

# **PRIVATE, PUBLIC AND OFFSHORE OFFERINGS ON THE INTERNET**

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The Internet provides entrepreneurs with a powerful tool that can be used to conduct capital raising efforts and to disseminate information about their company—so long as careful attention is paid to the applicable legal considerations. This chapter discusses potential implications of using the Internet for and during capital raising efforts, methods of raising capital via the Internet, and certain Internet resources available to issuers.

## **OVERVIEW**

Like any other communication medium, the Internet can be a valuable tool for issuers in the capital raising process, both as a means of providing information to, and seeking out, potential investors, in private and public offerings.

Although the Internet has not emerged as a widespread means of bypassing the traditional public offering process, as was once envisioned during the height of the “dot com” boom, it continues to be an area of significant opportunity for issuers, and a significant area of concern for the Securities and Exchange Commission and other regulatory authorities.

This section explores some of the unique issues involving use of Internet communications for or during private, public, and offshore offerings, as well as the increased regulatory scrutiny of Internet communications in connection with securities offerings. This section also discusses methods of raising capital in Internet offerings

and includes a summary of some of the resources currently available to issuers via the Internet, including informational resources and “matchmaking” services.

Readers should be aware, however, that this chapter is merely intended to be a summary of the implications of raising capital via the Internet and of other Internet-related matters. For a review of the more technical issues involved with securities offerings, it is strongly recommended that the reader consider the other chapters of this publication.

## **PRIVATE PLACEMENTS**

### **General Solicitation**

As discussed in Chapter Three, Regulation D provides a safe harbor exemption from registration for “transactions by an issuer not involving any public offering.” As a condition for the safe harbor, however, the issuer cannot engage in general solicitation or general advertising, except under limited circumstances. Issuers seeking to use the Internet in connection with a Regulation D private placement must be very careful to structure their Internet communications to comply with this prohibition.

The SEC has repeatedly stated that what constitutes a general solicitation is determined by the particular circumstances of the situation under consideration. One important factor that the SEC considers is whether the issuer had a prior relationship with the offeree. Another consideration is the extent of the issuer’s solicitation. Therefore, if an issuer makes a posting on its Web site indicating to any individuals with general access to the site that it is selling securities in a private placement, and further invites the readers to inquire for further information, that issuer is probably in violation of Regulation D’s prohibition of general solicitation and advertising.

To avoid running afoul of the Regulation D prohibition, issuers seeking to offer securities by means of a private placement should strongly consider doing the following:

- Limit access to offering materials only to pre-qualified accredited or sophisticated investors;
- When inviting potential purchasers to complete a purchaser questionnaire to determine whether they are accredited or sophisticated investors, make certain that neither the invitation nor the questionnaire reference a specific transaction that has or will be posted on the Web; and
- Post a notice of a private offering in a password-protected Web page that is accessible only to those accredited and sophisticated investors who have qualified as such.

### **Offshore Offerings Via Web Sites**

In a 1998 Interpretive Release, the SEC explained that the applicability of the registration provisions of the United States securities laws to offers or solicitations made via the Internet is dependent upon whether such communications are targeted to United States persons. Therefore, it is possible for a U.S. issuer to offer and sell securities offshore, solely via the Internet, as long as appropriate care is taken to avoid such targeting (or the appearance of such targeting, when viewed in hindsight by regulatory authorities).

Although the SEC has stated that what constitutes adequate measures to prevent persons residing in the United States from participating in an offshore Internet offer depends on the facts of each particular case, it has given some guidelines. To avoid targeting United States investors, issuers should strongly consider following these procedures:

- Include a prominent disclaimer which makes it clear that the offer is directed to individuals living in countries other than the United States; and
- Implement procedures on the Web site that are reasonably designed to guard against sales to United States persons.

If, despite these measures, a person residing in the United States purchases securities in the offshore offering, and the issuer did not know, or could not reasonably have known that the investor was a United States person, the SEC would generally not view such Internet offer as having been targeted at the United States. Factors that should put an issuer on notice include:

- Receipt of payment drawn on a United States bank;
- Provision of a United States taxpayer identification number or social security number; or
- Statements by the purchaser indicating that, notwithstanding a foreign address, he or she is a United States resident.

