



California Corporate & Securities Law

Commissioner Orders Crowdfunding Facilitator To Stop

By [Keith Paul Bishop](#) on December 6, 2011

In November, the U.S. House of Representatives passed the Entrepreneur Access to Capital Act, [HR 2930](#), to create a new exemption under the Securities Act of 1933 for “crowdfunding” meeting specified conditions. About the same time, the U.S. Senate weighed in with the Democratizing Access to Capital Act of 2011, [S 1791](#). According to the bill’s author, Massachusetts Senator Scott Brown, S 1791 “would allow small companies to offer shares of stock directly to ordinary investors through established and vetted peer-to-peer platforms.”

It is important to note that neither of these bills has been enacted and it remains to be seen what Congress will do, if anything, to facilitate crowdfunding. Unless and until action is taken at the state or federal level to facilitate crowdfunding, it will remain a risky proposition, as illustrated by this [Consent Order to Desist and Refrain](#) that was recently issued here in California.

According to the Order, ProFounder Financial, Inc. established a website to help issuers raise money through crowdfunding. For a flat fee, ProFounder provided issuers with web page templates hosted on ProFounder’s domain. Prospective investors could access an issuer’s website only if invited to do so. ProFounder required all issuers to confirm that they had a substantial, pre-existing relationship with each potential investor and all potential investors were required to provide the same confirmation.

The Commissioner’s order is not based on allegations that offers and sales were made in violation of California’s qualification requirement. Rather, the Commissioner contends that ProFounder had induced the sale of securities without having obtained a license as a broker-dealer in violation of Corporations Code Section 25210. ProFounder did not admit or deny the Commissioner’s findings (other than as to jurisdiction). The Commissioner did not seek monetary penalties.

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