

# *Nova Law Review*

---

*Volume 42, Issue 3*

2018

*Article 3*

---

## Equity Crowdfunding Portals Should Join And Enhance The Crowd By Providing Venture Formation Resources

Jeff Thomas\*

\*Central Michigan University

Copyright ©2018 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

## EQUITY CROWDFUNDING PORTALS SHOULD JOIN AND ENHANCE THE CROWD BY PROVIDING VENTURE FORMATION RESOURCES

JEFF THOMAS\*

---

I.	INTRODUCTION.....	375
II.	WHAT VENTURE FORMATION RESOURCES COULD INCLUDE.....	378
	A. <i>Characteristics of United States' Equity Crowdfunded Companies</i> .....	379
	B. <i>Resources Used by Venture Capital-Backed Companies</i> .....	381
	C. <i>One Size Does Not Fit All—but It Fits Many</i> .....	385
	D. <i>Different Platforms for Different Types of Ventures</i> .....	390
III.	PROVIDING RESOURCES WITHOUT PRACTICING LAW .....	392
IV.	BENEFITS OF PORTALS PROVIDING VENTURE FORMATION RESOURCES .....	395
	A. <i>An Assembly Line That Reduces Transaction Costs</i> .....	395
	B. <i>An Engine That Accelerates Growth and Creates Wealth</i> .....	396
	C. <i>Benefits That Transcend Issuers and Investors</i> .....	399
V.	POTENTIAL TRADE ASSOCIATION ROLE .....	401
VI.	CONCLUSION .....	403

### I. INTRODUCTION

On May 16, 2016, the Securities Exchange Commission's ("SEC") final equity crowdfunding rules went into effect.<sup>1</sup> These rules meant it would be easier for United States companies to issue their stock, debt, and

---

\* Jeff Thomas, JD, is the Entrepreneurship Chairperson at Central Michigan University. He has experience counseling entrepreneurial ventures through law firms and law school clinics in Chicago and Silicon Valley. He wishes to thank Carter Ballinger, Kalee Teeter, and Azharul Islam for their research assistance regarding the information summarized in Appendix A of this Article. He would also like to thank attendees at the 2018 Law and Entrepreneurship Association Retreat, and in particular J. Brad Bernthal, Associate Professor of Law at Colorado Law, for their thoughtful comments.

1. *Regulation Crowdfunding: A Small Entity Compliance Guide for Issuers*, SEC, <http://www.sec.gov/info/smallbus/secg/rccomplianceguide-051316.htm#1> (last updated Apr. 5, 2017).

other securities to both accredited and non-accredited investors, the crowd, without registering those securities with the SEC.<sup>2</sup> Before this regulation crowdfunding exemption (“Regulation Crowdfunding”) from SEC registration,<sup>3</sup> it was very difficult to raise funds from non-accredited investors,<sup>4</sup> which make up approximately 90% of the population.<sup>5</sup> Thus, Regulation Crowdfunding is important because it gives entrepreneurial companies and issuers easier access to a new and large source of potential capital.<sup>6</sup> However, in order to raise funds under Regulation Crowdfunding, issuers must offer their securities through an SEC-registered broker-dealer or funding portal and comply with numerous other rules.<sup>7</sup> These rules include initial disclosure requirements, where issuers must provide information about their business and the securities being offered; ongoing reporting obligations; and limits on the amount of money they can raise under the exemption.<sup>8</sup> Complying with these rules makes it difficult for companies to raise funds under the exemption.<sup>9</sup> In short, transaction costs can quickly become a large portion of the funds the companies are trying to raise.<sup>10</sup> In order to help

---

2. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015).

3. *Id.*; see also Jumpstart Our Business Startups Act, Pub. L. No. 112-106 sec. 302, § 4, 126 Stat. 306, 315 (codified as amended in scattered sections of 15 U.S.C. (2012)). This exemption was created by Title III of the Jumpstart Our Business Startups Act (“JOBS Act”). Sec. 302, § 4, 126 Stat. at 315.

4. See Edan Burkett, *A Crowdfunding Exemption? Online Investment Crowdfunding and U.S. Securities Regulation*, 13 TRANSACTIONS: TENN. J. BUS. L. 63, 75, 101 (2011). “Securities laws . . . are a formidable barrier to investment crowdfunding in the United States.” *Id.* at 75.

5. SEC, REPORT ON THE REVIEW OF THE DEFINITION OF “ACCREDITED INVESTOR” 48 (2015), <http://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf>.

6. Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015); Burkett, *supra* note 4, at 66.

7. Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015); see also Securities Act of 1933, Pub. L. No. 112-106, § 4A(b), 48 Stat. 74, 25 (codified as amended at 15 U.S.C. § 77 (2012)).

8. Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (May 16, 2016).

9. See Joseph M. Green & John F. Coyle, *Crowdfunding and the Not-So-Safe Safe*, 102 VA. L. REV. ONLINE 168, 169–70 (2016).

10. See BRAD FELD & JASON MENDELSON, VENTURE DEALS: BE SMARTER THAN YOUR LAWYER AND VENTURE CAPITALIST 127 (3d ed. 2016) (stating that Title III financings require “a significant burden of SEC-mandated information disclosures that can easily cost a company tens of thousands of dollars to comply with”); JD Alois, *Wefunder Publishes Open Letter to SEC: Six Recommendations to Improve Regulation Crowdfunding*, CROWDFUND INSIDER (May 16, 2017, 9:54 AM),

reduce transaction costs, funding portals are providing form investment contracts that issuers and investors can use when the companies raise capital.<sup>11</sup> Despite some of the potential shortcomings associated with using these form contracts,<sup>12</sup> funding portals have demonstrated there is a strong demand for them and the standards they create.<sup>13</sup> However, to date, U.S. funding portals have not provided venture formation-related resources such as form by-laws, initial resolutions, founder stock purchase agreements, or stock plans.<sup>14</sup> In addition to further reducing transaction costs for issuers and investors, providing these resources would steer resource-strapped issuers into organizational structures proven to accelerate growth and create value.<sup>15</sup> Thus, providing these resources may give Regulation Crowdfunding a much needed boost and help achieve more of the expectations and hopes of Title III of the JOBS Act.<sup>16</sup>

---

<http://www.crowdfundinsider.com/2017/05/100431-wefunder-publishes-open-letter-sec-six-recommendations-improve-regulation-crowdfunding/>.

Congress intended Regulation Crowdfunding to help small businesses with limited access to capital. Instead, the current regulations force these early-stage companies to spend capital they cannot afford to lose on accountants or lawyers, before they are even allowed to discover if any investors are actually interested. The current regulations directly harm the issuers Congress intended to help.

Alois, *supra*.

11. See Jack Wroldsen, *Crowdfunding Investment Contracts*, 11 VA. L. & BUS. REV. 543, 598 (2017). “[F]unding portals are driving innovative and influential contractual approaches to crowdfunding investment through standardized, cost-effective template agreements.” *Id.*

12. See Green & Coyle, *supra* note 9, at 169–70 (stating that one of the commonly used investment securities, the SAFE, “is not the right tool for channeling retail investment capital to crowdfunding companies”).

13. See Wroldsen, *supra* note 11, at 588. “Most companies take advantage of funding portals’ economies of scale by adopting the ready-made template agreements designed specifically for crowdfunding offerings.” *Id.*

14. *But see* GUST: FOR STARTUPS, <http://www.gust.com/startups> (last visited Apr. 18, 2018); Wroldsen, *supra* note 11, at 595. While this Article focuses on Regulation Crowdfunding and United States funding portals, crowdfunding platforms in other jurisdictions do provide formation resources. Wroldsen, *supra* note 11, at 595. Moreover, there is at least one United States platform aimed at angel investment groups and other accredited investors that offer formation resources. FUNDERBEAM, <http://markets.funderbeam.com/raise> (last visited Apr. 18, 2018) (promoting “[f]ree company incorporation and structuring services”).

15. See Wroldsen, *supra* note 11, at 598; *About the CfPA*, CROWDFUNDING PROF. ASS’N, <http://www.crowdfundingprofessionalassociation.org/about/> (last visited Apr. 18, 2018).

16. See Jumpstart Our Business Startups Act, Pub. L. No. 112-106, sec. 302, 126 Stat. 306, 315 (codified as amended in scattered sections of 15 U.S.C. 2012)); Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015); Chance Barnett, *The House Passes Fixes to Equity Crowdfunding Laws*, FORBES: ENTREPRENEURS (July 18, 2016, 1:13

This Article takes the position that funding portals should not only provide formation-related resources but they should also require their issuers to use them.<sup>17</sup> Specifically, Part II of this Article describes what these formation-related resources could include.<sup>18</sup> Part III explains why requiring issuers to use these resources would not be considered practicing law.<sup>19</sup> Part IV examines the benefits of providing these resources.<sup>20</sup> Part V suggests that a trade association could play an important role in both making the resources available and encouraging wide adoption.<sup>21</sup>

## II. WHAT VENTURE FORMATION RESOURCES COULD INCLUDE

In order to explore what formation-related resources could include, this Part looks at how Regulation Crowdfunding issuers are currently formed.<sup>22</sup> Then, to get a better idea of what is possible, the formation resources used by venture capital-backed companies are considered.<sup>23</sup> Interestingly, several reputable law firms with long histories of representing these companies share formation-related resources online.<sup>24</sup> Considering that venture capital (“VC”) investing is far more established than Regulation Crowdfunding<sup>25</sup> and the striking similarity of the practices of venture capital-

---

PM), <http://www.forbes.com/sites/chancebarnett/2016/07/18/the-house-passes-fixes-to-equity-crowdfunding-laws/>. Stating that:

[T]he highly anticipated *boom* of access to non-accredited investors, namely regulated under Title III, is a bit of bust. . . . Title III was intended to allow non-accredited investors to invest in private businesses but created barriers, burdens, and costs too significant for many otherwise investable startups and small businesses to want to take on.

Barnett, *supra*.

17. See *infra* Parts II–V. Funding portals could provide these resources by acting unilaterally or by working with a collaborative organization that supports the equity crowdfunding industry, such as a trade association. See *About the CfPA*, *supra* note 15.

18. See *infra* Part II.

19. See *infra* Part III.

20. See *infra* Part IV.

21. See *infra* Part V.

22. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015).

23. See Jeff Thomas, *Making Equity Crowdfunding Work for the Unaccredited Crowd*, HARV. BUS. L. REV. ONLINE 62, 71 (2014), [http://www.hblr.org/wp-content/uploads/2014/04/Thomas\\_Making-Crowdfunding-Work.pdf](http://www.hblr.org/wp-content/uploads/2014/04/Thomas_Making-Crowdfunding-Work.pdf); *Startup Company Toolkit*, THOMSON REUTERS: PRAC. L., <http://uk.practicallaw.thomsonreuters.com/8-608-7253> (last visited Apr. 18, 2018).

24. GARRET JAMES BLACK ET AL., PITCHBOOK 2016 ANNUAL GLOBAL LEAGUE TABLES 15 (2017); see *infra* Part II.B.

25. See FELD & MENDELSON, *supra* note 10, at 127; Brian G. Cartwright, Gen. Counsel, U.S. SEC, *The Future of Securities Regulation* (Oct. 24, 2007) (transcript available at <http://www.sec.gov/news/speech/2007/spch102407bgc.htm>). Stating that:

backed companies,<sup>26</sup> these resources arguably reflect *best practices* for new, high-growth, for-profit companies seeking capital.<sup>27</sup> Since typical Regulation Crowdfunding issuers are also new, high-growth, for-profit ventures seeking capital, funding portals could cause issuers to adopt these best practices by requiring issuers to use a comprehensive set of formation-related resources resembling the resources routinely used by venture capital-backed companies—but include adjustments to address issues unique to equity crowdfunding.<sup>28</sup> However, because a single set of formation-related resources will not necessarily work well for every venture seeking capital, funding portals could offer separate platforms, which include distinct sets of resources to different types of issuers—such as lifestyle firms, social ventures, and previously-formed businesses.<sup>29</sup>

#### A. *Characteristics of United States' Equity Crowdfunded Companies*

As part of the fundraising process, issuers must file a Form C with the SEC.<sup>30</sup> The Form C collects various information about the issuer—such as their name, organizational form, jurisdiction, date of organization,

---

[VC] funds came into their own in the 1960s after the seminal funding of Fairchild Semiconductor by Venrock Associates in 1959. With few exceptions, such as the occasional *friends and family* or employee investor, retail investors are excluded from investing in [VC] funds. [VC] funds, however, have become indispensable as one of the most important drivers of innovation and growth in our economy and as an important—and high return—asset class for institutional investors.

Cartwright, *supra*.

