

# Welcome



 POLSINELLI

**WELCOME**  
TO  
**Growing California Companies™**  
RAISING MONEY IN A NEW ERA

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## RAISING MONEY IN A NEW ERA

*ROC, Santa Monica  
October 10, 2013*

Crowdfunding – Myth  
or Magic?



# Welcome

- Rob Vickery, BNY Mellon
  - Presenters and Sponsors
  - The 2013 Landscape for startups in SoCal

# Sponsors and Presenters

- BDO
  - A professional services firm
  - 49 offices; services multinational clients through a network of 1,204 offices in 138 countries
- BNY Mellon
  - Global investment company
  - Serves 35 countries and more than 100 markets worldwide
- Polsinelli
  - A national law firm
  - 670+ attorneys
  - 17 offices

# Overview

- Tonight we will discuss the changes to raising capital under the Jumpstart Our Business Startups Act, or JOBS Act, including the new SEC rules that allow companies to use advertisements for private securities sales, and the proposed rules governing equity crowdfunding:
  - What are the changes?
  - How they will change fundraising in California?
  - What is crowdfunding?

# What is a Securities Offering?

- **SEC Registration**
  - Every offer or sale must be registered with the SEC unless an exemption applies
  - Three main requirements:
    - Disclosure
      - Material Information = what a buyer would reasonably want to know about the Company and the investment
    - Registration
    - Broker-dealer
  
- **Failure to comply**
  - Criminal charges (fraud)
  - Government sanctions
  - Lawsuits from investors
  - Rescission
  - Practical ability to raise funds down the road

# The JOBS Act (1)

- Four Titles
  - Separate titles
  - What does the JOBS Act Change?
    - General solicitation (*i.e.* advertising) in exempt private offerings permitted
    - Crowdfunding offering exemption
  
- Title I – Emerging Growth Companies
  - Annual gross revenues of < \$1 billion
  - IPO “on ramp”

# The JOBS Act (2)

- Title II – General Solicitation/Accredited Investors
  - Statutory Directive – Removes ban on general solicitation in certain private securities offerings
  - Offering vs. Sale – General solicitation permitted if securities are sold to accredited investors only
  - Verification – Issuers must verify that purchasers are accredited investors



# The JOBS Act (3)

- Title III – Crowdfunding
  - Currently, there are numerous websites engaging in donation-based crowdfunding (*i.e.*, crowdsourcing)
  - We are waiting on the SEC to adopt rules before equity-based crowdfunding will be permissible

# The JOBS Act (4)

- Title IV – Reg A+
  - Intent to offer a “mini public offering”
  - Rarely used - In 2010, there were 25 initial Reg A offerings filed with the SEC – only 7 were qualified
  - Title IV attempts to make it usefulness by increasing the maximum offering size from \$5M to \$50M

# The JOBS Act (5)

- The JOBS Act was touted as creating *new opportunities* for small business *to raise capital*
  - Startups, VC funds and private investment vehicles can tell more people that they are raising money
- But regulatory delays continue, and this is still a highly regulated area of law with *serious pitfalls for the unwary* (*i.e.*, filing violations)

# Private Offerings – Old Landscape

	Rule 504	Rule 505	Rule 506	Regulation A	§ 4(2)	§ 4(5)
<b>Offering Amount</b>	\$1,000,000	\$5,000,000	Unlimited	\$5,000,000	Unlimited	\$5,000,000
<b>Number of Investors</b>	Unlimited	35; unlimited accredited	35; unlimited accredited	Unlimited	Unclear; finite number	Unlimited accredited
<b>Investor Qualification</b>	None	None	Sophisticated; presumed for accredited	None	Financially sophisticated; registration info	Accredited only
<b>State Law Compliance</b>	Yes	Yes	No	Yes	Yes	Yes
<b>Limitation on Manner of Offering</b>	General Advertising may be permitted	No general advertising or solicitation	No general advertising or solicitation	General advertising and solicitation permitted	No general advertising or solicitation	No general advertising or solicitation
<b>Limitation of Resale</b>	May be unrestricted	Restricted	Restricted	Unrestricted	Restricted	Restricted
<b>SEC Filing</b>	Form D w/in 15 days	Form D w/in 15 days	Form D w/in 15 days	Offering Statement (SEC reviewed)	None	Form D w/in 15 days

