

The Real Shark Tank: An Overview of Private Securities Offerings and Crowdfunding

presented by
William B. Helbling, Esq.
2021 Professional Advisor Symposium

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PRIVATE CAPITAL MARKETS & SECURITIES



What are Private Capital Markets?

- The sale of securities in private companies, as opposed to publicly traded companies (i.e. Nike and Facebook).
- Private companies use private capital markets to raise capital through private placements and offerings.
- Private placements and offerings differ from initial public offerings (IPOs), as private offerings involve the sale of securities not registered with the Securities and Exchange Commission (SEC).

Is It a Security?



Shares of Stock in GameStop Corp?

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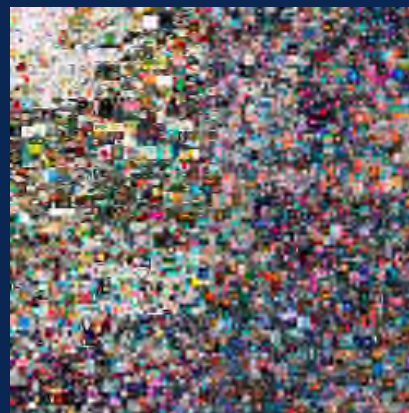
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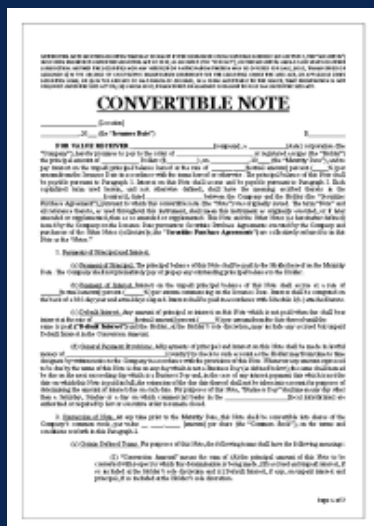
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NFTs?



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A Convertible Note?

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Dogecoin?

Securities sold in Private Capital Markets

- Equity (i.e. Common Stock, LLC Membership Units, Limited Partnership Interests).
- Hybrid Debt Securities (i.e. Convertible Notes).
- Other Instruments (i.e. Options and Simple Agreement for Future Equity (SAFEs)).

Why do private capital markets matter?

- Private markets are outraising public markets by a significant amount. For 2020, the SEC reported that private offerings generated ~\$3.33 Trillion in capital fundraising, as opposed to IPOs which only resulted in \$2.1 Trillion in capital fundraising.
- Commercial lending has become less available and/or attractive to start-up companies and other existing private entities (i.e. lack of collateral, pandemic issues, etc.).
- Developments and changes in securities regulation at the federal and state level have made private offerings more attractive and accessible.

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How COVID-fueled crowdfunding can revive small businesses

Tina Orem NICHOLLS

A pandemic-fueled boom in crowdfunding has small businesses flocking to capital-raising platforms that experts say could help many companies get back to normal — as long as small-business owners are able to launch effective campaigns.

Regulation crowdfunding, in which companies raise capital from investors via government-mandated online platforms, has mushroomed in the last two years, going from approximately \$100 million in 2019 to over \$200 million in 2020, according to Chris Lastrino, founder and CEO of crowdfunding analytics and ratings firm EligoCrowd. It's already exceeded the \$250 million mark year-to-date in 2021, he adds.

"COVID has been a massive boon to this market," Lastrino says.

When the pandemic disrupted traditional financing options, more small-business owners began looking for alternative funding sources; that made them more open to the idea of crowdfunding and of capital as a commodity, he says.

More investors got comfortable with crowdfunding during the pandemic, too, he adds.