26. See FELD & MENDELSON, *supra* note 10, at 127; Green & Coyle, *supra* note 9, at 169.

27. *Model Legal Documents*, NAT'L VENTURE CAP. ASS'N, <http://www.nvca.org/resources/model-legal-documents/> (last visited Apr. 18, 2018).

28. Green & Coyle, *supra* note 9, at 169; VLADIMIR IVANOV & ANZHELA KNAZEVA, U.S. SECURITIES-BASED CROWDFUNDING UNDER TITLE III OF THE JOBS ACT 2–3 (2017). Even though venture capital-backed companies and Regulation Crowdfunding issuers share many common goals and needs, there are key differences and the resources should reflect these differences. IVANOV & KNYAZEVA, *supra*, at 2–4, 14. For example, VC firms typically demand seats on the boards of their portfolio companies; whereas founders of Regulation Crowdfunding issuers are reluctant to give up control to large numbers of unsophisticated investors. See John S. (Jack) Wroldsen, *The Social Network and the Crowdfund Act: Zuckerberg, Saverin and Venture Capitalists' Dilution of the Crowd*, 15 VAND. J. ENT. & TECH. L. 583, 616 (2013).

29. See JD Alois, *Startwise, a New Crowdfunding Platform Using RegCF Goes Live with Revenue Sharing Offerings*, CROWDFUND INSIDER (Aug. 22, 2017, 8:30 AM), <http://www.crowdfundinsider.com/2017/08/120892-startwise-new-crowdfunding-platform-using-reg-cf-goes-live-revenue-sharing-offerings/>; *The Current Status of Regulation Crowdfunding*, WEFUNDER, <http://www.wefunder.com/stats> (last visited Apr. 18, 2018).

30. 17 C.F.R. § 227.203 (2017); see SEC, SEC 2930, FORM C: UNDER THE SECURITIES ACT OF 1933 (2017).

physical address, number of employees at the time of the Form C filing, and issuance—like the target offering amount, “description of the purpose and intended use of the offering proceeds,” and “terms of the securities being offered.”<sup>31</sup> Appendix A of this Article summarizes characteristics of the first 139 companies to file a Form C that went on to successfully raise over \$50,000 via Regulation Crowdfunding, according to the list provided by Wefunder, Inc. (“Wefunder List”).<sup>32</sup> Below is a summary of the data in Appendix A:

- 68.35% of the issuers were corporations;
- 43.17% of the issuers were Delaware corporations;
- 30.94% of the issuers were Limited Liability Companies (“LLCs”);
- 60.43% of the issuers were formed after January 1, 2014;
- 26.62% of the issuers were formed after January 1, 2016; and
- The median number of employees issuers reported was 4.<sup>33</sup>

---

31. 17 C.F.R. § 227.201(a)–(b)(1), (g), (i), (m)(1).

32. See *Statistics on Numbers of Reg CF Companies That Have Hit Their Funding Target*, WEFUNDER, <http://www.wefunder.com/stats/all> (last visited Apr. 18, 2018). As of April 18, 2018, statistics provided by Wefunder Inc.—maintained at <https://wefunder.com/stats/all>—reported that “185 [Regulation Crowdfunding] companies have hit their funding target.” *Id.* However, the amount 185 only reflects issuers that raised over \$50,000. *The Current Status of Regulation Crowdfunding*, *supra* note 29. SEC Edgar searches were conducted to obtain Form C data for each of the 139 companies to first appear on the Wefunder List. *Id.* Appendix A includes select information from these Form Cs, including: Issuer name(s) including DBAs and A/K/As, for instances when the name on the Wefunder List differed from the name provided on the Form C; entity type; entity jurisdiction; formation date; physical address; number of employees; and, funding portal. See *infra* Appendix A. Appendix A is sorted first by entity type and then by entity jurisdiction. See *infra* Appendix A. Further, intermediary names provided on Form Cs for the funding portals popularly known as Indiegogo and Republic were First Democracy VC and OpenDeal Inc., respectively. See *Regulation Crowdfunding Education Center*, MICROVENTURES: BLOG, <http://www.microventures.com/what-is-first-democracy-vc> (last visited Apr. 18, 2018). “First Democracy VC is [the] registered funding portal formed through a partnership between Indiegogo and MicroVentures” or MicroVenture Marketplace Inc. *Id.* OpenDeal Inc. is the company that owns and operates the Republic funding portal. REPUBLIC, <http://www.republic.co> (last visited Apr. 18, 2018). Appendix A identifies Indiegogo and Republic as the applicable funding portals. See *infra* Appendix A. Finally, some issuers that used the StartEngine funding portal provided their own name—i.e., the issuer name—as the intermediary name on their Form C. See *infra* Appendix A. For those cases, Appendix A identifies StartEngine as the funding portal. See *infra* Appendix A.

33. See *infra* Appendix A. At least three of the Delaware corporations listed on Appendix A—i.e., My Trail Company, PBC; Powur, PBC; Meow Wolf, Inc.—are Public Benefit Corporations. See *infra* Appendix A; *Statistics on Numbers of Reg CF Companies That Have Hit Their Funding Target*, *supra* note 32.

This information is consistent with data provided by the StartEngine Index, which started reporting on entity types of issuers in its July 2017 Index.<sup>34</sup> According to the October 2017 StartEngine Index, which includes Regulation Crowdfunding raises between May 16, 2016—the date Regulation Crowdfunding started—and October 31, 2017:

- 68.9% of the issuers were corporations;
- 30.5% of the issuers were LLCs;
- The average issuer is three years old; and
- The average issuer had five employees.<sup>35</sup>

Thus, the typical Regulation Crowdfunding issuer is a recently formed Delaware corporation with a handful of employees.<sup>36</sup>

#### B. *Resources Used by Venture Capital-Backed Companies*

To gain an understanding of the formation resources used by venture capital-backed companies, one can look at the resources provided by the law firms that frequently advise those companies.<sup>37</sup> PitchBook Data, Inc. lists the fourteen most active U.S. VC law firms in 2016.<sup>38</sup> Five of those firms share

---

34. Ryan Hynes, *The StartEngine Index: July 2017*, STARTENGINE: MONTHLY INDEX (Aug. 8, 2017), <http://blog.startengine.com/july-2017-e4f497ec7048>. Reporting: This month we began tracking the types of companies registered with the SEC. A large majority are corporations at 68.4%, with 28.5% as LLCs. [It is] interesting to see Public Benefit Corporations represent 2.1% of the total. These corporations use state laws to allow the management to control the company for benefits other than shareholder wealth creation.

*Id.*

35. Ryan Hynes, *The StartEngine Index: October 2017*, STARTENGINE: MONTHLY INDEX (Nov. 13, 2017), <http://blog.startengine.com/october-2017-75e7a1c72e7>.

36. See IVANOV & KNYAZEVA, *supra* note 28, at 14, 27. This description is also consistent with the conclusion of an SEC White Paper prepared for Scott Bauguess, Acting Chief Economist and Acting Director of the Division of Economic and Risk Analysis (“DERA”). *Id.* at 1 n.1, 27. “The typical issuer was a small, pre-revenue, growth company located in California and incorporated in Delaware, with some debt and limited cash holdings.” *Id.*

37. See *Document Generator*, WILMERHALE LAUNCH: BUILD, <http://launch.wilmerhale.com/build/document-generator/> (last visited Apr. 18, 2018); *Founders Workbench: Formation Tools*, GOODWIN PROCTER LLP, <http://www.foundersworkbench.com/document-driver/> (last visited Apr. 18, 2018); *Incorporation Package (Delaware)*, COOLEY LLP, <http://www.cooleygo.com/documents/incorporation-package/> (last visited Apr. 18, 2018); *Perkins Coie Delaware Startup Forms Wizard*, PERKINS COIE: STARTUP PERCOLATOR, [http://startupdocs.perkinscoie.com/Questionnaire.aspx?db\\_template\\_reference=Delaware+Startup+Package](http://startupdocs.perkinscoie.com/Questionnaire.aspx?db_template_reference=Delaware+Startup+Package) (last visited Apr. 18, 2018); *Startup Forms Library*, ORRICK, <http://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms> (last visited Apr. 18, 2018).

38. See BLACK ET AL., *supra* note 24, at 3, 15.



the following comprehensive sets of formation-related resources publicly via the internet:

- Cooley Limited Liability Partnerships (“LLP’s”) Cooley GO Incorporation Package (“Cooley Forms”),<sup>39</sup>
- Orrick, Herrington & Sutcliffe LLP’s Startup Forms Library (“Orrick Forms”),<sup>40</sup>
- Goodwin Procter LLP’s Founders Workbench Document Driver (“Goodwin Forms”),<sup>41</sup>
- Perkins Coie LLP’s Startup Percolator/Delaware Startup Forms Wizard (“PC Forms”),<sup>42</sup> and
- Wilmer Cutler Pickering Hale and Dorr LLP’s WilmerHale LAUNCH (“WH Forms”).<sup>43</sup>

Upon inspection, these resources are strikingly similar.<sup>44</sup> For example, each resource uses Delaware for the state of formation.<sup>45</sup> All of the resources also support the corporate entity type.<sup>46</sup> The universal focus on Delaware corporations leads to similar specific formation documents, including a Certificate of Incorporation, By-laws, Action by Incorporator, and Initial Organizational Board Resolutions.<sup>47</sup> Specific provisions in these documents are also similar; for example, each firm’s Certificate of Incorporation uses a default, or suggested, capital structure of ten million

---

39. *Incorporation Package (Delaware)*, *supra* note 37.

40. *Startup Forms Library*, *supra* note 37.

41. *Founders Workbench: Formation Tools*, *supra* note 37.

42. *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37.

43. *Document Generator*, *supra* note 37.

44. BERNICE GRANT ET AL., EXPANDING OUR REACH: ONLINE TOOLS & THE DEMOCRATIZATION OF LEGAL DOCUMENTS (2017), <http://www.teachvlgcom.Files.wordpress.com> (follow “PDF Version of 1-Pager of Links to Open Source Resources” hyperlink). At the 2017 Transactional Clinical Conference in Philadelphia, PA, the author’s panel distributed a comparison of specific documents included as part of the resources made available online by several respected parties, including the five firms on the PitchBook List (“TCC Summary”). *See id.* The Author also co-authored an article with members of the TCC panel. *See* Jeff Thomas et al., *Democratizing Entrepreneurship: Online Documents, Tools, and Startup Know-How*, 26, 1 J. AFFORDABLE HOUSING & CMTY. DEV. L. 193 (2017).

45. GRANT ET AL., *supra* note 44.

46. *See id.* However, the Goodwin Forms also include formation-related resources for Delaware LLCs and the Cooley Forms offer a Public Benefit Corporation option. *See Founders Workbench: Formation Tools*, *supra* note 37; *Incorporation Package (Delaware)*, *supra* note 37.

47. GRANT ET AL., *supra* note 44.

authorized shares of common stock having a par value of \$0.0001 per share.<sup>48</sup>

Additional formation-related documents provided by these firms—and specific provisions in those documents—are also similar.<sup>49</sup> For example, each firm provides a document designed to issue a company’s common stock to its founders.<sup>50</sup> Moreover, each firm offers the ability for this document to include a repurchase option that allows the company to repurchase the founder’s shares, at the founder’s original cost—generally, \$0.0001 per share—instead of the then potentially much higher fair market value, if the founder departs the company before his or her repurchase option has fully vested.<sup>51</sup> Further, each law firm’s resources permit, and in some cases recommend, using a repurchase option that lapses—i.e., vests—over a period of forty-eight months.<sup>52</sup>

---

48. See *Incorporation Package (Delaware)*, *supra* note 37 (noting that the Cooley Forms set “authorized capital to [ten million] shares of Common Stock . . . [and] the par value of the shares of Common Stock” at \$0.0001); *Founders Workbench: Formation Tools*, *supra* note 37 (stating “[y]ou may not issue more than the Company’s authorized capital, which is preset at [ten million] shares of common stock” and, upon examination of the Certificate of Incorporation, the stock has a par value of \$0.0001 per share); *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37 (stating “[w]e suggest starting with 10 million authorized shares” and, upon examination of the Certificate of Incorporation, the stock is common stock having a par value of \$0.0001 per share).

49. Compare *Incorporation Package (Delaware)*, *supra* note 37, with *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37.