# Private Offerings – New Landscape

	Rule 506(b)	Rule 506(c)	Regulation A	§ 4(6)
<b>Offering Amount</b>	Unlimited	Unlimited	\$50,000,000***	\$1,000,000
<b>Number of Investors</b>	35; unlimited accredited	Unlimited number of accredited investors	Unlimited	Unlimited
<b>Investor Qualification</b>	Accredited only	Accredited only, with verification	None	None (but limits on investment amount)
<b>State Law Compliance</b>	No	No	Yes	No
<b>Limitation on Manner of Offering</b>	No general solicitation	General solicitation permitted	General solicitation permitted	Portals only
<b>Limitation of Resale</b>	Restricted	Restricted	Unrestricted	Restricted
<b>SEC Filing</b>	Form D w/in 15 days	Form D w/in 15 days***	Offering Statement (SEC reviewed)	Portal filings

# General Solicitation (1)

- Didn't anyone ever tell you that you can't show your PRIVATES in PUBLIC?
- Permits
  - General solicitation
  - Reasonable steps to verify accredited investor status of purchasers
  - Verification of investors
- Rule 506(c) Offerings are not crowdfunding

# General Solicitation (2)

- Four verification methods (non-exclusive, non-mandatory):

1. **Income:**

IRS forms (W-2, 1099, K-1, 1040) that show last 2 years of income + written rep from purchaser

2. **Net Worth:**

*Assets* – bank, brokerage and other statements, CODs, tax assessment & appraisal reports

*Liabilities* – report from a nationwide credit reporting agency

3. **Third Party Confirmation:** written confirmation from

- Broker-Dealers
- Registered Investment Advisors (RIAs)
- Attorneys
- CPAs

4. **Prior Purchasers:** Certification that they continue to be Accredited Investors

# SEC Proposed Rules (1)

- **Moving Target**
  - The rules are evolving
- **Pre-General Solicitation Offering Filing**
  - File Form D *15 days before* using General Solicitation
- **Post-General Solicitation Offering Filing**
  - File amended Form D *within 30 days after* General Solicitation offering
- **Legends**
  - Include legends in General Solicitation materials
- **Disqualification**
  - 1-year disqualification from using Rule 506 for failure to comply with Form D requirements



# SEC Proposed Rules (2)

## ■ **Additional Disclosures in Form D**

Amend about half of the 16 current disclosure fields and create 6 new fields to require additional info, including:

- types of General Solicitation used
- verification methods
- Issuer's website
- number of purchasers (including types of Accredited Investors)
- use of proceeds
- name and address of any person who controls the issuer
- whether a Broker-Dealer was used

## ■ **Provide SEC with General Solicitation Materials**

Must do so by date of first use; would expire 2 years after effective date

# What does General Solicitation look like?

Don't do this...

LOS ANGELES HERALD: SUNDAY MORNING, DECEMBER 21, 1908

## See What \$100 Has Earned

When Invested with the  
**Los Angeles Investment Company**  
With Dividends Reinvested

\$100 invested 1 year ago has earned	\$ 27.00
\$100 invested 2 years ago has earned	68.10
\$100 invested 3 years ago has earned	109.75
\$100 invested 4 years ago has earned	162.70
\$100 invested 5 years ago has earned	216.95
\$100 invested 6 years ago has earned	294.10
\$100 invested 7 years ago has earned	373.54
\$100 invested 8 years ago has earned	428.20
\$100 invested 9 years ago has earned	689.40
\$100 invested 10 years ago has earned	over 1,500.00*
\$100 invested 11 years ago has earned	over 4,000.00*
\$100 invested 12 years ago has earned	over 6,500.00*
\$100 invested 13 years ago has earned	9,417.63

\* Correct figures are not available as account of dividends being paid on dates not at one year apart.

The above table shows the wonderful earnings of a small amount of  
**Money Compounded Quarterly**  
\$100 invested thirteen years ago is now worth \$9,417.63, the dividends being reinvested each dividend day, the earnings in turn earning and compounding, growing in volume each quarter.

Figures Are Taken at Market Value of Stocks in Each Data  
This shows more clearly than anything else how men attain great wealth.

### You Can Be Wealthy Yourself

We have placed a block of stock for sale at \$2.60 per share. This price will raise to \$2.65 December 31.

### We Want You as a Stockholder

Even if you start with only \$1.00. Not more than 1000 shares sold to any person. Don't delay, but start immediately.

**Los Angeles Investment Co.**  
335-337 South Hill Street Los Angeles, Cal.

Los Angeles Herald

Dec 20, 1908

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...no...not this either...