"There are so many angel investors and investors in general out there who had a lot of skepticism about putting [money] into private companies online," Lastrino says. "But suddenly, that was the only way they could do these deals. And so almost overnight there was this total buy-in from the retail investor



Although crowdfunding is often associated with raising capital for new businesses, months of lockdowns have many small businesses exploring crowdfunding as a way to get back to normal operations. DAVID ZALUTSKY/AP FILE

capacity restrictions have many small businesses exploring crowdfunding as a way to get back to normal operations, according to Sherwood Helms, a principal at Crowdfunder Capital Advisors.

"What we're seeing is a lot of these small restaurants, local parks, beauty salons, that type of thing, that were struggling during the pandemic are now going up to the customers and saying, 'Hey, I need \$25,000, \$50,000 to re-open, get us up and running,'" he says. "And the businesses are offering great yields. If you think about it, many of them are 7%, 8%, 9%, which is a healthy

businesses in certain industries; others focus on geography or businesses of certain sizes. "Look at how much money these companies have raised or are raising right now so you can start to get a sense of how big their investor base might be," Lastrino adds.

• Don't skip the legal work. "This isn't people just giving money to support someone like they do on Kickstarter and GoFundMe," Helms says. "This is a highly regulated activity overseen" by the Securities and Exchange Commission and Financial Industry Regulatory Authority. "And so you have to file disclosures for investors." Templates and boilerplate language can go a long way, but have a lawyer review the final documents, he adds.

• Promote your campaign. "Campaigns that just go up there without any marketing behind them get zero. They just get zero traction," Helms says. "The people that put the effort in are the people that see the traction."

Targeted social media efforts, email outreach and in-store promotions such as QR codes with campaign information are popular, according to the pros. "I've seen people do really creative things like have an ice cream social if they're an ice cream store and invite people in and then say, 'By the way, you can actually invest in our company right now,'" Lastrino says. "They come in, they're surprised to be a part of this thing, then now maybe they're going to put in \$500 more because they get really excited once they're there and they see what they're contributing to."

3 keys to an effective crowdfunding campaign

Crowdfunding may not be a good fit for small-business owners who are strapped for time or energy. Small businesses launching recovery-oriented



APPLE COMPUTER INC.

Preliminary Confidential
Offering Memorandum

150,000 shares of Common Stock at \$1
per share with a par value of \$0.00 per share

The information contained herein is deemed confidential by the company, has not been released publicly and is disclosed for the sole purpose of evaluation by a potential purchaser of the company's Common Stock. Any estimates or projections as to events that may occur in the future (including projections of income, expense and net income) are based upon the best judgment of company management as of the date of this prospectus. Whether or not such estimates or projections may be achieved will depend upon the company achieving its over-all business objectives, including availability of funds resulting from the sale of the shares offered herein.

The shares are offered to a limited number of individuals qualified as sophisticated investors, and as a private placement without registration under the Securities Act of 1933 in reliance upon specific exemptions under that act relating to transactions not involving a public offering or solicitation. Transfer of the shares is subject to all of the requirements of the Federal and California Securities Act.

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SUMMARY OF PROPOSED OFFERING
Number of Shares Offered

STAFF

A.C. Markkula, Chairman of the Board and V.P. Marketing
MBA, SDSU University of Southern California
VPS - Hughes Aircraft Co. - 4 Yrs.
Marketing Mgr. - Fairchild Semiconductor - 4 Yrs.
Marketing Mgr. - Intel Corporation - 4 Yrs.

M.W. Scott, President
BSME, California Institute of Technology
Engineer, Hewlett-Packard - 2 Yrs.
Marketing Mgr. - Fairchild Semiconductor - 4 Yrs.
Marketing Mgr. - National Semiconductor - 3 Yrs.
Director Hybrid Operations - National Semi. - 4 Yrs.

S.P. Jobs, V.P. Operations
Attended Stanford and Reed College
Engineer - Atari - 2 Yrs.

S.G. Wozniak, V.P. Engineering
Attended University of Colorado and University of
California at Berkeley
Engr. Tennant - 1 Yr.
Engr. Electroglas - 1 Yr.
Engr. - Hewlett-Packard - 3 Yrs.


