

When is Crowdfunding Not Crowdfunding?

The answer to this question is when its done under §201 of the JOBS Act. On March 26, almost a full year after the JOBS Act was signed into law, the SEC issued a no-action letter FundersClub Inc. and FundersClub Management LLC . (“FundersClub”)

FundersClub is a venture capital fund adviser. It manages venture capital funds and operates a website. Once FundersClub has identified start-up companies, it enters into an agreement with the company to raise a target amount. This is where the website comes into play. Once the agreement is reached with the start-up FundersClub post information provided by the company on its website. The information is available to FundersClub members all whom must be accredited investors. Does any of this sound familiar?

FundersClub was asking the SEC to agree to take no action if it conducted this business without registering as a broker-dealer under the Securities and Exchange Act. This is the perfect storm between the general solicitation provisions and the crowdfunding provisions of the JOBS Act. When the JOBS Act was first passed, there was a provision that allowed persons to maintain a

website to offer
unregistered shares of companies under Regulation D Rule 506
without being
registered as a broker-dealer. Most
people read the provisions and laughed.
However, some read it and tried to figure out how to use it.
The biggest drawback was that the entity
controlling the website could not be compensated for offering
the shares. However, they could provide other services.

The
JOBS Act also provided for crowdfunding.
The process by which small companies could raise funds through
portals
or broker-dealers. Under the JOBS Act,
the funding portals would be regulated by the SEC and probably
FINRA but would
not have the full range of functions available to a broker-
dealer.

FundersClub
has taken these two sections of the JOBS Act, combined them
and ended up
without having to register as an investment adviser or a
broker-dealer.

Neither
the request for no-action nor the no-action letter mention
crowdfunding, but in
reality this is crowdfunding for accredited investors.

<http://www.sec.gov/divisions/marketreg/mr-noaction/2013/funders-club-032613-15a1.pdf>