What Some Small Investments in Trust Company Stock Have Paid

\$100 invested in Fidelity Trust Co. is paying 30 per cent annual dividends, worth . . . . . \$ 950	\$100 invested in St. Louis Union Trust Co. is paying 20 per cent annual dividends, worth . . . . . \$ 500
\$100 invested in United States Trust Co. is paying 50 per cent annual dividends, worth . . . . . \$1125	\$100 invested in Equitable Trust Co. is paying 24 per cent annual dividends, worth . . . . . \$ 537
\$100 invested in Farmers Loan & Trust Co. is paying 50 per cent annual dividends, worth . . . . . \$1450	\$100 invested in Girard Trust Co. is paying 36 per cent annual dividends, worth . . . . . \$990
\$100 invested in Central Trust Co. is paying 45 per cent annual dividends, worth . . . . . \$1050	\$100 invested in New York Life Ins. & Trust Co. paying 32 per cent annual dividends, worth . . . . . \$1040
\$100 invested in Guaranty Trust Co. is paying 40 per cent annual dividends, worth . . . . . \$1021	\$100 invested in Mercantile Trust Co. is paying 18 per cent annual dividends, worth . . . . . \$360
\$100 invested in Union Trust Co. is paying 106 per cent annual dividends, worth . . . . . \$2575	\$100 invested in Bankers Trust Co. is paying 30 per cent annual dividends, worth . . . . . \$585

What the World's Successful Men Say:

- "Accumulation of wealth is the first \$100 well invested"--J. P. Morgan.
- "All our self-made men began as small investors."--Chas. M. Schwab.
- "Don't delay! Get in while you can."--Rockerfeller.
- "Five thousand Americans are worth a million each, because they invested their savings in new things."--Westinghouse.

The Bankers Trust Company of Amarillo  
Offers You An Opportunity to Share In It's Profits.

HAVE YOU SEEN MR. LOGAN YET?  
MANY CALLED YESTERDAY AND ARE TAKING STOCK.

Amarillo Daily News

Aug 14, 1912, Page 8

...and especially not this...

**Any Investment in  
Mohave County is  
a Safe One**

Our listings are the very best propositions that can be  
offered in the county

**WE SPECIALIZE IN VALUES**

**MINING PROPERTY**

THAT WE HANDLE HAS IN EVERY INSTANCE  
BEEN PASSED UPON BY COMPETENT AUTHORITIES  
AS TO VALUE AND IS OPEN TO THE MOST  
SEARCHING INQUIRY.

**We do not Promote Mining  
Companies**

BUT WILL SELL STOCK IN GOING MINES ON A  
COMMISSION BASIS ONLY.

WE SELL RANCHES, BUSINESS PROPERTY,  
HOUSES AND LOTS.  
ADVERTISE THEM PROPERLY AND REPRESENT  
THEM AS THEY ARE.

You are assured of a square deal if you transact  
business with us.