Risk Factors

Operating History: Apple Computer Inc. is a new company which has not established a long history of operation upon which to base opinions of accuracy of forecasts, financial projections or operations efficiency.

Manufacturing: Apple has experienced extreme difficulty in obtaining its custom injection molded cases. There is no assurance that this problem will be solved through establishing additional sources of supply.

Cash Flow vs Rapid Growth: Apple management expects that rapid growth and potential market fluctuations may present severe cash flow management difficulties.

Management: Apple Computers' Management team is young and relatively in-experienced in the high volume consumer electronics business.



HOW ARE SECURITIES REGULATED?

Stock Market Crash of 1929

- On October 29, 1929 the US stock market crashed due to a bubble created by extremely speculative sales/trading of securities.



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Federal Government's Response

- Securities Act of 1933 – As a result of the 1929 stock market crash and lack of securities regulation under federal law, US Congress moved to enact the Securities Act of 1933. The sole purpose of the Securities Act of 1933 was to lay out the legal framework for regulating the sale of securities from an issuer (i.e. a corporation) to an investor.



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Federal Government's Response (cont.)

- Securities Exchange Act of 1934 - In addition to the 1933 Act, US Congress enacted the Securities Exchange Act of 1934 to govern the sale of securities on the secondary market (i.e. stock exchanges).
- The Securities Exchange Commission (SEC) – The government agency created under the 1934 Act to regulate the sale of all securities throughout the US.



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Blue Sky Laws

- In addition to federal securities laws, each state in the US has its own securities laws/regulations that cover the sale of securities to its residents.
- Many Blue Sky Laws predate the 1933 and 1934 Act, as there was a growing need for securities regulation due to honest investors being sold bad securities (Kansas first state in 1911).
- The term “Blue Sky” actually was coined from Judges and financial commentators who urged the states to regulate the sale of securities, as financial hucksters were selling investments in everything but the “blue sky.”



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Pennsylvania Laws and Regulatory Body

- Pennsylvania Securities Act of 1972
- Pennsylvania Department of Banking and Securities



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Origin of Securities Exemptions & Private Offerings

- 4(a)(2) of the 1933 Act provides that securities do not need to be registered if they are sold in connection with “transactions by an issuer not involving a public offering.”
- Section 4(a)(2) of the 1933 is known as the private offering exemption, which has resulted in subsequent regulations from the SEC defining what is considered an exempt offering of securities.

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Why Private Offering

- Why not to go IPO route?
 - Registration Process
 - Prospectus
 - Ongoing Reporting Requirements/Compliance



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Most Popular Exempt Offerings

- Regulation D
- Regulation A
- Regulation Crowdfunding (CF)

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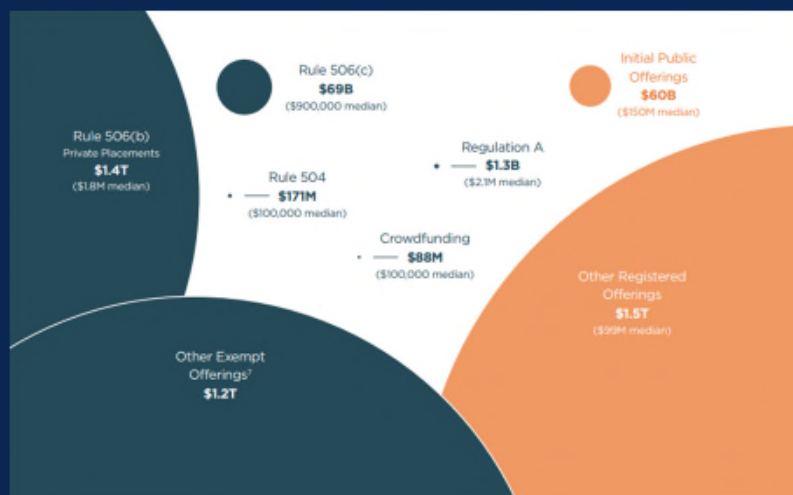


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Regulation D

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Background

- In 1989, the SEC adopted Regulation D to provide safe harbors to help issuers to ensure offerings were exempt from registration.