50. See GRANT ET AL., *supra* note 44.

51. See *Incorporation Package (Delaware)*, *supra* note 37 (providing resources that: (i) assume founders contribute \$0.0001 per share; (ii) permit founders to be subject to vesting; and (iii) note that “[forty-eight] months is a common vesting period”); *Startup Forms Library*, *supra* note 37 (providing: (i) a Common Stock Purchase Agreement that contains Section 3(a), giving the company “an irrevocable, exclusive option—the *Repurchase Option*— . . . to repurchase all or any portion of the Unvested Shares . . . held by [founder] as of the Termination Date at the original purchase price per Share;” and (ii) initial organizational resolutions of the board of directors that utilize a [forty-eight]-month vesting schedule); *Founders Workbench: Formation Tools*, *supra* note 37 (providing resources that: (i) assume each founder will contribute \$0.0001 for each share; and (ii) permit founder stock to vest over a period of one to four years—in equal quarterly installments); *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37 (providing resources that: (i) indicate the amount paid for founders’ stock “should be equal to the fair market value of such stock, which for most newly formed companies is a nominal amount, such as \$0.0001 per share;” (ii) permit founders’ share be subject to vesting; and (iii) state it “is customary for vesting to last anywhere from [twenty-four] to [forty-eight] months, with [thirty-six] months generally being the most common”); *Document Generator*, *supra* note 37 (providing resources that: (i) use a purchase price of \$0.0001 per share for founders’ stock; and (ii) state its founder restricted stock agreement is “written with a [four]-year vesting period” and that “[t]ypically, all of the shares will be subject to vesting”).

52. See GRANT ET AL., *supra* note 44; *Incorporation Package (Delaware)*, *supra* note 37.

Researching these resources and the law firms on the PitchBook List also reveals interesting uses of technology.<sup>53</sup> For example, four of the five firms that provide a comprehensive set of resources offer a *document generator* or *wizard* to help website users generate a ZIP file containing numerous formation-related documents after they enter a few specific pieces of information online.<sup>54</sup> This allows users to generate custom transactional documents, without getting lost in the legalese they contain.<sup>55</sup> Moreover, at least three VC law firms on the PitchBook List have their clients leverage comprehensive third-party equity management platforms, such as Shoobx, Inc. (“Shoobx”) and eShares, Inc. (“eShares”).<sup>56</sup> Shoobx and eShares can be used to, among other things, incorporate companies, onboard employees, grant stock options, manage stock ownership—such as, by keeping track of owners and vesting provisions—communicate with board members and stockholders, and work with attorneys and others.<sup>57</sup> Finally, resources such as Thomson Reuters’ Practical Law (“Practical Law”) provide focused educational resources to quickly bring entrepreneurs and attorneys up to speed on key issues surrounding entrepreneurial transactions they are currently embarking on, or preparing for.<sup>58</sup>

---

53. See BLACK ET AL., *supra* note 24, at 28–35.

54. *Incorporation Package (Delaware)*, *supra* note 37; *Startup Forms Library*, *supra* note 37; *Founders Workbench: Formation Tools*, *supra* note 37. The Orrick Forms do not leverage an online generator or wizard; they do, however, include an *Incorporation Questionnaire* to collect information similar to that entered by users of online generators or wizards. *Incorporation Questionnaire*, ORRICK, <http://www.orrick.com/Total-Access/Tool-Kit/Start-Up-Forms/Corporate-Formation/Incorporation%20Questionnaire> (follow “Download Form”) (last visited Apr. 18, 2018).

55. See *Document Generator*, *supra* note 37; *Founders Workbench: Formation Tools*, *supra* note 37.

56. See BLACK ET AL., *supra* note 24, at 28–35; Press Release, Goodwin Procter LLP, *Shoobx, Goodwin Partner to Offer Enhanced Legal Technology Automation to Emerging Companies* (Dec. 7, 2016) (on file with author); Josh Epstein, *DLA Piper to Collaborate with Shoobx to Boost Startup Clients’ Ability to Form, Fund and Grow*, DLA PIPER: NEWSROOM (Dec. 7, 2016), <http://www.dlapiper.com/en/us/news/2016/12/dla-piper-to-collaborate-with-shoobx>; ESHARES, <http://www.esharesinc.com> (last visited Apr. 18, 2018); *Fenwick Helps Startup Companies Streamline Equity Management Processes Through eShares Partnership*, FENWICK & WEST, LLP (Apr. 28, 2017), <http://www.fenwick.com/media/pages/fenwick-helps-startup-companies-streamline-equity-management-processes-through-eshares-partnership.aspx>; SHOOBX, <http://www.shoobx.com> (last visited Apr. 18, 2018).

57. See ESHARES, *supra* note 56; SHOOBX, *supra* note 56; *From Formation to Exit*, SHOOBX, <http://www.shoobx.com/product/> (last visited Apr. 18, 2018).

58. See *Startup Company Toolkit*, *supra* note 23 (offering “[r]esources to assist startup companies and the attorneys representing them with the array of legal issues facing new business ventures, including entity formation, capital raising, corporate governance and housekeeping, shareholder relations”).

C. *One Size Does Not Fit All—but It Fits Many*

Given the typical Regulation Crowdfunding issuer—a relatively new Delaware corporation with a handful of employees—funding portals would likely please their target market by providing formation-related resources similar to those used by venture capital-backed companies.<sup>59</sup> Specific resources could include the following documents: A certificate of incorporation; by-laws; founder stock purchase agreements; stock plans; indemnification agreements; form resolutions—such as actions by written consent of incorporators, initial organizational board resolutions, board and stockholder approvals of the stock plan, and board approvals of stock option grants; form employee offer letters; and form confidential information and invention assignment agreements.<sup>60</sup>

If funding portal issuers mirrored a typical venture capital-backed company, they would be formed as Delaware corporations with ten million shares of authorized stock, having a par value of \$0.0001 per share.<sup>61</sup> They would also issue common stock to their founders and options to purchase common stock to their other employees.<sup>62</sup> The founders' stock would be

---

59. IVANOV & KNYAZEVA, *supra* note 28, at 2, 27; Thomas, *supra* note 23, at 71; *see also* Epstein, *supra* note 56. Per Part II.A, the typical Regulation Crowdfunding issuer was formed as a Delaware corporation within the last three years and had four or five employees at the time it filed its Form C. *See supra* Part II.A; IVANOV & KNYAZEVA, *supra* note 28, at 1–2, 14. Presumably, such an issuer would have benefited from access to resources designed to: (i) form Delaware corporations; and (ii) use equity to recruit, motivate, and retain employees. *See* Epstein, *supra* note 56; Thomas, *supra* note 23, at 72–73.

60. GRANT ET AL., *supra* note 44; Cooley *GO Incorporation Package (Delaware)*, *supra* note 37; *Startup Forms Library*, *supra* note 37. These resources could include caveats for issuers to consult attorneys licensed in the applicable jurisdictions. *Incorporation Questionnaire*, *supra* note 54; *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37. This is because employment laws, for example, can vary from state to state. Lauren Kreps, *Employee Innovation: Does Your Company Own Your Inventions?*, LEGALSHIELD: SHAKE (July 10, 2015), <http://www.shakelaw.com/blog/employee-inventions/>. These laws may require unique disclosures regarding an employee's potential intellectual property rights. *See id.* To address such differences, the resources would have some built-in flexibility—e.g., form riders and/or schedules of exceptions to satisfy an issuer's unique need. *See id.*

61. *See Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37. Some of these initial shares may include a special class of stock that is designed for future equity crowdfunding investors. *See id.*; Thomas, *supra* note 23, at 62. Such shares could include superior economic rights but less control rights, when compared to common stock. *See Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37; Thomas, *supra* note 23, at 72–73.

62. CONSTANCE E. BAGLEY & CRAIG E. DAUCHY, *THE ENTREPRENEUR'S GUIDE TO LAW AND STRATEGY* 95 (5th ed. 2017); *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37.

subject to a repurchase option that lapses over a period of forty-eight months, but founders would be given credit for time spent working on the venture before their stock was issued.<sup>63</sup> Similarly, the employee options would vest over a forty-eight month period.<sup>64</sup> Further, the issuers would leverage a two-tier stock structure, whereby relatively inexpensive common stock is reserved for the issuer's team and relatively more expensive stock, with special rights, is sold to outside investors.<sup>65</sup> The inexpensive common stock

---

[S]tock initially issued to the founders—founders' stock—is almost always common stock. . . . As additional employees are hired and the value of the company increases, it is often desirable to switch from issuing common stock outright to granting employee stock options, which give the option holder the right to acquire common stock in the future at a specified price.

BAGLEY & DAUCHY, *supra*, at 95.

63. See FENWICK & WEST LLP, *Guide to Starting a Corporation*, in LEGAL RESOURCE GUIDE FOR STARTUP ENTREPRENEURS 1, 8, <http://www.fenwick.com/FenwickDocuments/Legal-Resource-Guide-April-2017.pdf> (last visited Apr. 18, 2018).

The corporation typically retains the option to repurchase unvested shares at the initial purchase price at the time of termination of a shareholder's employment. Vesting usually occurs over [four] years, i.e., if the employee remains employed by the corporation for the entire period, all shares become *vested* and the repurchase option ends.

*Id.*; see also John Bautista, *What Entrepreneurs Need to Know About Founders' Stock*, MEDIUM (Sept. 15, 2008), <http://www.medium.com/@lightspeedup/what-entrepreneurs-need-to-know-about-founders-stock-8f8ae6148274>.

[M]ost founders will start vesting of their shares from the date they actually started providing services to the company . . . even if [the founders] started working on the company prior to the issuance of founders' stock or even prior to the date of incorporation of the company. As a result, at the time of company incorporation, a portion of the shares held by the founders will usually be fully vested. . . . In Orrick's experience, venture capitalists require that at least 75% of founders' stock remain subject to vesting over the three or four years following the date of a Series A investment.

Bautista, *supra*.

In its most common form, vesting occurs if the individual holding the stock continues to be employed by or otherwise performs services for the company over as specified period. A common vesting schedule for founders is to vest a portion of the stock at the time of issuance—especially, if the founder has spent considerable time working on the venture before incorporation or has transferred significant assets to the firm—and an additional portion after one year, with the remaining stock vesting monthly over the next [twelve] to [thirty-six] months.

BAGLEY & DAUCHY, *supra* note 62, at 101.

64. See *Incorporation Package (Delaware)*, *supra* note 37.

[A] common vesting schedule for rank-and-file employees is for all stock underlying the option to be completely unvested at the time of issuance, with one-fourth of the underlying stock vesting after one year—*cliff vesting*—and with the remaining stock vesting in equal portions monthly over the next [thirty-six] months.

BAGLEY & DAUCHY, *supra* note 62, at 110.

65. BAGLEY & DAUCHY, *supra* note 62, at 96–97. “Unlike the founders and other employees, [VC] investors usually acquire preferred stock, not common, stock. There are two primary reasons for this two-class structure in venture-backed companies: [R]isk management and taxes.” *Id.* at 96.

motivates the team, while the special rights protect outside investors and justify the price differential for tax purposes.<sup>66</sup> While mirroring these practices of venture capital-backed companies, Regulation Crowdfunding issuers will also need resources that reflect their unique needs.<sup>67</sup> For example, VC firms typically demand seats on the boards of their portfolio companies, whereas founders of Regulation Crowdfunding issuers are reluctant to give up control to large numbers of unsophisticated investors.<sup>68</sup> Thus, Regulation Crowdfunding resources should provide outside investors with less—or perhaps no—voting rights as opposed to the control provisions granted to VC investors.<sup>69</sup> Regardless, because Regulation Crowdfunding issuers share this need amongst themselves, funding portals could efficiently address it through the resources they provide.<sup>70</sup>

Instead of just providing form documents—or even wizards—funding portals could incorporate many of the matters contemplated by the various formation-related documents as *terms and conditions* that issuers, and in some cases, investors using the portals, *must* comply with.<sup>71</sup> Thus, while some documents, such as the Certificate of Incorporation, would still need to be available in the traditional format, in order to be filed with Delaware’s Division of Corporations, other items could be behind the scenes

---

66. *See id.* at 96–97.

67. Wroldsen, *supra* note 11, at 557–58.

68. *Id.* at 558.

Of course, not all investor protections that venture capitalists negotiate are appropriate for crowdfunding investors. For instance, venture capitalists are typically involved with portfolio companies in a hands-on way and assist the start-up team with substantial expertise and industry connections. Accordingly, venture capitalists usually hold a seat on their portfolio companies’ board of directors. But a board seat may not be appropriate or feasible for crowdfunding investors, due, for instance, to the small amount of money that each crowdfunder invests and the dispersed nature of crowdfunding investors.

*Id.* (footnotes omitted).

69. *See id.* at 554–56, 567. A future article may go into depth on how to accomplish this, particularly given the need to justify a higher value on the stock issued to outside investors—i.e., the stock with low or no voting rights—when compared to the common stock, or options to purchase common stock, issued to employees. BAGLEY & DAUCHY, *supra* note 62, at 100, 105; Wroldsen, *supra* note 11, at 558, 568. For purposes of this Article, such shares could include an initial liquidation preference and a cumulative dividend that increases the liquidation preference over time. *See* Wroldsen, *supra* note 11, at 557, 567–68.