---

**MOHAVE SECURITIES CO.**  
AT DAILY MINER OFFICE PHONE BLUE 48

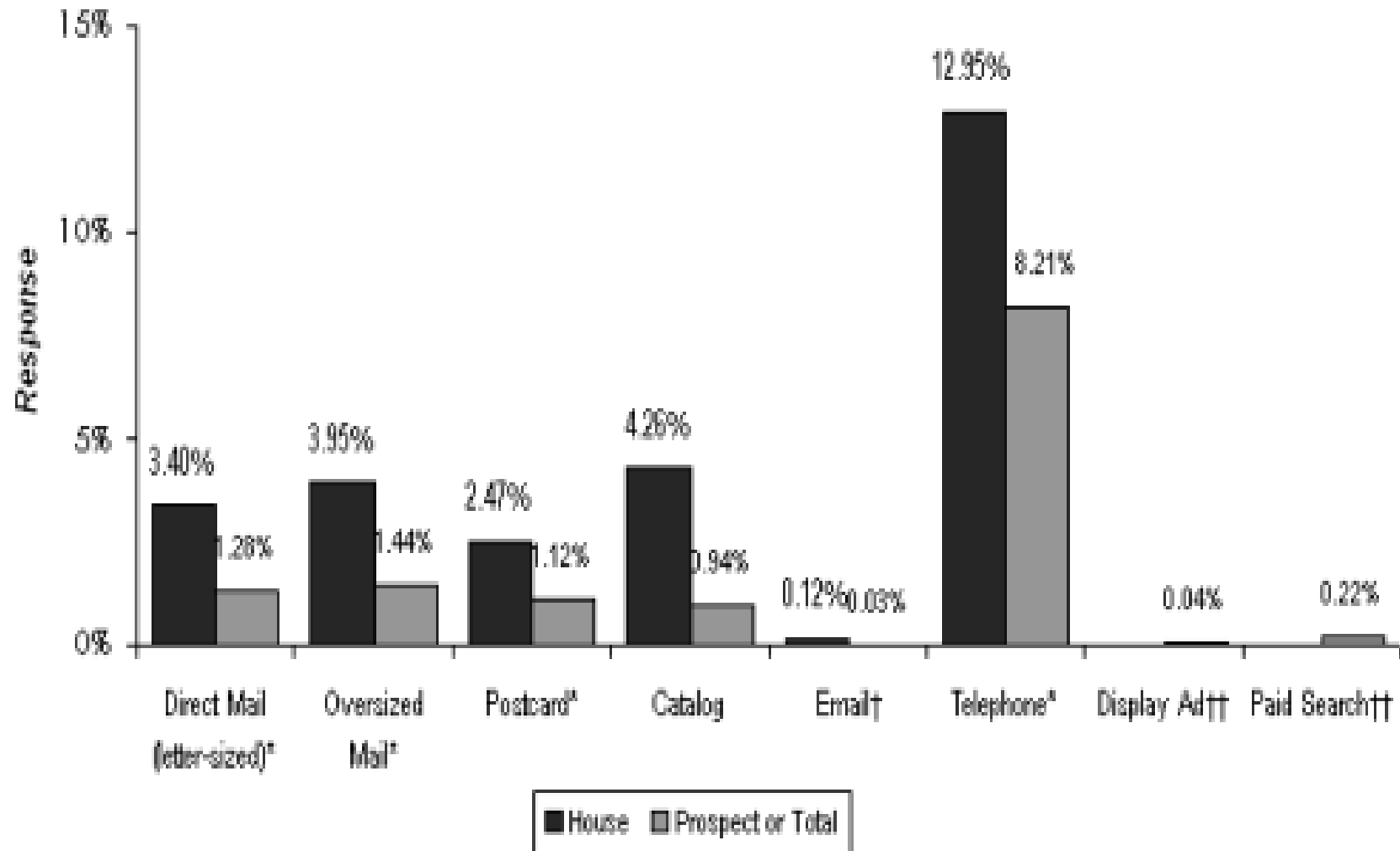
Mohave County Miner

Aug 4, 1917 P.7

# Potential Marketing Channels

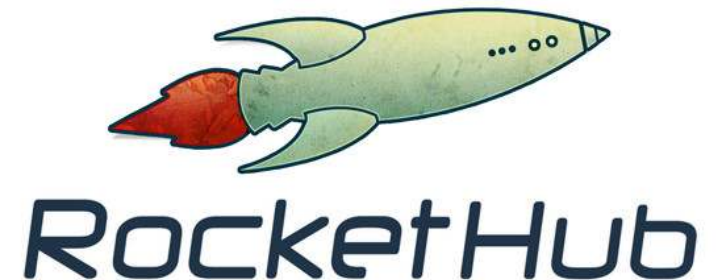
- Radio/TV
- Digital: SEO, Adwords, Internet
- Print Publications
- Direct Marketing
  - Telemarketing
  - Direct mailings

# Response Rates



# Crowdfunding (1)

- Not to be confused with 506(c)
- Donation vs. Equity





# Crowdfunding (2) – The Basics

- **Offering Size**
  - up to \$1 million every 12 months (includes non-crowdfunding sales)
- **Portals**
  - issuers must use a portal
- **Disclosures**
  - target offering amount
  - deadline
  - provide updates throughout offering period
  - annual disclosures to investors and SEC

# Crowdfunding (3) – Investor Limitations

<b>Annual Earnings and Net Worth</b>	<b>Investment Amount</b>	<b>Transferability of Securities</b>
**Either is <u>LESS THAN</u> \$100,000	\$2,000 – \$4,999.99  (depending on annual earnings and net worth)	1 year lock up  (with certain exceptions)
Either is <u>GREATER THAN</u> \$100,000	\$10,000 – \$100,000  (depending on annual earnings and net worth)	1 year lock up  (with certain exceptions)

# Crowdfunding (4) – Issuer Restrictions

- **No direct selling** - Issuer must sell through an SEC registered broker or SEC registered “funding portal”
- **Issuer cannot advertise**, but may direct prospective investors to the portal or its registered broker
- **No public companies** (*i.e.*, publicly reporting issuer)
- **Domestic companies** (U.S. based only)
- **Bad boy provisions apply** (*i.e.*, certain bad actors cannot use the exemption)