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“Accredited Investor”

■ Individuals

- A person who has earned income that exceeded \$200,000 (or \$300,000 together with a spouse or spousal equivalent) in each of the prior 2 years, and reasonably expects the same for the current year.
- A person that has a net worth over \$1 million, either alone or together with a spouse or spousal equivalent (excluding the value of the person’s primary residence).
- A director, executive officer, or general partner of the issuer selling the securities.



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“Accredited Investor”

▪ Entities

- A bank, savings and loan association, insurance company, registered investment company, business development company, or small business investment company or rural business investment company.
- An employee benefit plan if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the plan has total assets in excess of \$5 million.
- Entities or Trusts with assets exceeding \$5 million.
- Entities whose equity owners are Accredited Investors.

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New “Accredited Investor” categories

- A person that holds in good standing a Series 7, 65 or 82 license.
- Any person who is a “knowledgeable employee” of a private fund for investments in that fund.
- A “family office” with over \$5 million in assets under management (not formed for the purpose of making investment) directed by a person with knowledge and experience in financial and business matters who is capable of evaluating the merits and risks of the prospective investment.
- Any “family client” of a family office meeting the requirements in the new category above.

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“Sophisticated Investor”

Individuals with sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment.



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“General Solicitation”

- Advertisements published in newspapers and magazines, public websites, communications broadcasted over television and radio, and seminars where attendees have been invited by general solicitation or general advertising.



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EDGAR

- The Electronic Data Gathering, Analysis, and Retrieval system.
- The SEC's filing system for private and public entities who issue and sell securities.



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506(b) Offering Rules

- No fundraising limits.
- Accredited Investors only or up to 35 Sophisticated Investors.
- No General Solicitation.
- No need to comply with Blue Sky Laws.
- Securities sold are Restricted Securities.
- No financial disclosure if Accredited Investors only.

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506(b) Offering Rules (cont.)

- If Sophisticated Investors participate then:
 - Reasonable steps need to be taken to confirm that investors are Sophisticated Investors.
 - Disclosure documents must be provided (i.e. PPMs).
 - Up to \$20 million – Internal financial statements must be provided.
 - \$20 million and above – Audited financial statements must be provided.

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506(c) Offering Rules

- No fundraising limits.
- Allows for General Solicitation.
- Accredited Investors only.
- Issuer takes reasonable steps to verify that the investor is an Accredited Investor.
- Securities sold are Restricted Securities.
- No need to comply with Blue Sky Laws.

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504 Offering Rules

- \$10 Million limit within the past 12 months.
- No General Solicitation.
- Securities sold are Restricted Securities.
- Required to comply with Blue Sky Laws.

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Regulation D Filings

- All 504 and 506 Offerings require the issuer to file a Form D with the SEC 15 days after the sale of securities through EDGAR.
- 506 Offerings only require an issuer to mail a copy of the Form D to the state securities authorities where investors are domiciled.
- 504 Offerings will require additional forms filed with state securities authorities where investors are domiciled.

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Regulation D Filings (cont.)

- Form D is a notice filing that contains the following information:
 - Name of Issuer/Contact Information
 - Industry Type/Issuer Size
 - Type of Securities Sold
 - Offering Terms
 - Broker Dealer Information

Regulation A

Background

- Regulation A was adopted in 1936 as one of the first exemptions from registration for small issuers.
- Regulation A allows companies to offer and sell securities to the public, but with more limited disclosure requirements.
- Title IV of the JOBS Act (2012) required revisions to Regulation A.
- In March 2015, the SEC adopted final rules to modernize and expand Regulation A.



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Fundraising Limits

- Tier 1 Offering
 - Up to \$20 million within a 12 month period.
- Tier 2 Offering
 - Up to \$75 million within a 12 month period.