70. *See* Wroldsen, *supra* note 11, at 558, 628–32.

71. *See* 17 C.F.R. § 227.402 (1) (2017); *Founders Workbench: Disclaimer & Terms of Use*, GOODWIN PROCTOR LLP, [https://documentdriver.goodwinfoundersworkbench.com/Questionnaire.aspx?db\\_template\\_reference=GlobaldictionaryMultipleMemberLLC](https://documentdriver.goodwinfoundersworkbench.com/Questionnaire.aspx?db_template_reference=GlobaldictionaryMultipleMemberLLC) (last visited Apr. 18, 2018) [[https://web.archive.org/web/20150407035600/https://documentdriver.goodwinfoundersworkbench.com/Questionnaire.aspx?db\\_template\\_reference=GlobaldictionaryMultipleMemberLLC](https://web.archive.org/web/20150407035600/https://documentdriver.goodwinfoundersworkbench.com/Questionnaire.aspx?db_template_reference=GlobaldictionaryMultipleMemberLLC)]; *Incorporation Questionnaire*, *supra* note 54.

terms and conditions that would be incorporated by reference, as issuers register with a funding portal and attempt to raise capital through it.<sup>72</sup> For example, standard by-laws, Founder Stock Purchase Agreements, and Stock Plans could be used by every issuer using a particular funding portal.<sup>73</sup> Much shorter forms, containing issuer and transaction-specific information—such as the number of directors, names of employees, share amounts, and particular vesting commencement dates—could also be maintained by the funding portal.<sup>74</sup> Further, the funding portal could provide a schedule of exceptions that would aggregate and report any necessary deviations from its standard templates.<sup>75</sup>

Given the similarity of the documents and provisions currently being used by venture capital-backed companies represented by several different—and prominent—law firms, it seems feasible that one set of standard formation-related resources could work for a significant number of Regulation Crowdfunding issuers.<sup>76</sup> Moreover, a funding portal could aim

---

72. See 17 C.F.R. § 227.402(1)–(3); 112 CONG. REC. S2231–33 (daily ed. Mar. 29, 2012) (statement of Sen. Bennet); *Incorporation Questionnaire*, *supra* note 54. Issuers could apply to funding portals in advance of raising capital. See 17 C.F.R. § 227.402 (7)–(10). In fact, doing so would help justify issuing founder and other employee equity interests at lower prices, when compared to the price of any equity issued as part of the equity crowdfunding financing. See BAGLEY & DAUCHY, *supra* note 62, at 97.

[T]he more time that elapses between the issuance of the common to the founders and the issuance of the preferred to investors, the easier it is to defend a larger differential. This is but one reason why it usually makes sense to incorporate and issue founders' stock as early as possible. The more time separating the issuance of the founders' stock from a subsequent event that establishes a higher valuation, the lower the risk that the founders will be treated as having purchased their stock at a discount with resulting taxable compensation income.

*Id.*

73. Thomas, *supra* note 23, at 72; see also GRANT ET AL., *supra* note 44.

74. See 17 C.F.R. § 227.201(a)–(b)(1); GRANT ET AL., *supra* note 44; Perkins Coie Delaware Startup Forms Wizard, *supra* note 37.

75. See 17 C.F.R. § 227.302(b)(ix)(2). For example, if an issuer has unique by-law provisions, the schedule of exceptions would highlight the issuer's deviation from the portal's standard form by-laws. See Perkins Coie Delaware Startup Forms Wizard, *supra* note 37.

76. See *Incorporation Package (Delaware)*, *supra* note 37. In fact, several data points support the notion that one set of resources could support a large number—and substantial percentage—of issuers. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015). First, per Appendix A, just a few funding portals have conducted the majority of the equity crowdfunding financings to date. See *infra* Appendix A. Similarly, according to the October 2017 StartEngine Index, only four of the portals completed 85.4% of the financings that closed between May 16, 2016 and October 31, 2017. Hynes, *supra* note 35 (reporting that WeFunder, StartEngine, Seed Invest, and Indiegogo—a/k/a First Democracy VC—represented 36.7%, 22.5%, 13.4%, and 12.9% of the financings between May 16, 2016 and October 31, 2017, respectively). Thus, even a single portal has the potential to reach a

its set of formation-related resources at its most likely issuers: New, high-growth Delaware corporations, with four or five employees, which plan to seek additional funding.<sup>77</sup> If all of the portal's users shared these characteristics, then they would be likely to have their needs met by the same set of documents or terms and conditions, as the case may be.<sup>78</sup> Further, funding portals could encourage use of services similar to—and/or be designed to work with—services provided by Shoobx, eShares,<sup>79</sup> and

---

large portion of issuers. *See id.* Second, even though multiple leading VC law firms use similar documents with similar provisions—suggesting that a common set of documents already supports a large volume of activity taking place at several firms—just a single firm's volume of activity supports the notion that one size can fit many. *Id.* For example, Cooley LLP completed 457 venture capital deals in 2016 alone. BLACK ET AL., *supra* note 24, at 29. Whereas, from May 16, 2016 through August 30, 2017, there were only 139 total Regulation Crowdfunding raises that exceeded \$50,000. *Statistics on Numbers of Reg CF Companies Have Hit Their Funding Target*, *supra* note 32. Thus, in only one year, a single law firm completed more than three-times the number financings reported on the WeFunder List. *Id.* While Cooley Forms were most likely not used to form all of the companies, it completed venture capital deals for Cooley LLP which has demonstrated its commitment to using a comprehensive set of resources to assist with the formation process and it clearly engages in a large volume of activity. *See* BLACK ET AL., *supra* note 24, at 29. *Incorporation Package (Delaware)*, *supra*.

77. *See* Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76,324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (May 16, 2016).

78. IVANOV & KNYAZEVA, *supra* note 28, at 14, 27; *Startup Company Toolkit*, *supra* note 23. This is why the VC law firms are able to use the same resources—*i.e.*, they repeatedly represent the same types of clients doing similar transactions. ESHARES, *supra* note 56; SHOOBX, *supra* note 56; *Startup Company Toolkit*, *supra* note 23.

79. ESHARES, *supra* note 56; SHOOBX, *supra* note 56; *Startup Company Toolkit*, *supra* note 23. Funding portals could empower Regulation Crowdfunding issuers to more efficiently communicate with directors and stockholders; manage their capitalization tables; onboard employees; get help with the Internal Revenue Code (“IRC”) 409A compliance; and work with their attorneys and others. *See* 17 C.F.R. § 227.402(b)(14). However, portals will need to ensure that any such services comply with the regulations. *See id.* Regulations permit funding portals to:

Provide communication channels by which investors can communicate with one another and with representatives of the issuer through the funding portal's platform about offerings through the platform, so long as the funding portal—and its associated persons: (i) [d]oes not participate in these communications, other than to establish guidelines for communication and remove abusive or potentially fraudulent communications; (ii) [p]ermits public access to view the discussions made in the communication channels; (iii) [r]estricts posting of comments in the communication channels to those persons who have opened an account on its platform; and (iv) [r]equires that any person posting a comment in the communication channels clearly disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote an issuer's offering.

*Id.*



educational materials like those offered by Practical Law.<sup>80</sup> These tools and resources could also be customized for high-growth Delaware corporations that have employees and plan to seek capital.<sup>81</sup>

#### D. *Different Platforms for Different Types of Ventures*

While many Regulation Crowdfunding issuers will welcome the Delaware corporate structure used by venture capital-backed companies,<sup>82</sup> others will prefer a different entity form.<sup>83</sup> In part, this is because some issuers will be social ventures that are entrepreneurial enterprises driven by social purposes,<sup>84</sup> while others will be lifestyle companies, which are small businesses that generate sufficient cash but are not VC fundable.<sup>85</sup> Thus, different funding portals could cater to different types of ventures and investors.<sup>86</sup> For example, some portals could specialize in social ventures, while others could focus on lifestyle businesses.<sup>87</sup> The specific formation-

---

80. See Thomas et al., *supra* note 44, at 202. These resources would be designed for both entrepreneurs and attorneys, who may represent them. *Id.*

81. See *Startup Company Toolkit*, *supra* note 23.

82. See *infra* Appendix A. Per Part II.A, 43.17% of the Regulation Crowdfunding issuers on the WeFunder List were formed as Delaware corporations. See *supra* Part II.A.

83. See *infra* Appendix A.

84. See Roger L. Martin & Sally R. Osberg, *Two Keys to Sustainable Social Enterprise*, HARV. BUS. REV., May 2015, at 86, 88. Social ventures are referred to as “[a] hybrid of government intervention and pure business entrepreneurship” that “can address problems that are too narrow in scope to spark legislative activism or to attract private capital.” *Id.*

85. See Fred Wilson, *Lifestyle Businesses*, AVC (Apr. 6, 2015), <http://www.avc.com/2015/04/lifestyle-businesses/> (stating that lifestyle businesses will be “too small for VC, but will generate enough annual cashflow to be a great business to own and operate”).

86. See *Incorporation Package (Delaware)*, *supra* note 37; *Founders Workbench: Formation Tools*, *supra* note 37.

87. See Martin & Osberg, *supra* note 84, at 88; Wilson, *supra* note 85. While this Article focuses on formation-related resources, different types of ventures will also desire different types of securities, creating additional efficiencies for portals specializing on specific types of ventures. See Adrian Camara, *Anonymous Capital: Managing Shareholder Volume for Equity Crowdfunded Companies in Canada*, 31 BANKING & FIN. L. REV. 259, 275–76 (2016). For example, lifestyle businesses, which are less likely to have an exit event, may desire to issue revenue sharing agreements instead of equity or securities that later convert into equity. See Alois, *supra* note 29. Alois interviewed a Startwise co-founder as to why her new funding portal focuses on revenue sharing agreements:

We work with consumer small and medium businesses where founders and owners are actually looking to build a legacy, grow the company long-term and make sure they stay true to the mission that lays at the core of their business. These are not the tech startups that will get acquired fast. So revenue sharing provides the

related resources provided would depend on the type of ventures being courted.<sup>88</sup> For example, portals aimed at social ventures could provide formation-related resources for public benefit corporations<sup>89</sup> and portals aimed at lifestyle firms could provide formation-related resources for LLCs.<sup>90</sup> Instead of having separate portals for each type of venture, single portals could simply offer different platforms or tracks—each having its own set of resources—for the different types of ventures.<sup>91</sup> Further, special platforms or tracks could help existing entities *convert* into a structure used by the portal.<sup>92</sup> While forming a new entity may work well for many potential Regulation Crowdfunding issuers, other issuers will have already been formed using different resources.<sup>93</sup>

---

alternative capital option for small businesses, enabling them to tap into the consumers for support and pay them back as they grow their business.

*Id.*

88. See Camara, *supra* note 87, at 275–76. In locations with a longer history of equity crowdfunding, different portals have adopted different structures for their specific issuers. *Id.* As Camara states:

[C]rowdfunding portals in Europe have begun commoditizing their own legal structures, complete with standard template agreements, model articles of incorporation and shelf [special purpose vehicles] that strike a balance between shareholder protection and managing the volume of shareholders, interests and rights. Not all structures are appropriate for every issuer. Fortunately, the experience from the [United Kingdom] suggests that in mature equity crowdfunding markets, different portals will adopt different legal structures to manage shareholder volume. Issuers can choose the mechanism appropriate for their capital structure, business model, and future funding goals.

