Is Crowdfunding for You?

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Starting a new brewery takes money. Is crowdfunding the way to raise the funds you need?

Crowdfunding allows a company to raise money online without registration under securities laws. There are other exemptions from registration, the most popular being the safe harbor of Regulation D ("Reg D") for private placements.

To use the Reg D safe harbor exemption, the company seeking investment is supposed to have a "preexisting relationship" with the investors it targets, and there are limits on the number of "unaccredited" investors to whom the company can sell stock or other equity securities. If you do sell securities to unaccredited investors under Reg D, you need to comply with detailed disclosure requirements, and provide that disclosure to all your potential investors, whether accredited or unaccredited. For individuals, one is "accredited" if he or she has a net worth of at least $1 million, or an annual income of at least $200,000, or $300,000 with one's spouse.

The new crowdfunding rules allow a company to bypass the preexisting relationship and accredited investor limitations, but there are issues with crowdfunding that should make you think twice before going that route for your brewery's financing:

- You will have to file disclosure documents with the Securities and Exchange Commission ("SEC") at least 21 days prior to the initial closing. If there are subsequent material changes, you will need to file an amendment. You will also have to file regular progress updates and annual reports with the SEC. (Reg D does not require the filing of disclosure documents with the SEC.)
- Crowdfunding offerings can only be done online through a registered broker-dealer or funding portal, both of which charge fees for their services – usually 3% to 10% of the offering amount. (Reg D does not require the use of a broker-dealer or funding portal.)
- The crowdfunding rules limit you to a maximum raise of $1 million in any 12 month period. (Rule 506 of Reg D has no dollar limitation.)

The crowdfunding rules limit how much each investor can invest (Reg D does not). Because of these limits, your company could end up with tens or hundreds of equity holders who have each invested a very small amount. This can make getting equity holder consents and filing your tax returns a huge burden; it can also cause problems with later financings and exit transactions.