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Tier 1 Rules

- No limit on investors (Can be Accredited or non-Accredited Investors).
- Internal Financial Statements required.
- Required to comply with Blue Sky Laws.

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Tier 2 Rules

- A non-Accredited Investor may invest no more than: (1) 10% of the greater of annual income or net worth (for natural persons); or (2) 10% of the greater of annual revenue or net assets at fiscal year-end.
- No limit on Accredited Investors.
- No need to comply with Blue Sky Laws.
- Audited Financial Statements required.

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Regulation A Filings

- All Regulation A Offerings require the issuer to file a Form 1-A with the SEC before offering securities to the public.
- Form 1-A is a notice filing that contains the following information:
 - Organization of the Issuer
 - Directors and Officers of Issuer
 - Principal Owners of Issuer
 - Business Plan and Risk Factors
 - Terms of the Offering/Description of Security
 - Financial Information Required (based on Tier)

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Regulation A Filings (cont.)

- Tier 1
 - Exit Report filed with SEC after completion of offering.
- Tier 2
 - Annual and semiannual reports with SEC (i.e. 1-K, 1-SA).

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Regulation Crowdfunding



Background

- Title III of the JOBS Act required the SEC to adopt rules permitting crowdfunding.
- SEC adopted Regulation Crowdfunding (CF) effective as of May 16, 2016, which implemented the requirements of the JOBS Act.



Crowdfunding Platforms

- All transactions under Regulation CF take place online through an SEC-registered “platform” or “portal”.
- Popular Crowdfunding Portals
 - WeFunder
 - Seedinvest
 - StartEngine



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Regulation CF Rules

- Issuers can raise up to an aggregate of \$5 million over a 12 month period.
- Offering must be made solely through an SEC approved platform.
- Accredited Investor – No Limit.
- Non-Accredited Investor - The aggregate amount individuals may invest in offerings shall not exceed the greater of \$2,200 or 5% of the investor's annual income if the investor's annual income is less than \$107,000. If the investor's annual income and net worth are equal to or greater than \$107,000, then the individual can invest up to the lesser of either 10% of his or her annual income, or 10% of his or her net worth, up to a maximum of \$107,000.
- No need to comply with Blue Sky Laws.

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Regulation CF Filings

- In connection with an offering conducted by a funding platform, the platform will file a Form C on SEC's EDGAR prior to the offering of securities to the public.
- The Form C includes the following information:
 - Organization of the Issuer
 - Directors and Officers of Issuer
 - Principal Owners of Issuer
 - Business Plan and Risk Factors
 - Terms of the Offering/Description of Security

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Regulation CF Filings (cont.)

- Financial Information Required (based on offering size):
 - Less than \$107,000 – Internal Financial Statements Certified by Officers.
 - \$107,000-\$535,000 – Reviewed Financial Statements.
 - More than \$535,000 – Audited Financial Statements.

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Navigating Regulation A and D Offering Documents



Private Placement Memorandums

- Regulation A and D issuers generally provide investors with “Private Placement Memorandums” (PPMs). Issuers will use PPMs to provide the following information and terms relating to the private offering:
 - Exemption Disclosures – Properly drafted PPMs will include information relating to which particular securities registration exemptions are utilized in connection with the offering. For example, there will be language in ALL CAPS stating that the securities sold pursuant to the PPM are not registered with the SEC and are exempt from such registration under _____.
 - Terms of Offering – In addition to the regulatory disclosures, a PPM will contain the terms of the offering including the type of security offered, value of the security sold and the fundraising limits of the offering.

Private Placement Memorandums (cont.)

- Business Plans/People – PPMs should contain an overview of the issuer and business plan. Such plan should include a description of the products or services sold and information relating to the officers, directors and key employees of the issuer.
- Risk Factors – PPMs will contain risk factors that will warn investors of the potential issues that the issuer may face, which will result in the loss of the investment amount. A good PPM will address all risks relating to the issuers business and industry.
- Instructions for Offering – Always look to see if a PPM has detailed instructions on how to submit Subscription Agreements.