*Id.*

89. See *PBC Incorporation Package (Delaware)*, COOLEY LLP, <http://www.cooleygo.com/documents/pbc-incorporation-package-delaware/> (last visited Apr. 18, 2018). For example, the Cooley Forms provide a package for Delaware Public Benefit Corporations. *Id.*

90. See *Founders Workbench: Formation Tools*, *supra* note 37. For example, the Goodwin Forms provide packages for both single member Delaware LLCs and multi member Delaware LLCs. *Id.*

91. See *id.*

92. See Camara, *supra* note 87, at 275–76; *Founders Workbench: Formation Tools*, *supra* note 37.

93. See BAGLEY & DAUCHY, *supra* note 62, at 97; Alois, *supra* note 29. Many Regulation Crowdfunding issuers are relatively newly-formed entities. See Alois, *supra* note 29. Thus, it seems reasonable to assume that many founders of future issuers have not yet formed entities and would welcome resources to help with that process. See *id.* However, funding portals requiring the use of certain formation-related resources will need to communicate this to entrepreneurs before they form entities using different resources. See *What Happens at Y Combinator*, Y COMBINATOR (Nov. 2016), <http://www.ycombinator.com/atyc/#>. Moreover, while forming entities to meet a portal's requirements from the onset would be desirable, conversion to a portal's structure would be possible. See *id.* In fact, applicants to leading accelerator programs have faced similar issues and undergone similar conversations. *Id.*

### III. PROVIDING RESOURCES WITHOUT PRACTICING LAW

Funding portals may be hesitant to provide formation-related documents to issuers because of concerns that doing so constitutes practicing law.<sup>94</sup> Moreover, because funding portals are not licensed to practice law, they could be “engaging in the *unauthorized* practice of law.”<sup>95</sup> Initially, this concern seems warranted given some of the actions taken against those who provide legal documents to the public.<sup>96</sup>

Regardless, this concern also seems to contradict the trend of top law firms providing these resources,<sup>97</sup> the fact so many non-attorneys already

---

If your company is unincorporated when it is accepted into [Y Combinator], [we will] help you get it incorporated in Delaware using standard formation documents. These documents include provisions for vesting of founder’s shares and proper protection of the company’s intellectual property. . . . If your company is already incorporated in the [United States], we will do a review of your formation documents before we make our investment. . . . If there are problems that prevent [Y Combinator] from purchasing its stock or that could cause problems with investors in future, we will point you in the right direction to get the problems fixed, which could be using a standard template that we provide or could require you to work with your own external counsel. If your company is not a corporation but an LLC, we can provide resources to convert your company into a corporation. Similarly, if your company is an entity formed outside of the [United States], we can help you find the right expert to *flip* your foreign entity into the [United States].

*Id.*

94. See Thomas, *supra* note 23, at 72.

95. *Id.* (emphasis added).

96. See Caroline E. Brown, Note, *LegalZoom: Closing the Justice Gap or Unauthorized Practice of Law?*, N.C. J.L. & TECH. ON., May 2016, at 219, 222. “A large facet of unauthorized practice of law regulation is ensuring that non-lawyers are not offering legal advice. Most recently, websites that provide legal services have been under attack as conducting unauthorized practice of law.” *Id.*

97. See *Incorporation Package (Delaware)*, *supra* note 37; *Perkins Coie Delaware Startup Forms Wizard*, *supra* note 37. Unlike funding portals, law firms do practice law. Epstein, *supra* note 56. However, even law firms take the position that providing these resources does not constitute providing legal advice and that no attorney-client—or other professional—relationship is being created by providing these resources by requiring users to agree with these positions before they can gain access to the applicable resources. *Cooley GO Docs Terms of Use*, COOLEY LLP, <http://www.cooleygo.com/documents/incorporation-package/> (follow “click here” hyperlink) (last visited Apr. 18, 2018). The “Cooley GO Docs Terms of Use” states:

You acknowledge and agree that the making available of these documents (the “Cooley GO Docs”) to you by Cooley LLP and Cooley (UK) LLP shall not create any attorney-client or other confidential or special relationship between you and Cooley LLP and does not constitute the provision of legal advice or other professional advice by Cooley LLP or Cooley (UK) LLP.

*Id.* The *Terms & Conditions* for the forms provided by Orrick, Herrington & Sutcliffe LLP state:

Nothing in the Start-Up Forms Library including the document descriptions and help resources (the “Forms Library”), and the documents produced by the Forms Library (the “Documents”) is to be considered as the rendering of

provide these types of resources,<sup>98</sup> the congressional intent expressed during the passage of the JOBS Act,<sup>99</sup> the Crowdfunding Regulations,<sup>100</sup> and the fact

---

legal or business advice, either generally or in connection with any specific issue or case. These materials are intended for general informational and educational purposes only . . . . Neither the availability, operation, transmission, receipt nor use of the Forms Library or the Documents is intended to create, nor does it create, an attorney-client relationship or any other relationship.

*Incorporation Questionnaire, supra* note 54. The “Disclaimers & Terms of Use” for the forms provided by Goodwin Procter LLP states:

By using Document Driver, you agree to the following: Document Driver and documents generated by Document Driver . . . have been prepared by Goodwin Procter LLP for general information purposes only, and are provided with the understanding and subject to the user’s agreement that they do not constitute the rendering of legal advice or other professional advice by Goodwin Procter LLP, and do not create any attorney-client or other special relationship.

*Founders Workbench: Disclaimer & Terms of Use, supra* note 71. The “Acceptance of Terms of Use” and the “Disclaimer and Terms of Use” for the forms provided by Perkins Coie LLP state:

The Delaware Startup Forms Wizard, including the online questionnaires and annotations (collectively, the “Wizard”) and the documents generated by the Wizard (collectively, the “Documents”) have been prepared by Perkins Coie LLP for general informational purposes only and do not constitute advertising, a solicitation or legal advice. Neither the availability, operation, transmission, receipt nor use of the Wizard or of the Documents is for the purpose of requesting legal advice, securing legal services, or retaining a lawyer nor is intended to create, or constitutes the formation of any attorney-client relationship or other special relationship or privilege.

*Perkins Coie Delaware Startup Forms Wizard, supra* note 37. The “Document Generator Terms and Conditions” for the forms provided by Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) state:

You agree and acknowledge that the Generated Materials are prepared by . . . WilmerHale for your informational purposes only without any knowledge of your industry, business model or other specific circumstances. You further agree that the provision of Generated Materials to you, and your provision of information to WilmerHale through the Document Generator or otherwise, (i) does not constitute the provision of legal, tax or other professional advice by WilmerHale and (ii) shall not create an attorney-client or other confidential or privileged relationship between you and WilmerHale.

*Document Generator, supra* note 37.

98. See *Formation*, CLERKY, INC., <http://www.clerky.com/formation> (last visited Apr. 18, 2018); *Incorporation*, ROCKET LAW, <http://www.rocketlawyer.com/incorporation.rl> (last visited Apr. 18, 2018); GUST: FOR STARTUPS, *supra* note 14.

99. See 112 CONG. REC. S2231–33. “[F]unding portals should be allowed to engage in due diligence services. This would include providing templates and forms, which will enable issuers to comply with the underlying statute. In crafting this law, it was our intent to allow funding portals to provide such services.” *Id.*

100. See 17 C.F.R. § 227.402(b)(5) (2017). “A funding portal may [a]dvice an issuer about the structure or content of the issuer’s offering, including assisting the issuer in preparing offering documentation.” *Id.*

the funding portals, and others, already provide form investment contracts.<sup>101</sup> Moreover, if a funding portal required all its issuers to use a set of documents or standard terms—for bona fide business reasons<sup>102</sup>—it would not be providing any advice—legal or otherwise—in connection with an issuer’s formation.<sup>103</sup> On the contrary, it would be saying, this is the deal, if you want to use our service, take it or leave it.<sup>104</sup> Thus, instead of providing advice, funding portals would be establishing conditions to using their service.<sup>105</sup> This position is similar to positions taken by other online service providers—like Amazon.com, Inc.—when they require their users to agree to terms and conditions as a condition to using their services.<sup>106</sup> In some ways, this puts funding portals on the opposite side of the issuers, instead of turning the funding portal into the issuers’ legal counsel.<sup>107</sup> This logic is amplified when the funding portal takes an equity position on an issue, as part of the portal’s fee, since the portal would then become an investor—and thus be on the opposite side of the issuer raising funds to the extent there is an opposing side for the transaction.<sup>108</sup>

---

101. See WEFUNDER: SECURITIES, <http://www.wefunder.com/faq/securities> (last visited Apr. 18, 2018) (providing investment contract templates); Gregory Raiten, *500 Startups Announces ‘KISS’: Free Legal Docs for Startup Founders and Investor*, 500 STARTUPS (July 3, 2014), <http://www.500.co/kiss/>.

102. See Thomas, *supra* note 23, at 71–72, 71 n.54; *Incorporation Questionnaire*, *supra* note 54. Required resources could still provide flexibility. See *Model Legal Documents*, *supra* note 27. For example, each issuer using the form by-laws would specify its number of directors. See *Incorporation Questionnaire*, *supra* note 54. Moreover, if necessary, issuers could modify by-law provisions themselves via a rider. See Thomas, *supra* note 23, at 72; GRANT ET AL., *supra* note 44. *Rider*, WEBFINANCE INC.: BUSINESS DICTIONARY, <http://www.businessdictionary.com/definition/rider.html> (last visited Apr. 18, 2018). Further, some resources, such as form resolutions, would be available, but not required. See GRANT ET AL., *supra* note 44. While funding portals would provide educational content about these resources, they would stay clear of providing any advice—legal or otherwise—regarding an issuer’s particular facts and circumstances. *Incorporation Questionnaire*, *supra* note 54.

103. See Thomas, *supra* note 23, at 71–72. Portals would clarify to issuers they are not providing any legal advice and that issuers are encouraged to seek counsel. See *Incorporation Questionnaire*, *supra* note 54.

104. See 17 C.F.R. § 227.402(b)(1); Thomas, *supra* note 23, at 72. A funding portal may “[d]etermine whether and under what terms to allow an issuer to offer and sell securities in reliance on [Regulation Crowdfunding] . . . through its platform.” 17 C.F.R. § 227.402(b)(1).

105. See *Incorporation Questionnaire*, *supra* note 54.

106. See *Conditions of Use*, AMAZON, <http://www.amazon.com/gp/help/customer/display.html?nodeId=.508088> (last updated Oct. 3, 2017).

107. See 17 C.F.R. §§ 227.403–04.

108. See *id.* § 227.403(a).

While funding portals could avoid practicing law when requiring formation-related resources, they would still affect the practice of law.<sup>109</sup> This is because issuers may seek legal advice from counsel not affiliated with funding portals about the consequences of using funding portals—to understand the impact of the applicable formation-related resources and terms.<sup>110</sup> Because issuers deciding whether to use a particular portal would become subject to the terms and conditions of its formation-related resources, it would be reasonable for them to first seek counsel to better understand the implications of committing to the particular resources.<sup>111</sup> Furthermore, counsel may be desired for assistance with related matters, such as helping with user specific information—for example, determining how many shares to grant to members of the team—and/or a necessary rider.<sup>112</sup>

#### IV. BENEFITS OF PORTALS PROVIDING VENTURE FORMATION RESOURCES

In addition to reducing transaction costs, using these resources will increase the odds of issuers' success.<sup>113</sup> Further, benefits created by using the resources will not just flow to issuers and investors.<sup>114</sup> Employees, funding portals, service providers, and entrepreneurial ecosystems can all realize gains.<sup>115</sup>

##### A. *An Assembly Line That Reduces Transaction Costs*

By providing formation-related resources, funding portals can reduce formation and other transaction costs for issuers and investors.<sup>116</sup> On the issuer side, it can easily cost thousands of dollars to form a Delaware corporation.<sup>117</sup> By requiring issuers to use a particular set of resources,

---

109. See *id.* §227.403; Thomas, *supra* note 23, at 72; *Incorporation Questionnaire*, *supra* note 54.

110. See Thomas, *supra* note 23, at 72 & n.60.

111. See *Incorporation Questionnaire*, *supra* note 54.

112. See Thomas, *supra* note 23, at 72 & n.60.

113. See Wroldsen, *supra* note 11, at 597–98; Barnett, *supra* note 16.

114. See Barnett, *supra* note 16.

115. See *id.*; Emil Protalinski, *Is Your Facebook Employee Friend About to Become a Millionaire?*, ZDNET (Jan. 12, 2012, 7:09 AM), <http://www.zdnet.com/article/is-your-facebook-employee-friend-about-to-become-a-millionaire/>.

116. Wroldsen, *supra* note 11, at 559, 598–99; Thomas, *supra* note 23, at 73.

117. FENWICK & WEST LLP, *supra* note 63, at 3. “Filing fees, other costs, and legal fees through the initial organizational stage usually total about \$3500 to \$5000, with a Delaware corporation being at the high end of the range.” *Id.*

portals could significantly reduce, and perhaps eliminate, such costs.<sup>118</sup> Moreover, if all issuers are organized using the same templates, post-formation resources can be more easily leveraged to reduce ongoing transaction costs as well—for both issuers and investors.<sup>119</sup> For example, resolutions approving future stock option grants and financings can be more easily prepared, and due diligence can be performed more efficiently, if an issuer's underlying foundational documents are a known commodity.<sup>120</sup> By way of further example, portals could provide Frequently Asked Questions and other educational content to explain complex topics, such as employee equity vesting provisions and their tax consequences.<sup>121</sup> Similarly, portals and others could publish information about deal term norms and trends.<sup>122</sup> This content could be leveraged by multiple issuers and their employees, as well as potential investors who seek to better understand how their positions would relate to securities previously granted to employees of issuers.<sup>123</sup>

#### B. *An Engine That Accelerates Growth and Creates Wealth*

Thus, the potential for reducing transaction costs for issuers and investors is significant.<sup>124</sup> However, even if transaction costs are reduced to zero, perhaps a much larger benefit results from portals providing formation-related resources.<sup>125</sup> By requiring the use of these resources, portals will also empower Regulation Crowdfunding issuers to take at least three plays from the proven venture capital-backed company playbook.<sup>126</sup> By executing these plays, issuers will increase their chances of success and their expected

---

118. Wroldsen, *supra* note 11, at 559, 598–99; *Model Legal Documents*, *supra* note 27. However, issuers would still need to pay Delaware's Secretary of State filing fees and possibly some attorney fees—e.g., for advice on the consequences of using a particular portal, and for assistance with state and issuer specific items, such as qualifications to transact business filings in the states where issuers are physically located and where employment and intellectual property issue. See FENWICK & WEST LLP, *supra* note 63, at 1–3.