An issuer involved in an offshore offering could take the following procedures to protect against United States persons purchasing its securities:

- Obtain and verify the mailing addresses and telephone numbers of the prospective purchasers prior to making any sales;
- Limit access to the posted offering materials to those who have provided the issuer with their addresses and telephone numbers;
- Implement password procedures that are reasonably designed to ensure that only non-United States persons can obtain access to the offer; and

- Post only those offering materials that relate exclusively to the offshore offering.

Nevertheless, it should be remembered that the adoption of suitable procedures will not suffice if the SEC determines that an issuer has been using an offshore Internet offering, ostensibly aimed at non-United States persons, to stimulate interest in an offering taking place in the United States.

## **PUBLIC OFFERINGS**

### **Gun Jumping Issues**

It is extremely important, both for non-reporting issuers preparing for their first registered public offering and established public company issuers conducting registered secondary or follow-on offerings, to be cognizant of what they are posting on their Web sites prior to effectiveness so as to avoid the SEC's prohibition against so-called "gun jumping"—making pre-effective communications which can be viewed as increasing market interest in the offered securities.

Although the SEC has stated that an issuer in registration should maintain communication with the public concerning those matters that either arise in the ordinary course of business or relate to financial information, an issuer that first establishes or significantly enhances a Web site contemporaneously with the registration of its offering may raise the ire of the SEC. In the view of the SEC, such action tends to give the appearance that the site was constructed not in the ordinary course of business, but instead to serve as a tool to condition the market and stimulate interest in the company or the offering.

Pursuant to various SEC releases, the following is permissible information that may be posted on an issuer's established Web site:

- Advertisements concerning the company's products and services;
- Exchange Act reports required to be filed with the SEC, if applicable;
- Annual reports to security holders and dividend notices;
- Press announcements concerning business and financial developments;
- Answers to unsolicited telephone inquiries concerning business matters from securities analysts, security holders, and participants in the communications field who have a legitimate interest in the company's affairs; and
- Security holders' meetings and responses to security holder inquiries relating to such matters.

### **Internet Road Shows**

A traditional road show involves efforts by managing underwriters during the registration waiting period to generate interest in the offering among qualified investors and investment professionals. Such events are not prohibited by the Securities Act because they involve oral and visual communications (as opposed to written communications) that do not meet the rather technical definition of a prospectus under the Securities Act.

In a series of No-Action Letters issued by the SEC in 1997 and 1998, the SEC seemed to make clear that Internet road shows would also be acceptable, provided they are conducted in accordance with the guidelines set out in the letters. The advent of the electronic road show brings with it significant benefits to both issuers and underwriters:

- Cost savings in the promotion of an offering;
- Quicker dissemination of information, thus affording qualified investors more time to make fully informed investment decisions;
- Creation of a broader audience of potential investors, thus bringing about a leveling of the playing field;
- Reduction in the amount of time and effort expended by executives who are typically responsible for conducting road shows; and
- Assurance that prospective investors are being given a consistent message.

An issuer intending to conduct an electronic road show via the Internet would be best served by structuring it in such a way that the following procedures are adhered to:

- **Limit the Audience:** Limit the audience to the same types of qualified investors and investment professionals as would be invited to attend a traditional road show. Such investors should be pre-cleared by an institutional salesperson or an underwriter before being invited to view the show.
- **Limit the Viewings:** Either limit the number of times a potential investor can access the electronic road show, or limit the number of times the show can be viewed during a certain period (e.g., a 24-hour period). This could, for example, be accomplished by the use of an access code.
- **Respect the Primacy of the Prospectus:** Make a printed version of the preliminary prospectus available to all who will be viewing the road show. Also, prominently display a clickable button to the preliminary prospectus which would make an electronic version available at all times throughout the road show. In addition, stress to potential

investors the importance of reading the prospectus prior to making an investment decision. For example, this could be accomplished by programming a periodic crawl to run across the screen throughout the entirety of the show.