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Subscription Agreements

- Representations and Warranties - Within all Subscription Agreements, issuers will include representations and warranties to be made by the investor. It is crucial to determine what these representations and warranties are and confirm they can be accurately made by the investor (i.e. Accredited Investor status).
- Investor Questionnaires - Depending on the type of offering, an issuer may provide an “Investor Questionnaire” to confirm whether an investor is an Accredited Investor.

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Convertible Notes (if applicable)

- Interest and Maturity Date
 - Any form Convertible Note included with a PPM should contain a set interest rate and maturity date.
- Conversion Rights
 - Generally, convertible notes convert to equity upon a future fundraising events or at maturity.

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Appendices to PPMs

- Financial Statements – Always review the financial statements provided with a PPM to ensure they meet the disclosure requirements of the corresponding exemption.
- Use of Funds – PPMs should have some information relating to how the funds raised will be utilized by the issuer (i.e. purchase of equipment or real estate).
- Organizational/Governing Documents - PPMs should provide at least a summary of the terms of the governing documents of an issuer and/or actual copies.

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Issues if Offering Documents are Not Prepared Correctly

- Investment Viability
- Federal and State Penalties
- Rescission Offers
- Ensuring “Bad Actors” are Not Present

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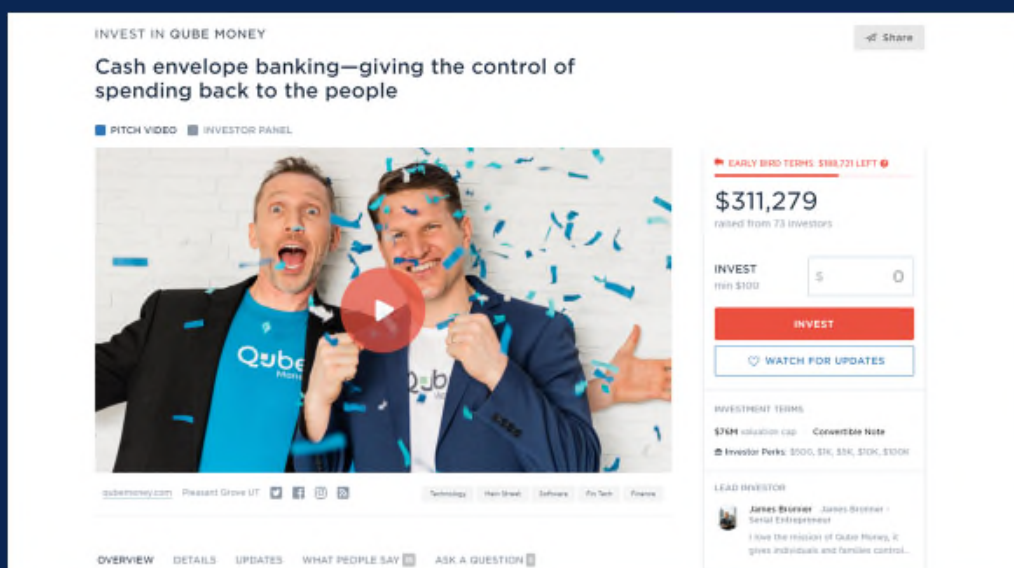
Navigating Crowdfunding Investments



Online Profiles

- Business Background/Risks - Like a PPM, an issuer will have a profile on a crowdfunding platform that contains an overview of the issuer and business plan.
- Organizational Documents/Financials - Within the profile, search for any organizational documents provided (i.e. operating agreements and bylaws).
- Type of Security – Always determine what type of security that is being sold. Platforms will allow for issuers to sell equity, convertible notes, debt instruments and SAFEs.
- Information Not Readily Apparent - If you cannot find all information on the issuer, search the issuer's Form C filed on EDGAR.

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Questions?



Thank You!

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