119. See Wroldsen, *supra* note 11, at 588, 598–99; *Model Legal Documents*, *supra* note 27.

120. See Thomas, *supra* note 23, at 72; Wroldsen, *supra* note 11, at 591.

121. See WILSON SONSINI GOODRICH & ROSATI PROF'L CORP., THE ENTREPRENEURS REPORT: PRIVATE COMPANY FINANCING TRENDS 2, 7–11 (2017), <http://www.wsg.com/publications/PDFSearch/entreport/1H2017/EntrepreneursReport-1H-2017.pdf>; *Incorporation Questionnaire*, *supra* note 54.

122. See Hynes, *supra* note 34. Also, members of the VC ecosystem regularly publish information about deal terms and trends. See WILSON SONSINI GOODRICH & ROSATI PROF'L CORP., *supra* note 121, at 1–6.

123. See Hynes, *supra* note 34.

124. See Wroldsen, *supra* note 11, at 598.

125. See Thomas, *supra* note 23, at 71.

126. See *id.* at 71–73.

value—that is why venture capital-backed companies habitually call these plays.<sup>127</sup>

First, venture capital-backed companies understand the importance of granting founders, and other employees, an equity stake.<sup>128</sup> They use equity to recruit, screen, motivate, and retain their employees.<sup>129</sup> Per Part II.A, the typical Regulation Crowdfunding issuer has four or five employees at the time it files its Form C.<sup>130</sup> When compared to venture capital-backed companies, these issuers should be even more dependent on utilizing equity.<sup>131</sup> This is because they are likely to have less cash available for salaries—making equity a more important component of total compensation—and they will likely be earlier in their lifecycles, signaling a bigger opportunity for individual employees to impact an issuer's future valuation.<sup>132</sup> The portals' resources will make it easier to grant equity to founders and other employees.<sup>133</sup>

Second, venture capital-backed companies understand the importance of making founder and employee equity sticky through the use of repurchase options and vesting provisions, respectively.<sup>134</sup> Repurchase options and vesting provisions do more than protect investors—they help employees who stay at firms after others depart.<sup>135</sup> Without these provisions, co-founders and other employees, who quit would take more shares with them and, thus, free ride off the hard work of those who stay.<sup>136</sup> This would allow former employees to benefit too much from the sweat of others and, thereby, demotivate the remaining team members.<sup>137</sup> Thus, venture capitalists require these provisions before investing funds in a company.<sup>138</sup>

---

127. *Id.* at 71, 73; *see also* WILSON SONSINI GOODRICH & ROSATI PROF'L CORP., *supra* note 121, at 7.

128. BAGLEY & DAUCHY, *supra* note 62, at 96, 105.

129. *Id.* at 95, 105; *see also* WILSON SONSINI GOODRICH & ROSATI PROF'L CORP., *supra* note 121, at 8, 10.

130. IVANOV & KNYAZEVA, *supra* note 28, at 14; Hynes, *supra* note 35; *see infra* Part II.A.

131. *See* WILSON SONSINI GOODRICH & ROSATI PROF'L CORP., *supra* note 121, at 10.

132. *See id.*

133. *See* Wroldsen, *supra* note 11, at 587–88. Examples of such resources include founder stock purchase agreements, which can be used to issue stock subject to repurchase options that lapse, and stock plans, which can be used to grant options subject to vesting. FENWICK & WEST LLP, *supra* note 63, at 8.

134. FENWICK & WEST LLP, *supra* note 63, at 8.

135. *See* BAGLEY & DAUCHY, *supra* note 62, at 101; FENWICK & WEST LLP, *supra* note 63, at 8.

136. *See* BAGLEY & DAUCHY, *supra* note 62, at 100.

137. *See id.*; FENWICK & WEST LLP, *supra* note 63, at 8.

138. BAGLEY & DAUCHY, *supra* note 62, at 101. “Except in the most unusual situations, a vesting requirement will be imposed before venture capitalists will invest.” *Id.*



Unfortunately, because Regulation Crowdfunding issuers do not have experienced venture capitalists to require these types of provisions, they are less likely to use them.<sup>139</sup> Therefore, portal resources could add value by making employee equity sticky, by requiring resources that include repurchase options and vesting provisions.<sup>140</sup> While not advising any individual issuers or investors, portals would be protecting the interests of the ecosystem as a whole by requiring best practices as a condition to using their services.<sup>141</sup> Crowdfunding investors should welcome this because they are likely to invest amounts that are too small to justify the costs of professional advice or to exert influence over issuers.<sup>142</sup>

Third, venture capital-backed companies understand the importance of issuing founders and employees common stock and options for common stock, respectively, at relatively low prices and issuing outside investors a different security, series seed or preferred stock, at relatively higher prices.<sup>143</sup> Because Regulation Crowdfunding issuers do not have venture capitalists advising them, they are more likely to issue common stock to outside investors and forego the benefits available under a two-tier equity model.<sup>144</sup> Platform resources would ensure that common stock and options to purchase common stock are reserved for members of their issuers' teams.<sup>145</sup> These resources would also reflect the unique needs of Regulation Crowdfunding issuers with respect to voting rights.<sup>146</sup> Again, while not advising any individual issuers or investors, portals would be protecting the interests of

---

139. See *id.*; Wroldsen, *supra* note 11, at 557. Additional research is necessary to determine how many Regulation Crowdfunding issuers utilize employee equity and repurchase options and vesting provisions. See Wroldsen, *supra* note 11, at 557–58.

140. See FENWICK & WEST LLP, *supra* note 63, at 8.

141. Fenwick Helps Startup Companies Streamline Equity Management Processes Through eShares Partnership, *supra* note 56.

142. See Wroldsen, *supra* note 11, at 600–05; *The Current Status of Regulation Crowdfunding*, *supra* note 29. The average Regulation Crowdfunding investment size is approximately \$873. See *The Current Status of Regulation Crowdfunding*, *supra* note 29 (reporting on January 27, 2018 that “[i]nvestors funded \$56,128,822 in [Regulation Crowdfunding] offerings” and that “[t]here have been 64,263 investments”).

143. See BAGLEY & DAUCHY, *supra* note 62, at 96–97.

144. See *id.*; Green & Coyle, *supra* note 9, at 178 n.30; Hynes, *supra* note 35. For example, from the inception of Regulation Crowdfunding through October 31, 2017, common stock has been the most widely used type of security offered. Hynes, *supra* note 35. “Companies are increasingly offering common shares with 36% of the total raises” *Id.*

145. See BAGLEY & DAUCHY, *supra* note 62, at 95, 97.

146. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76, 324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 247 (May 16, 2016); BAGLEY & DAUCHY, *supra* note 62, at 105; Wroldsen, *supra* note 11, at 564–65.

the ecosystem, as a whole, by requiring best practices as a condition to using their services.<sup>147</sup>

By requiring the use of resources that institutionalize these three practices for Regulation Crowdfunding issuers, funding portals will not just reduce transaction costs—they will appropriately structure issuers for high-growth, and they will be furthering the interests of their ecosystem.<sup>148</sup>

### C. *Benefits That Transcend Issuers and Investors*

Reducing transaction costs and accelerating growth and wealth creation will clearly benefit issuers and investors.<sup>149</sup> However, by requiring issuers to use formation-related resources, funding portals would also benefit several others including issuer employees, attorneys, and other service providers, students and educators, and the overall ecosystem.<sup>150</sup>

The formation-related resources would make it easier for issuers to grant equity to employees as part of their total compensation packages.<sup>151</sup> Thus, more employees could share in the economic gains realized by their respective issuers—gains they helped produce.<sup>152</sup> In addition to sharing some of the wealth created by their new ventures, employees would be more

---

147. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76, 324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 247 (Nov. 16, 2015).

148. See *About the CJPA*, *supra* note 15. The resources will also help institutionalize additional best practices, such as requiring founders to assign applicable intellectual property rights—i.e., established before an issuer’s formation—to the issuer upon formation, and requiring all employees, including founders, to sign Confidentiality and Invention Assignment Agreements as a condition to their employment with the issuer—thereby, ensuring the issuer’s post-formation ownership rights and protections. BAGLEY & DAUCHY, *supra* note 62, at 33, 98–99; *Formation*, *supra* note 98. However, issuers will be encouraged to seek counsel licensed in the applicable jurisdictions. Thomas, *supra* note 23, at 72.

149. See Crowdfunding, Securities Act Release No. 9974, Exchange Act Release No. 76, 324, 17 C.F.R. pts. 200, 227, 232, 239, 240, 249, 269, 274 (Nov. 16, 2015); Green & Coyle, *supra* note 9, at 180; Hynes, *supra* note 34.

150. See BAGLEY & DAUCHY, *supra* note 62, at 94, 105–06; Protalinski, *supra* note 115; Barnett, *supra* note 16.

151. See BAGLEY & DAUCHY, *supra* note 62, at 95, 105; Protalinski, *supra* note 115.

152. See Erick Schonfeld, *Counting the Google Millionaires*, TECHCRUNCH (Nov. 12, 2007), <http://www.techcrunch.com/2007/11/12/counting-the-google-millionaires/>. Microsoft Corporation, Google Inc.—now Alphabet Inc.—and Facebook, Inc., provide examples of how thousands of one company’s employees may become millionaires due to their stock options. *Id.* (reporting that “[i]n the 1990s, we loved to tally up the number of Microsoft millionaires”); Protalinski, *supra* note 115 (reporting that Facebook, Inc.’s public offering will soon create over 1000 new millionaires). “Now, it is Google’s turn. The *New York Times* cites estimates that there are 1000 Google employees whose stock grants and options are worth more than \$5 million.” Schonfeld, *supra*.

likely to feel motivated about their positions.<sup>153</sup> Further, making it easier for issuers to raise funds should lead to more entrepreneurial ventures and, thus, more positions for employees.<sup>154</sup>

Attorneys and other professionals could advise issuers on the consequences of using funding portals.<sup>155</sup> They could also develop niche practices designed to assist issuers that use portals to form businesses, raise capital, and complete related and ongoing matters.<sup>156</sup> For example, tax consultants could have practices that focus on IRC section 351 exchanges, IRC section 83(b) filings, IRC section 409A compliance, and Internal Revenue Service (“IRS”) form 1120 filings.<sup>157</sup> As standards develop, professionals should also become more efficient at representing issuers on seemingly unrelated matters.<sup>158</sup> For example, attorneys representing issuers on employment matters, intellectual property issues, commercial contracts, and acquisitions should benefit from knowledge of the issuers’ formation documents.<sup>159</sup>

As funding portals use a comprehensive set of formation-related resources, it will become more practical for academic courses and co-curricular initiatives, like accelerators and incubators, to address and use materials built for real transactions.<sup>160</sup> In addition to being able to examine a more reasonable number of documents, educators and students could focus on a particular jurisdiction’s laws, such as Delaware’s General Corporation

---

153. See BAGLEY & DOUCHY, *supra* note 62, at 94; IVANOV & KNYAZEVA, *supra* note 28, at 14. A scene from the film *Office Space* provides a humorous illustration of how employees might otherwise lack motivation. See OFFICE SPACE (Twentieth Century Fox 1999). This *Meeting with the Bobs* scene is available on YouTube. Arresteddevelfan, *Office Space: Meeting with the Bobs*, YOUTUBE (March 8, 2012), <http://www.youtube.com/watch?v=BTdOHB1ppx8>.

154. See Thomas, *supra* note 23, at 63.

155. See GUST: LAUNCH, <http://www.gust.com/launch/> (last visited Apr. 18, 2018). Several law firms, accountants, and other service providers are listed as friends on the *The Gust Launch Network* part of the Gust accredited investor platform. *Id.*

156. See *From Formation to Exit*, *supra* note 57; Thomas, *supra* note 23, at 72 n.60.

157. See I.R.C. § 351 (2012); I.R.S. Form 1120 (2017); *From Formation to Exit*, *supra* note 57; ESHARES, *supra* note 56.