- **Prohibit the Copying, Downloading, Printing, and Distribution of Road Show Materials:** Before allowing a potential viewer the opportunity to watch the road show, ensure that he or she agrees not to copy, download, print, or distribute any of the road show material. In addition, post a constantly appearing disclaimer warning that such activities are clearly prohibited. Finally, the company's transmissions should include technology designed to prevent the copying, downloading, or printing of any part of the road show transmission, except for the preliminary prospectus.
- **Restrict the Content:** Ensure that the road show is not edited for content and is shown in its entirety. However, if the information changes between the time the road show is filmed and when it is available for viewing over the Internet, it is advisable to clearly inform the viewers of such and provide information on how they may contact an institutional salesperson to further discuss these changes. This could be accomplished through the use of a periodic crawl which provides a synopsis of the changes.
- **Use a Rule 134 Legend:** If the registration statement is not effective when a road show is transmitted, post a legend that informs potential investors of the following:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This (communication) shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be

any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

Requiring the potential investor to click a button acknowledging the legend before being granted access to the transmission is also recommended.

- **Carefully Structure the Fees:** An issuer should structure a flat fee that is related to the production and transmission costs of the road show, rather than to the offering's size or success.
- **Make the Road Show Interactive:** If an electronic road show is being transmitted in "real time" along with a traditional road show, permit the Internet viewers to send e-mail inquiries that can then be read and answered at the "live" show if such questions are deemed to be of general interest to the audience.

## **Electronic Prospectus Delivery and Confirmations**

The federal securities rules do not explicitly state which medium issuers should use when disseminating information to the public. In a 1995 Interpretive Release, the SEC made clear that the focus is not on the medium that is used, but instead on the extent that required disclosure is actually made. Therefore, the SEC concluded, the delivery of information via an electronic medium such as the Internet "could satisfy delivery or transmission obligations under the federal securities laws."

In order for the distribution of information through electronic means to be acceptable, it would be necessary that "such distribution results in the delivery to the intended recipients of substantially equivalent information as these recipients would have had if the information were delivered to them in paper form." Although not an exhaustive

list, the following are major factors that should be considered in determining whether the legal requirements concerning Internet delivery or transmission of disclosure and offering documents:

- **Informed Consent.** In its 1995 Release, the SEC indicated that the recipient must first give his or her consent before an issuer may deliver required documents by electronic means. The informed consent requirements demand that the recipient be informed of the following prior to consenting to electronic delivery:
  - The media or medium used to transmit the information;
  - Which documents will be transmitted via this electronic delivery method;
  - How long the consent to electronic delivery will remain effective;
  - That he or she may revoke his or her consent to electronically receive documents at any time reasonably in advance of their delivery;
  - The potential that the recipient may incur such costs as online charges by receiving the information electronically; and
  - That there exists a risk of system outages and slow downloading.
- **Silence Not Consent.** The SEC has indicated that an investor's silence as to his or her approval of electronic delivery by the issuer shall not be construed as consent. In other words, negative consent is not recognized. However, the 2000 Release clarified that an issuer may obtain an informed consent by telephonic means, provided the following two conditions are met:

- The issuer must retain a record of the telephone consent in the form of an internal file memorandum or a copy of a letter sent to the recipient acknowledging such consent, and this record must contain the disclosure requirements necessary to make the consent informed; and
  - The issuer must obtain the investor’s consent in such a manner that its authenticity is assured.
- **Notice.** The SEC requires that timely and adequate notice be given to investors informing them that certain information is available on a Web site. It may be necessary to supplement the electronic communication with another communication on an agreed upon format with the investor such as a computer disk, CD-ROM, audiotape, videotape, or e-mail. Such communication provides notice similar to that afforded by the dissemination of information via traditional print media, and, by itself, generally constitutes adequate notice. Until investors are provided with timely and adequate notice that the information posted on the Internet is available, such delivery is not deemed to be effective. Thus, the mere posting of information on a Web site, without more, will not suffice. The SEC’s notice requirements must be read in conjunction with its informed consent requirements discussed immediately above.
- **Access.** The SEC takes the position that the use of a particular medium of electronic communication should not be so burdensome that it is difficult or impossible for the intended recipients to access the information provided. The electronically delivered document should be as accessible as a paper version mailed to the recipient. It is essential that the recipients have the ability to either personally retain the information or have ongoing access to it. Thus, information appearing on an issuer’s Web site or made available through an online service should be available for as least as long as an

SEC delivery requirement remains in effect. Finally, issuers must be prepared to make all of the information delivered via an electronic medium available in printed format. This might be required for any of the following reasons:

- Revocation by the investor of his or her consent to receive documents electronically;
  - A specific request by the investor for a paper copy;
  - Computer incompatibilities; or
  - System failure.
- **The Use of Portable Document Format (PDF).** The use of PDF to transmit documents over the Internet has become quite commonplace. However, a concern with PDF is that not everyone owns the special software needed to read such documents. In response, the SEC discussed this issue in its 2000 Interpretive Release and approved its use by issuers to deliver documents electronically provided the following conditions are met:
    - That investors are informed of the necessary requirements to download documents in PDF at the same time consent is obtained; and
    - That investors are provided with any necessary software (i.e., Adobe Acrobat Reader) and technical assistance at no cost, in addition to applicable system requirements for downloading and utilizing the software.

