annual income or net worth

Title III Crowdfunding (cont.)

- Issuer Qualification
 - must be organized in the U.S.
 - may not be public company, investment company, blind pool or “bad actor”
- Must be conducted through one intermediary, either:
 - broker/dealer registered with SEC and member of FINRA; or
 - “funding portal” registered with SEC and member of FINRA

Title III Crowdfunding (cont.)

- Offering Mechanics
 - Investors may cancel up to 48 hours pre-closing
 - All-or-Nothing
 - If target reached before deadline, issuer may close early but five days' notice
 - If material change to offering, issuer must disclose
 - if investor does not reconfirm, investment cancelled and funds returned to investor

Title III Crowdfunding (cont.)

- Status of Securities
 - No transfers for one year, except to issuer, accredited investors, family
 - Holders not counted toward threshold triggering Section 12(g) registration provided current in annual reporting, retains registered transfer agent and has less than \$25 million in total assets
- Rescission right for material misstatements or omissions
 - No need to prove intent to defraud or reckless disregard
 - Issuer burden proof: didn't know, exercise of reasonable care could not have known
 - No intermediary exemption

Title III Crowdfunding (cont.)

- Offering Disclosure: Form C
 - File with SEC (but no SEC approval needed)
 - Intermediary must post or provide a link to SEC filing
 - Similar to offering memorandum, must include:
 - Use of Proceeds;
 - Target and max offering size;
 - Offering Price;
 - Business;
 - Directors and officers;
 - Beneficial Ownership and Capital Structure;
 - Indebtedness;
 - Related party transactions;
 - Exempt offerings;
 - Risk factors;
 - Transfer restrictions; and
 - Management’s Discussion and Analysis

Title III Crowdfunding - Issuer Requirements (cont.)

- Financial information, depending on aggregate amount of offering together with all other Title III offerings within the last 12 months:
 - **\$100,000 or less:** income, taxable income and total tax for most recently completed year, certified by principal executive officer.
 - **More than \$100,000, up to \$500,000:** financial statements reviewed by independent public accountant.
 - **More than \$500,000:** financial statements audited by independent public accountant, but first-time issuers only need reviewed financials

Title III Crowdfunding - Issuer Requirements (cont.)

- Progress Update: issuer required to file progress updates with SEC on Form C-U, five days after:
 - commitments for 50% of the deal received
 - commitments for full deal received
 - subscriptions in excess of initial offering amount will be accepted, or issuer closes the offering.

Title III Crowdfunding - Issuer Requirements (cont.)

- Annual Report on Form C-AR
 - Issuer must file with SEC, post on website within 120 days after fiscal year end
 - Same information required in offering statement
 - Financial statements certified by principal executive officer
 - May terminate when issuer:
 - required to file reports under the Exchange Act
 - filed one annual report, fewer than 300 shareholders
 - filed three annual reports, assets not exceeding \$10 million
 - repurchase all crowdfunded securities; or
 - liquidation or dissolution

Title III Crowdfunding - Issuer Requirements (cont.)

- Restrictions on Advertising and Promotion
 - Communicate with potential investors only through platform
 - Make clear communications being made by issuer or on issuer's behalf
 - Take reasonable steps to ensure paid promoters disclose receipt of compensation
 - Exception for tombstone ads that include only:
 - statement that issuer conducting an offering
 - name of intermediary and link to offering page
 - amount, nature and price of securities offered
 - the closing date; and
 - brief factual description of issuer's business

Title III Crowdfunding - Intermediary Requirements

- Financial Interest: Intermediaries (but not its directors, officers, partners) may receive financial interest in issuer, provided received for services in the offering and same securities as in offering
- Measures to Reduce Risk of Fraud
 - Reasonable basis for believing issuer in compliance with crowdfunding requirements and established means to keep accurate records of security holders
 - must deny access to an issuer if it has a reasonable belief that
 - issuer or offering would present a potential for fraud; or
 - issuer, or any of its directors, officers or 20% shareholders is subject to a “bad actor” disqualification
 - must conduct background check on each issuer and each officer, director and 20% shareholder

Title III Crowdfunding - Intermediary Requirements

- Opening Accounts
 - Obtain consent to electronic delivery of materials
 - Deliver educational materials, including information on process for buying securities on portal, types of securities and risks, investment caps, resale restrictions, limitations on right to cancel, annual information
 - obtain investor representation: reviewed educational materials, understands investment may be lost and can bear risk of loss

Title III Crowdfunding - Intermediary Requirements

- Issuer Information
 - offering information available to SEC and potential investors 21 days before any sale in offering
 - public access to offering information
- Investor Limits
 - make sure no investor exceeds investment cap
 - may reasonably rely on investor representation

Title III Crowdfunding - Intermediary Requirements

- Communications Channels
 - allow investors to communicate with one another and issuer about offering
 - public viewing, but only persons who have opened accounts may post
 - intermediary may not participate unless registered B-D; may only set rules and remove offensive postings
 - Representatives of the issuer, and anyone promoting the offering, must clearly identify
 - Must keep records of all of all chats

Title III Crowdfunding - Intermediary Requirements

- Maintenance and Transmission of Funds
 - offering proceeds only provided to issuer when target reached, returned to investors if not
 - registered B-D must follow existing rules for maintenance and transmission of funds
 - funding portal may not handle funds; must direct investors to transmit to escrow agent

Title III Crowdfunding - Intermediary Requirements

- Additional Restrictions on Funding Portals
 - Streamlined registration process; Form Funding Portal
 - Effective on later of 30 days or FINRA membership
 - May not:
 - offer investment advice or recommendations
 - solicit offers
 - pay success fees to persons for solicitations; or
 - handle investor funds or securities
- But no net cap requirements, reps need not pass series exams

Title III Crowdfunding Reform Efforts

- Fix Crowdfunding Act
 - Issuer cap
 - Portal liability
 - Section 12(g) Registration Exemption
 - Special purpose vehicles
 - Testing the waters

Thank You.

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