158. See *Startup Company Toolkit*, *supra* note 23; Thomas, *supra* note 23, at 72 n.60.

159. See *From Formation to Exit*, *supra* note 57; *Startup Company Toolkit*, *supra* note 23; Thomas, *supra* note 23, at 72 n.60.

160. See Thomas, *supra* note 23, at 72, 74 n.60. For example, the University of Chicago’s New Venture Challenge provides a form Simple Agreement for Future Equity on its website. Resources, NEW VENTURE CHALLENGE: C. NVC, <http://research.chicagobooth.edu/nvc/collegenvc/resources/> (last visited Apr. 18, 2018).

Law.<sup>161</sup> This focus would allow entrepreneurship education to become less theoretical and more practical.<sup>162</sup> This shift would trigger more experiential learning opportunities and better connect classrooms and campuses to the real world.<sup>163</sup>

As alluded to in Part IV.B, by requiring use of formation-related resources that reflect best practices, funding portals can protect the interests of the crowdfunding ecosystem.<sup>164</sup> By serving this role and benefitting so many constituents, funding portals could significantly enhance the ecosystem.<sup>165</sup> However, it is possible that they could make even more of an impact if they worked together with a collaborative organization that supports equity crowdfunding.<sup>166</sup>

#### V. POTENTIAL TRADE ASSOCIATION ROLE

A trade association dedicated to equity crowdfunding, such as the Crowdfunding Professional Association (“CfPA”),<sup>167</sup> could play a key role in helping funding portals provide formation-related resources.<sup>168</sup> In fact, the CfPA could oversee the creation and maintenance of the resources and encourage their wide adoption.<sup>169</sup> This would make it easier for the resource authors to achieve economies of scale and for issuers to move from one portal to another.<sup>170</sup> Trade associations have an interest in providing tools to make their ecosystems healthy and these tools sometimes include legal templates.<sup>171</sup> For example, the National Venture Capital Association

---

74. 161. See Del. Code Ann. Tit. 8, § 398 (2017); Thomas, *supra* note 23, at 72–

162. Thomas, *supra* note 23, at 73.

163. See *id.* at 73, 75.

164. See *supra* Part IV.B; *About the CfPA*, *supra* note 15.

165. See *About the CfPA*, *supra* note 15.

166. See Wroldsen, *supra* note 11, at 599.

167. See *About the CfPA*, *supra* note 15.

The CfPA is dedicated to equitably representing the Crowdfunding industry and supporting the . . . [SEC] and Financial Industry Regulatory Authority during the rule making period while providing the industry with education, professional networking opportunities and the tools necessary to cultivate a balanced and healthy ecosystem that will accelerate capital formation and ensure investor protection.

*Id.*

168. See *id.*; Epstein, *supra* note 56.

169. See *About the CfPA*, *supra* note 15.

170. *Id.*; Wroldsen, *supra* note 11, at 588.

88. 171. *About the CfPA*, *supra* note 15; see also Wroldsen, *supra* note 11, at 587–

(“NVCA”) provides model legal documents for VC financings.<sup>172</sup> One of NVCA’s reasons for providing these resources is clearly to reduce transaction costs:

By providing an industry-embraced set of model documents that can be used as a starting point in [VC] financings, it is our hope that the time and cost of financings will be greatly reduced and that all principals will be freed from the time consuming process of reviewing hundreds of pages of unfamiliar documents and instead will be able to focus on the high level issues and trade-offs of the deal at hand.<sup>173</sup>

However, the NVCA aims to do more than minimize costs: “[O]ne of our goals in drafting these documents is also to reflect *best practices* and avoid hidden legal traps, even if doing so means straying from current custom and practice.”<sup>174</sup> When comparing Regulation Crowdfunding issuers to companies on the verge of raising VC, Regulation Crowdfunding companies seem more likely to appreciate free or low cost resources.<sup>175</sup> This is because venture capital-backed companies are generally in a better position to afford sophisticated legal counsel and other transaction costs.<sup>176</sup> Moreover, the investors are likely to have counsel protecting their interests.<sup>177</sup> Thus, the amount of benefits created by the NVCA for its

---

172. Wroldsen, *supra* note 11, at 588; *see also Model Legal Documents, supra* note 27. Realtor Associations offer another example of how associations add value to their members by providing model documents as resources. *Transact*, NC REALTORS, <http://www.ncrealtors.org/business-center/transact/> (last visited Apr. 18, 2018).

Protect your business and your consumers with one of the most popular benefits offered to all members—NC REALTORS approved standard forms and contracts. These industry standard forms are developed and maintained with guidance from legal professionals and are used in more than 75 [%] of [North Carolina] real estate transactions statewide.

*Id.*

173. *Model Legal Documents, supra* note 27.

174. *Id.* Explaining further that the model legal documents aim to: Reflect and in a number of instances, guide and establish industry norms; [b]e fair, avoid bias toward the VC or the company/entrepreneur; [p]resent a range of potential options, reflecting a variety of financing terms; [i]nclude explanatory commentary where necessary or helpful; anticipate and eliminate traps for the unwary—*e.g.*, unenforceable or unworkable provisions; . . . [p]rovide a comprehensive set of internally consistent financing documents; [p]romote consistency among transactions; [r]educe transaction costs and time.

*Id.*

175. *See* Alois, *supra* note 10; *Model Legal Documents, supra* note 27.

176. *See* Alois, *supra* note 10; *Model Legal Documents, supra* note 27; *Startup Company Toolkit, supra* note 23.

177. *See* Alois, *supra* note 10; *Model Legal Documents, supra* note 27; *Startup Company Toolkit, supra* note 23.

ecosystem, by providing model legal documents, would seem to be exceeded by the benefits that could be created by the CfPA for its ecosystem, by providing formation-related resources.<sup>178</sup>

## VI. CONCLUSION

The typical Regulation Crowdfunding issuer is a new Delaware corporation.<sup>179</sup> It is a growth company.<sup>180</sup> It currently has four or five employees.<sup>181</sup> It lacks the cash and expertise available to venture-capital backed companies.<sup>182</sup>

Several leading VC law firms share their formation-related resources online.<sup>183</sup> These resources are for high-growth ventures that will become Delaware corporations and use their equity to recruit, motivate, and retain employees.<sup>184</sup> Despite the fact that different law firms provide these materials, the resources and their specific contents are quite similar.<sup>185</sup> Leading VC law firms also leverage technology tools that help users generate tailored formation-related documents, manage equity ownership, and improve communications with stockholders, attorneys, and others.<sup>186</sup> The NVCA adds further to the VC ecosystem by providing a comprehensive set of model legal documents.<sup>187</sup> These various resources help venture capital-backed companies reduce transaction costs while encouraging best practices.<sup>188</sup>

Many of the resources used by venture capital-backed companies are well suited for Regulation Crowdfunding issuers.<sup>189</sup> This is because the typical company, in both cases, is a new, high-growth Delaware corporation

---

178. Alois, *supra* note 10; *About the CfPA*, *supra* note 15; *Model Legal Documents*, *supra* note 27.

179. See IVANOV & KNYAZEVA, *supra* note 28, at 2.

180. See *id.* at 2, 14.

181. See *id.* at 14.

182. See Hynes, *supra* note 34; Wroldsen, *supra* note 11, at 558.

183. See *Incorporation Package (Delaware)*, *supra* note 37; *Founders Workbench: Formation Tools*, *supra* note 37; *Document Generator*, *supra* note 37.

184. See IVANOV & KNYAZEVA, *supra* note 28, at 2, 14; BAGLEY & DAUCHY, *supra* note 62, at 94.

185. See GRANT ET AL., *supra* note 44.

186. See Press Release, Goodwin Procter LLP, *supra* note 56; *Fenwick Helps Startup Companies Streamline Equity Management Processes Through eShares Partnership*, *supra* note 56.

187. See *Model Legal Documents*, *supra* note 27.

188. See *id.*

189. See IVANOV & KNYAZEVA, *supra* note 28, at 4; Wroldsen, *supra* note 11, at 557.

with employees that seek outside capital.<sup>190</sup> While the resources should be tweaked for Regulation Crowdfunding issuers, they should still reflect certain best practices of venture capital-backed companies and empower issuers to provide equity to employees, to make that equity subject to vesting, and to take advantage of a two-tier stock structure.<sup>191</sup> Further, an equity crowdfunding association could develop and maintain these resources.<sup>192</sup> Funding portals could then select which resources to require their issuers to use.<sup>193</sup> By requiring issuers to use a set of formation-related resources, funding portals could reduce transaction costs and accelerate growth and the creation of wealth without practicing law.<sup>194</sup>

It is time to make entrepreneurial finance more entrepreneurial.<sup>195</sup> The established VC ecosystem has demonstrated that a comprehensive set of formation-related resources can support many of its members.<sup>196</sup> It has also demonstrated what those resources should include and the benefits of providing them.<sup>197</sup> Unfortunately, VC is unavailable to most entrepreneurial ventures.<sup>198</sup> Thus, we need the emerging equity crowdfunding ecosystem to join and enhance the crowd.<sup>199</sup> We need equity crowdfunding portals to provide venture formation resources.<sup>200</sup>

---

190. See IVANOV & KNYAZEVA, *supra* note 28, at 2, 4; *Incorporation Package (Delaware)*, *supra* note 37.

191. See Wroldsen, *supra* note 11, at 556, 588–89.

192. See *About the C/PA*, *supra* note 15; *Model Legal Documents*, *supra* note 27.

193. See Wroldsen, *supra* note 11, at 557.

194. Thomas, *supra* note 23, at 71; see also *Model Legal Documents*, *supra* note 27.

195. See Cartwright, *supra* note 25.

196. See Hynes, *supra* note 34.

197. See *Model Legal Documents*, *supra* note 27; *Transact*, *supra* note 172.

198. See Cartwright, *supra* note 25.

199. Thomas, *supra* note 23, at 63–64.

200. See *id.* at 71.

## Appendix A – Summary of Regulation Crowdfunding Issuer Data

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
Hylete, Inc.	Corp	CA	3/26/2012	CA	17	StartEngine
Community Ventures (a/k/a Force for Good Fund)	Corp	CA	11/15/2008	CA	0	WeFunder
Voyage Media Inc.	Corp	CA	1/5/2004	CA	6	WeFunder
VoiceVoice, Inc. dba MaestroConference	Corp	CA	3/20/2007	CA	4	WeFunder
Jetpack Aviation	Corp	CA	9/1/2016	CA	1	StartEngine
FAFCO, Inc.	Corp	CA	3/17/1972	CA	42	WeFunder
Palmia Corp	Corp	CA	6/14/2012	CA	3	WeFunder
Ridgemont Outfitters, Inc.	Corp	CA	11/5/2013	CA	5	WeFunder
ZipZap, Inc.	Corp	CA	8/7/2006	CA	10	WeFunder
Discotech, Inc.	Corp	CA	10/7/2013	CA	5	WeFunder
Tampon Tribe	Corp	CA	8/15/2016	CA	0	WeFunder
OODLES CORPORATION	Corp	CA	2/10/2017	CA	2	WeFunder
SlingFin, Inc.	Corp	CA	2/5/2010	CA	2	WeFunder
Spotlight:Girls	Corp	CA	10/9/2012	CA	4	WeFunder



Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
My Trail Company, PBC (a/k/a My Trail)	Corp	CO	4/9/2015	CO	5	WeFunder
Ohos, Inc.	Corp	CO	1/20/2016	CO	2	WeFunder
My Trail Company, PBC (a/k/a My Trail)	Corp	CO	4/9/2015	CO	4	WeFunder
Balanced Software, Inc. (a/k/a Balance)	Corp	DE	8/17/2016	CA	3	WeFunder
Minds Inc.	Corp	DE	10/3/2011	CT	8	WeFunder
SlideBelts Inc	Corp	DE	6/10/2013	CA	27	StartEngine
xCraft Enterprises, Inc. (a/k/a xCraft)	Corp	DE	9/23/2014	ID	1	StartEngine
Powur, PBC	Corp	DE	1/2/2014	CA	12	WeFunder
PT Motion Works, Inc. (a/k/a ElliptiGo)	Corp	DE	8/13/2009	CA	23	StartEngine
Sondors Electric Car Company (a/k/a SONDORS)	Corp	DE	8/15/2016	CA	1	StartEngine
LiquidPiston, Inc.	Corp	DE	6/21/2004	CT	7	WeFunder
Legion M Entertainment, Inc. (a/k/a Legion M)	Corp	DE	3/4/2016	CA	5	WeFunder
Scrap Connection, Inc.	Corp	DE	7/12/2012	AL	5	WeFunder

2018]