Perhaps the most effective way for an issuer to comply with these requirements is to provide a hyperlink from its Web site to that of Adobe Systems Incorporated, thus affording users the ability to easily download the Acrobat software and obtain any needed technical assistance.

The Internet address for Adobe's free Acrobat Reader download page is [www.adobe.com/products/acrobat/readstep2.html](http://www.adobe.com/products/acrobat/readstep2.html).

- Evidence of Delivery. The SEC deems the following procedures to be satisfactory methods of ensuring that electronic documents have successfully been delivered to investors:
  - Obtaining an informed consent;
  - Obtaining evidence that an investor actually received the information (e.g., by electronic mail return-receipt or confirmation of accessing, downloading, or printing);
  - Affording an investor the ability to access required information by clicking a hyperlink on a document (e.g., sales literature containing a link to a prospectus); and
  - Using forms or other material that would become available to investors only by means of accessing the information (e.g., an e-mail file containing an application attached to a prospectus).
  
- **National Association of Securities Dealers (NASD) Guidelines on Electronic Delivery.** In 1998, the NASD notified its members that they may transmit documents to their customers via electronic means in accordance with the standards set out by the SEC. However, pursuant to a 1996 NASD Regulatory and Compliance Alert, if a member is obligated to file information from its Web site with the NASD, and that site contains hyperlinks to a third party's site, then both the information from the member's site and that of the linked site must be submitted for review.

## Hyperlinked Information

The SEC has made clear that an issuer is “responsible for the accuracy of its statements that reasonably can be expected to reach investors or the securities markets regardless of the medium through which the statements are made, including the Internet.” Whether an issuer is responsible for information on a third-party’s Web site to which it has created a hyperlink depends on whether the issuer was either involved in the preparation of the information (the “entanglement” theory) or has somehow explicitly or implicitly endorsed it (the “adoption” theory). In determining whether an issuer has adopted such third-party information through the use of a hyperlink, the SEC considers the following factors to be relevant:

- The SEC will examine the context of the hyperlink by considering what the issuer says about the hyperlink or what is implied by the context of its use. When an issuer embeds a hyperlink to a Web site within a document to be filed or delivered under the federal securities laws, that issuer will be deemed to have adopted that information. In addition, when an issuer is in registration and establishes a hyperlink from its Web site to information that meets the definition of an “offer to sell,” “offer for sale,” or “offer,” a strong inference is created that, for purposes of securities law liability, it has adopted the information. Therefore, it is important that an issuer only link to the home page of a third-party’s Web site rather than to subsections within the site.
- Another factor the SEC will consider is the risk of confusion created in the minds of the investing public. Such risk is minimized if a message is prominently displayed on the user’s computer screen notifying the user that he or she is being taken from the issuer’s Web site to that of another. Also, the display of a clear and prominent statement made by the issuer disclaiming responsibility for, or endorsement of, the third-party’s information can serve as an effective tool

against investor confusion. On the other hand, the framing or inlining (i.e., importing through the use of a hyperlink) of information from a third-party's Web site tends to increase the risk of investor confusion. It must be stressed that, although the use of a disclaimer might afford some degree of comfort to an issuer, disclaimers by themselves are insufficient to protect an issuer from liability for fraudulent hyperlinked information. To be most effective, a disclaimer should:

- be prominent, clear, concise, and easy to read;
  - provide the full text of the disclaimer on the same screen as the information to which the disclaimer is relating;
  - use an intermediate screen that pops up on the Web site that forces users to acknowledge that they have seen the disclaimer by requiring that they click a box before being allowed to move forward and access the information; or
  - create a hyperlink from the information to the disclaimer or to the Web site's "terms and conditions."
- How the hyperlinked information is presented on the Web site is also a consideration. An issuer should avoid attempts at directing the attention of investors toward particular information through the selective use of hyperlinks on its site. In addition, an issuer should refrain from using different colors and font sizes and types in such a way so as to draw the attention of investors by making it appear that certain hyperlinked information is favored over other information on its site.