*EQUITY CROWDFUNDING PORTALS*

407

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
ArtCraft Entertainment, Inc. (a/k/a Artcraft)	Corp	DE	5/20/2013	TX	31	Indiegogo
Evolution Spirits, Inc. (a/k/a Monkey Rum)	Corp	DE	6/9/2014	NY	4	WeFunder
CrowdMed, Inc.	Corp	DE	10/31/2012	CA	6	WeFunder
VetPronto - Mobile Veterinarians Inc. (a/k/a VetPronto)	Corp	DE	5/21/2014	CA	7	WeFunder
TAXA Biotechnologies Inc	Corp	DE	3/8/2012	CA	3	WeFunder
Airbitz, Inc.	Corp	DE	10/1/2013	CA	6	WeFunder
Traveling Spoon	Corp	DE	7/24/2013	CA	5	SeedInvest
MOBODEX TER INC	Corp	DE	11/22/2013	NY	3	WeFunder
Thisisground Holdings, Inc. (a/k/a This Is Ground)	Corp	DE	10/1/2015	CA	7	WeFunder
Pearachute Inc.	Corp	DE	11/23/2015	IL	7	Republic
Happy Tax Holding Corp (a/k/a Happy Tax)	Corp	DE	2/23/2017	DE	10	WeFunder
Legion M Entertainment, Inc. (a/k/a Legion M)	Corp	DE	3/4/2016	CA	2	WeFunder
Goodmeets, Inc. (a/k/a Whim)	Corp	DE	10/1/2013	CA	0	Republic

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
Barber Surgeons Inc.	Corp	DE	7/28/2016	CA	0	SeedInvest
Jauvtis Engineering (a/k/a Monday Motorbikes)	Corp	DE	2/14/2013	CA	10	StartEngine
Big Cheese, Inc. (a/k/a The Grilled Cheese Truck)	Corp	DE	9/16/2016	FL	2	Indiegogo
Shape Labs Inc. (a/k/a ShapeScale)	Corp	DE	5/7/2015	CA	2	WeFunder
Snapwire Media, Inc. (a/k/a Snapwire)	Corp	DE	8/3/2012	CA	3	StartEngine
InGen Dynamics, Inc.	Corp	DE	7/21/2015	CA	1	StartEngine
Magic Instruments, Inc.	Corp	DE	11/8/2012	CA	6	WeFunder
WOLFPRINT 3D INC	Corp	DE	8/18/2016	DE	0	SeedInvest
Snapwire Media, Inc. (a/k/a Snapwire)	Corp	DE	8/3/2012	CA	3	StartEngine
BeatStars Inc.	Corp	DE	11/9/2016	TX	5	Indiegogo
Hustle Con Media	Corp	DE	11/25/2014	CA	6	SeedInvest
Play Impossible Corporation	Corp	DE	4/4/2014	WA	2	Indiegogo
MySwimPro, Inc.	Corp	DE	3/23/2015	MI	3	WeFunder

2018]

*EQUITY CROWDFUNDING PORTALS*

409

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
Farm From a Box Inc. (a/k/a Farm in a Box)	Corp	DE	2/6/2012	CA	2	Republic
Everipedia, Inc.	Corp	DE	8/1/2015	CA	5	WeFunder
Vera Roasting Company, Inc.	Corp	DE	9/17/2015	NH	5	WeFunder
Ellison Eyewear, Inc.	Corp	DE	3/19/2014	IL	1	Republic
MAGNABID INC.	Corp	DE	11/19/2015	CA	3	StartEngine
ALCHEMA INC. (a/k/a Achema)	Corp	DE	11/25/2015	CA	5	Indiegogo
AnJeDa Fitness, Inc. (a/k/a From Fat to Finish Line)	Corp	DE	11/3/2015	CA	0	StartEngine
EveryFit, Inc. (a/k/a QMedic)	Corp	DE	7/8/2010	MA	12	WeFunder
GoFish Cam, Inc.	Corp	DE	11/2/2015	TX	2	SeedInvest
MobileSpike Inc. (a/k/a Mobile Spike)	Corp	DE	3/31/2016	WA	5	FlashFund ers
Motoroso, Inc.	Corp	DE	8/1/2013	CA	3	WeFunder
One Technologies, Inc. (a/k/a Rumor)	Corp	DE	5/26/2016	CA	3	WeFunder
RaceYa, Inc.	Corp	DE	4/7/2014	NY	1	Republic
VooDoo Spirits, Inc.	Corp	DE	7/11/2012	NY	1	WeFunder

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
MobileSpike Inc. (a/k/a Mobile Spike)	Corp	DE	3/31/2016	DE	5	WeFunder
Next Future Transportation inc.	Corp	DE	2/27/2015	CA	6	StartEngine
Skillmil, Inc.	Corp	DE	2/11/2016	FL	0	Republic
EverMem, Inc. (a/k/a FlipWord)	Corp	DE	7/17/2015	CA	2	Republic
Avua Corporation (a/k/a Avua Cachaca)	Corp	DE	3/3/2011	NY	2	WeFunder
BLAZnTECH, Inc.	Corp	DE	11/4/2016	NC	5	WeFunder
Exemplars Inc. (a/k/a Veditz)	Corp	DE	9/8/2015	CA	6	WeFunder
qaZING, Inc.	Corp	DE	9/9/2015	NH	6	StartEngine
Zoi, INC	Corp	DE	1/6/2017	CA	3	StartEngine
Meow Wolf, Inc.	Corp	DE	11/28/2016	NM	100	WeFunder
Epec Holdings, Inc. (f/k/a Epec Biofuels Holdings, Inc.) (a/k/a Epec – James F.C. Hyde Sorgho Whiskey)	Corp	FL	10/9/2008	FL	0	WeFunder
MilTec Platform, Inc. (a/k/a Vodi)	Corp	GA	6/5/2014	GA	58	WeFunder

2018]

*EQUITY CROWDFUNDING PORTALS*

411

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
Hawaiian Ola Brewing Corporation (a/k/a Hawaii Cider Company)	Corp	HI	12/22/2015	HI	10	WeFunder
Urban Juncture, Inc.	Corp	IL	11/12/2003	IL	1	WeFunder
Beta Bionics, Inc.	Corp	MA	10/21/2015	MA	10	WeFunder
Chicago Steak Company, Inc.	Corp	MD	10/26/2007	MD	17	WeFunder
ITFT, Inc.	Corp	NC	6/5/2013	NC	5	StartEngine
Vios Nutrition, Inc.	Corp	NC	12/29/2015	NC	6	StartEngine
BOARDWALK HOSPITALITY INC. (a/k/a Boardwalk Hospitality)	Corp	NV	4/28/2017	NV	3	WeFunder
PlantSnap Inc.	Corp	NV	6/16/2016	CO	4	WeFunder
EVELO, Inc.	Corp	NY	1/20/2012	WA	4	WeFunder
Gotham Ballers, Inc.	Corp	NY	2/26/2016	NY	6	StartEngine
Sol Boards, Inc. (a/k/a GolfBoard)	Corp	OR	3/5/2013	OR	50	StartEngine
Maternova, Inc.	Corp	RI	5/6/2009	RI	2	Republic
Alkane Truck Company, Inc.	Corp	SC	2/6/2011	SC	10	StartEngine
BioClonetics Immunotherapeutics, Inc.	Corp	TX	12/24/2009	TX	3	WeFunder

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
WhiteClouds Inc.	Corp	UT	1/28/2013	UT	37	WeFunder
Daplie, Inc.	Corp	UT	8/12/2015	UT	2	WeFunder
Haint Blue Brewing Company LLC	LLC	AL	12/7/2015	AL	3	WeFunder
Sam Lee Laundry LLC (a/k/a The Speakeasy)	LLC	CA	1/2/2015	CA	8	WeFunder
Plant Power Encinitas, LLC (a/k/a Plant Power)	LLC	CA	7/6/2015	CA	3	Indiegogo
Charron Favreau L.L.C. (a/k/a Chareau)	LLC	CA	8/12/2011	CA	3	WeFunder
Sam Lee Laundry LLC (a/k/a The Speakeasy)	LLC	CA	1/2/2015	CA	8	WeFunder
LRF Thoroughbred Fund LLC	LLC	CA	6/27/2016	CA	5	StartEngine
Fun-gi Games LLC (a/k/a fun-gi)	LLC	CA	5/4/2015	CA	2	WeFunder
That Christmas Movie LLC	LLC	CA	2/17/2017	CA	2	StartEngine
Vive Restaurant Group Livermore, LLC (a/k/a/ Cinco Tacobar)	LLC	CA	12/29/2016	CA	2	NextSeed
Red Bay Coffee Company	LLC	CA	8/9/2013	CA	28	WeFunder

2018]

*EQUITY CROWDFUNDING PORTALS*

413

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
That Christmas Movie LLC	LLC	CA	2/17/2017	CA	1	WeFunder
Two A&H Entertainment, LLC (a/k/a Rambler)	LLC	CA	2/17/2016	CA	17	NextSeed
Recoup Fitness LLC	LLC	CO	5/28/2015	CO	5	WeFunder
Republic Restoratives LLC	LLC	D.C.	10/29/2013	D.C.	9	Indiegogo
Field Guide to Evil, LLC	LLC	DE	12/19/2016	DE	3	Indiegogo
Fizzics Group, LLC (a/k/a Fizzics)	LLC	DE	7/7/2014	NJ	5	Indiegogo
NICE USA, LLC (a/k/a NICE)	LLC	DE	9/16/2015	DE	3	WeFunder
Rental Marketplace, LLC (a/k/a Rentus.com)	LLC	DE	7/6/2015	CA	4	WeFunder
NICE USA, LLC (a/k/a NICE)	LLC	DE	9/16/2015	DE	3	WeFunder
Comic Blitz LLC (a/k/a ComicBlitz)	LLC	DE	3/27/2014	CA	3	WeFunder
Youngry, LLC	LLC	DE	6/14/2016	CA	2	Republic
Green Sense Farms, LLC	LLC	IN	9/24/2012	IN	12	StartEngine
Hopster's LLC (a/k/a Hopsters)	LLC	MA	4/5/2013	MA	20	WeFunder
MF Fire	LLC	MD	4/23/2014	MD	3	SeedInvest



Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
Do., LLC (a/k/a Bogobrush)	LLC	MN	2/12/2012	MI	2	WeFunder
Proof of Concept, LLC (a/k/a/ Barrow's Intense)	LLC	NY	4/22/2011	NY	3	WeFunder
Cleveland Whiskey LLC	LLC	OH	7/28/2009	OH	7	WeFunder
Eliot's Adult Nut Butters LLC	LLC	OR	10/24/2013	OR	2	WeFunder
Hops and Grain Production, LLC (a/k/a Hops and Grain)	LLC	TX	5/3/2016	TX	1	WeFunder
Native Hostel Austin LLC (a/k/a Native Hostel)	LLC	TX	3/31/2016	TX	3	NextSeed
Texas Zebo, LLC	LLC	TX	11/30/2001	TX	96	Indiegogo
Peli Peli Austin, LLC	LLC	TX	8/19/2016	TX	3	NextSeed
Brewer's Table - East Austin, LLC (a/k/a The Brewer's Table)	LLC	TX	2/26/2016	TX	2	NextSeed
Sugar Refinery, LLC (a/k/a The Sugar Refinery)	LLC	TX	8/18/2016	TX	3	NextSeed
Collective HTX, LLC (a/k/a The Co-Op HTX)	LLC	TX	4/24/2015	TX	2	NextSeed

2018]

*EQUITY CROWDFUNDING PORTALS*

415

Issuer Name(s)	Entity Type	Entity Jurisdiction	Formation Date	Physical Address	Number of Employees	Funding Portal
South Austin Beer Partners, LLC dba South Austin Brewery	LLC	TX	9/16/2013	TX	6	WeFunder
Intero Restaurant LLC (a/k/a Intero Ristorante)	LLC	TX	4/1/2014	TX	3	NextSeed
Texas Beer Company LLC (a/k/a Texas Beer Co)	LLC	TX	3/28/2013	TX	10	WeFunder
Vigilante Gaming Bar, LLC (a/k/a Vigilante)	LLC	TX	7/14/2015	TX	3	NextSeed
Flying Nun Collective, LLC (a/k/a Citizen Pilates)	LLC	TX	9/15/2016	TX	1	NextSeed
Tasty Minstrel Games, LLC	LLC	UT	3/11/2009	UT	9	Indiegogo
Bloomery Investment Holdings, LLC (a/k/a Bloomery)	LLC	WV	9/22/2014	WV	0	WeFunder
Neurohacker Collective, LLC	LLC	WY	12/11/2015	CA	17	WeFunder
CS Porters Partners, LP (a/k/a Porters)	LP	TX	1/12/2017	TX	5	NextSeed