The gun-jumping prohibitions that apply to the general content contained on Web sites also apply to information on a third-party Web site to which the issuer has established a hyperlink. (Please see the "General Solicitation" section above for further information related to this issue.) Therefore, an issuer must be concerned about

any hyperlinked information on a third-party's site that meets the definition of an "offer to sell," "offer for sale," or "offer" as those terms are defined in Section 2(a)(3) of the Securities Act.

### **Avoid Selective Disclosure**

Information posted on a company's Web site without being disseminated by other means creates selective disclosure concerns. This is the case because the SEC has not yet accepted the Internet as a medium of communication that satisfies the legal requirements for public dissemination of material information. The concern is that unlike with traditional news vendor services, not all investors have access to the Internet or choose to use it as a regular information source. Therefore, to avoid potential selective disclosure issues and to "ensure a level playing field for all investors," it is imperative that issuers be certain that they have already released material information either via a periodic or special SEC filing or press release prior to posting it on their Web sites. Pursuant to NASD Interpretation IM-4120-1, Disclosure of Material Information, the "policy on disclosure of corporate information requires that the use of the Internet to disseminate material press releases is appropriate provided the information is not made available over the Internet before the same information is transmitted to, and received by, the traditional news vendor services."

### **REGULATORY SCRUTINY AND INTERNET FRAUD**

In response to Internet fraud, the SEC and other regulatory agencies, such as the North American Securities Administrators Association (NASAA), are keeping a vigilant watch and closely monitoring the landscape. Below are just a few examples of measures that various regulatory bodies have taken to protect investors:

## **Fictitious Web Sites**

In recent years, the SEC launched a series of Web sites aimed at warning investors of the dangers involved with investing in online offerings without first fully researching the issuer and its claims. One site, whose address is [www.mcwhortle.com](http://www.mcwhortle.com), was set up by the SEC to appear as a genuine investment opportunity. The site incorporates a fictional company history, press releases, and even made up testimonials from the “CFO of [a] Fortune 100 Company” and an analyst of a “major investment banking firm.” McWhortle.com is a professionally designed Web site, and there is no way for a potential investor to know that it was put out by the SEC until he or she tries to make a purchase. At that point, the user is taken to a screen which prominently displays the following message: “If you responded to an investment idea like this . . . You could get scammed!” The SEC launched McWhortle.com in conjunction with a “spoof” press release intended to promote the site. By creating such Web sites, the SEC is attempting to show potential investors the telltale signs of fraud (i.e., promises of fast and high profits with little or no risk) and urging them not to make hasty and uninformed decisions.

## **Investor Alerts**

In January 2002, the SEC released a press release entitled “‘High Yields’ and Hot Air” in which it alerted potential investors to the “red flags” associated with “too good to be true” investment offers. In this release the SEC again urges investors to thoroughly research and understand the issuer and the investment before writing out a check. “‘High Yields’ and Hot Air” can be located at [www.sec.gov/investor/pubs/investorfraud.htm](http://www.sec.gov/investor/pubs/investorfraud.htm). The SEC has also published a document titled “Internet Fraud: How to Avoid Internet Investment Scams,” which tells prospective investors how to spot different types of Internet fraud, what the SEC is doing to fight Internet investment scams, and how to use the Internet to invest wisely. This document can be found at [www.sec.gov/investor/pubs/cyberfraud.htm](http://www.sec.gov/investor/pubs/cyberfraud.htm).

## **Public Warnings**

The NASAA has issued a number of public warnings alerting investors to various cyberspace schemes it deems to be illegal and abusive. Such Internet schemes include stock manipulations, pyramid scams, and Ponzi schemes.

## **METHODS OF PUBLICLY RAISING CAPITAL ONLINE**

The advent of the Internet has brought about a number of innovative methods designed to harness the technological advances and provide alternative methods for public offerings of securities.

### **The Direct Public Offering (DPO)**

In a DPO (i.e., a self-underwritten deal), the traditional underwriting process is completely bypassed because the shares are directly offered by the issuer to the prospective investors online. This is an attractive alternative to smaller investors who are often unable to attract traditional underwriters because of the fact that they are either relatively unknown and/or lack the necessary resources. In a typical DPO, the company offers its shares directly to potential investors. Those individuals who request further information about the investment are then sent a prospectus.

The DPO is more geared toward established companies with loyal customers who have a firm belief in the company and its products or services. Those persons likely to get most involved in the DPO are devoted customers who lack experience in investing. In fact, the majority of individuals who invest in DPOs do not use the services of a broker and have never purchased shares directly from an issuer. Because a company involved in a DPO typically draws investors from its customer base, a DPO is not generally an acceptable financing tool for start-ups. In addition, since a successful DPO can be expected to take about one year to complete and requires the

infusion of considerable time and money, it is best that the issuer be established with a track record of success.

## **The Online Public Auction**

Online public auctions use an auction method termed the “Dutch auction.” In a Dutch auction, prospective investors submit bids for the amounts that they are willing to pay for the securities. After the bidding process has been completed, the offering price is set at the highest price at which all of the offered shares can be sold. All investors pay the same amount for their shares regardless of the size of their orders. Furthermore, because in the typical Dutch auction all bids are blind, no preference is given to those customers who would normally be considered “preferred.” The end result is that whoever is willing to pay the highest price for the securities being offered will ultimately be the owner regardless of who they are or who they know, thus ensuring that the shares are allocated in an equal and impartial way. Purported advantages of the Dutch auction include:

- Decreased costs of the underwriting process (among other savings, underwriting and brokerage fees are effectively eliminated);
- Maximization of proceeds for the issuer (in a traditional initial public offering (IPO) the investment bank takes seven to nine percent of the proceeds);
- A more accurate gauge of market demand for the securities; and
- The “democratization” of the IPO process by allowing for the most equitable distribution of shares possible by virtue of the fact that the underwriter lacks the discretion to select the price of the shares and cannot unfairly favor one prospective purchaser over another.

Only a few years ago, the online auction format was touted as a viable alternative to the traditional IPO process. It was anticipated that revolutionary changes would level the playing field and bring about a more efficient and equitable method of raising capital and investing. Proponents of the auction process offered a myriad of reasons for such changes:

- The widespread knowledge and use of the Internet by both retail and institutional investors;
- Standardized hardware and software technology to facilitate the mechanics of an electronic offering;
- The inability of many small companies to raise capital via the traditional IPO;
- The unavailability of quality purchasing opportunities to those prospective buyers who lack close ties with the underwriting community; and
- The advent of online brokerage firms in search of new products to offer their customers.

### **The Pros and Cons of Internet Offerings**

Using the Internet to make an offering can bring tremendous advantages and cost savings to the issuer, thus significantly reducing its cost of capital. The following are the major benefits inherent in such an undertaking:

- Greater control by the issuer over the offering process;
- Rapid dissemination of information over Web-based technologies giving issuers direct access to large pools of investors;
- The use of the Internet allows issuers to reach the broadest range of potential investors possible without regard to their location;

- Continuous access to large amounts of up-to-date financial and investment information;
- Savings in costs associated with the capital formation process including reduced printing, binding, distribution, advertising, and promotion expenses; and
- A more efficient and economical method of supplementing and updating offering materials.

On the other hand, there exists a number of potential drawbacks to engaging in direct capital financing online. Some major concerns include the fact that:

- There is often a lack of liquidity due to the relatively small number or entire absence of market makers and researchers;
- There is a small “float” because the offerings are typically quite small;
- Internet offerings have sometimes been viewed as the “option of last resort” for companies that are perceived to be too “inferior” to obtain capital financing via the more traditional methods; and
- Many states have yet to make their positions on Internet offerings clear, thus creating possible “Blue Sky Laws” compliance issues.

## **INTERNET RESOURCES FOR RAISING CAPITAL**

Unfortunately, neither the DPO nor the auction format have met with the kind of success that was envisioned only a few years ago. The “dot com crash” has been responsible for the demise of a great many Web sites geared toward the sale of equity shares via self-underwritten offerings over the Internet. The majority of Web sites that have survived largely play a “matchmaking” role in connection with private placements by providing information about companies

to high net-worth investors and matching these investors with companies that fit their investment criteria. Most of the services require individuals to certify that they are accredited investors and screen company business plans before listing them on their sites. Only after individuals have qualified as accredited investors can they access information via a password protected area of the Web site.

Without serving as an endorsement by the Minnesota Department of Trade and Economic Development or Oppenheimer Wolff & Donnelly LLP, the following is a brief listing of Web sites that, at the time of publication, were among the more prevalent sites related to capital raising. Although most are of the “matchmaking” variety, WR Hambrecht & Co.’s OpenIPO stands out from the rest of the firms appearing in the following list in that it continues to offer equity securities via an auction format.

**WR Hambrecht & Co.**

([www.openipo.com](http://www.openipo.com))

- Via its OpenIPO process, WR Hambrecht & Co. brings investors and companies together by way of its online securities auction. The transactions consummated on its online auction run the investment spectrum as WR Hambrecht hosts IPOs, secondary offerings, and corporate debt offerings. Although the companies that participate in the online auctions are not required to operate in a select number of industries, they typically do operate within industries in which WR Hambrecht has developed expertise (i.e., software, Internet, and branded consumer products).

**OffRoadCapital.com**

([www.offroadcapital.com](http://www.offroadcapital.com))

- Seeks to bring together high net worth investors and emerging growth companies in a variety of industries.

- Initially screens corporate referrals. After this preliminary screening, OffRoadCapital follows-up with an assessment of the company, its business, products and services, and the competitive landscape in which it operates. In addition, OffRoadCapital performs due diligence and enlists the help of attorneys and accountants, if necessary, to perform such analysis and review of the company's books, records, and reports.
- During OffRoadCapital's "OffRoad Show," the Company presents its offering memorandum, provides an inside look at its products and services, and answers questions. There is also a live studio event and simultaneous webcast in which company principals personally present the business to investors. Investors can participate via phone and e-mail and can ask the companies questions.
- Once a company receives funding through OffRoad participants, it is required to provide regular updates online to its investors.

### **Garage.com**

([www.garage.com](http://www.garage.com))

- Uses its web-site to match venture capital, corporate, and angel investors with companies in the communications, infrastructure, software, and wireless sectors that seek to raise between \$2 million and \$15 million in a first or second institutional financing round. Although not officially set, the minimum investment is generally between \$50,000 to \$100,000.
- Focuses its efforts on early-stage companies that it perceives have the greatest growth and business potential.

- When an investor expresses interest in a listed company, Garage.com releases the investor's profile to the company to enable the company to decide whether to proceed with that particular investor. In addition, investors are notified via e-mail when the profile of a newly-listed company matches the investment criteria they previously selected.

### **EarlyBirdCapital**

([www.earlybirdcapital.com](http://www.earlybirdcapital.com))

- Provides financing for early-stage companies, typically within the range of \$3 - \$10 million. EarlyBirdCapital's corporate clients operate in high-growth industries such as e-commerce, information technology, Internet infrastructure, media, entertainment, telecommunications, and medical technology.
- Works with only accredited investors and provides them with a wide range of information concerning potential investments, including company overviews, data received in connection with road shows, due diligence summaries, private placement memoranda, and subscription documents.
- Configured to allow investors to engage in question and answer sessions with companies and their management.
- Offers immediate e-mail notification to investors of new postings that match their investment criteria.

## NVST

([www.nvst.com](http://www.nvst.com))

- Provides investors with prospects that meet their investment criteria.
- Provides entrepreneurs with direct access to angels, venture capitalists, corporate venture funds, and investment bankers.
- Advises companies as to how they may obtain capital financing and the ways in which they can formulate effective capital raising strategies and approaches.
- Investors must be accredited to participate.

## Social Media Sites

In the last few years, the popularity of social media sites such as Facebook, Twitter and LinkedIn has soared. Many venture capitalists and angel investors use their social networking accounts to find new investment opportunities. If used properly, entrepreneurs could benefit from establishing an online presence and using these social networking tools to build relationships with potential investors. Caution is required, because using these sites directly to raise capital, without complying with applicable law, may violate federal and state securities laws and create liabilities for both the company and the person who is posting the message. Issuers may use social networking sites to build relationships, including discussing company objectives and goals, but should only discuss an offering offline and in accordance with the federal and state securities laws.