# Crowdfunding (5) – Portal Restrictions

- Cannot offer investment advice
- Cannot hold, manage, or handle investor funds
- Subject to SEC oversight

(Although may provide certain “ancillary services”)

# FAQs (1)

- What's the difference between crowdfunding and crowdsourcing?
  - Crowdsourcing – “is a process that involves outsourcing tasks to a distributed group of people” (Wikipedia). Wisdom of the crowd
  - Crowdfunding applies Crowdsourcing to raising capital for start-up and established business
- What are the pros and cons of crowdfunding by donations vs. equity?
- How to utilize donation-based crowdfunding effectively?
- What if I want to raise over \$1 million in a year?
  - Reg. D

# FAQs (2)

- What information does a business need to provide to potential crowdfunding investors?
  - financial statements (reviewed/audited)
  - officers, directors, major shareholders
  - risks
  - target offering amounts and deadlines
  - use of proceeds
- Are there any restrictions on what type of companies may raise money via crowdfunding?
- Is it possible to switch mid-fundraising from a 506(b) to a 506(c) offering?
- In real terms, how will the new rules change the California economic landscape?
- Will the new rules afford greater access to capital for California businesses?

# Q&A

- Your questions

# Contact Information

Please contact us with any questions:

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# Polsinelli

- **Polsinelli – [www.polsinelli.com](http://www.polsinelli.com)**

Polsinelli is a business and litigation law firm with more than 670 attorneys in 17 offices spanning the country from Los Angeles to New York. Serving corporations, institutions, entrepreneurs, and individuals, our attorneys build enduring relationships by providing legal counsel informed by business insight to help clients achieve their objectives. This commitment to our clients' businesses has helped us become the fastest-growing law firm in America.



# Polsinelli



- **Tracey Ginn – Principal, Polsinelli**  
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During her more than 20 years of experience as a corporate lawyer, Tracey has developed significant deal experience and likes nothing better than deftly advising clients throughout the transaction process. She works efficiently and effectively alongside clients to navigate the legal process and negotiate on the client's behalf – and always aims to meet the client's goals. Tracey also counsels companies on the variety of legal issues that arise in the course of doing business, when expanding an existing business, fundraising or starting a new business. Her broad experience includes working with many industries and types of business structures in the United States and other jurisdictions and advising on novel and complex structures.

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Phillip P. Guttilla chairs one of Polsinelli's corporate practice groups. He serves as outside corporate counsel to his clients, which range from emerging growth companies to multi-national enterprises. He practices in the areas of general corporate law, mergers and acquisitions, securities and capital formation, venture capital, private equity, and advising corporate boards.

Phil is a Certified Public Accountant (CPA) and Chartered Financial Analyst (CFA®) and brings a broad skill set to clients he represents. Phil has significant experience helping companies raise money and grow through mergers and acquisitions across a number of industries.

# Polsinelli



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Evan Gilbert concentrates his practice on corporate and securities law, representing clients in matters relating to corporate finance, SEC compliance, mergers, acquisitions, and a wide variety of other commercial transactions. Evan has significant experience representing private and publicly held foreign and domestic companies, as well as international and domestic investment banks, in private placements and public equity and debt offerings. He routinely advises clients regarding the periodic reporting requirements of the Securities Exchange Act of 1934, the Sarbanes-Oxley corporate governance requirements, and the listing standards of the NYSE and Nasdaq. He also assists clients with the corporate formation process, corporate governance matters, and limited liability, limited partnership and joint venture agreements.

# BNY Mellon

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# BNY Mellon



- **Robert Vickery - Director, BNY Mellon, Los Angeles**  
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Rob Vickery was born and raised in the West Country of the United Kingdom, but has enjoyed living in California for a number of years. Since graduating in the UK, he has worked mainly in the financial services industry, most recently at Lloyds Banking Group, where he held a number of senior positions in the UK before moving to Los Angeles to run the North America region for Lloyds International Wealth.

Currently, Rob is a Director for BNY Mellon Wealth Management, the world's largest custodian of assets. He provides financial coaching for individuals in the Entertainment & Technology industries, helping them to fully exceed their potential by simplifying their financial lives and bringing repeatable strategic solutions.

# BDO

- **BDO** - [www.bdo.com](http://www.bdo.com)

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Tim has more than 24 years of accounting experience. He has worked in public accounting and in industry as a corporate vice president and controller. Tim has worked with a wide variety of national and international public and private corporate clients and has significant experience advising companies in the manufacturing and distribution, biotechnology, entertainment and service industries.

In addition to his responsibilities in the accounting and auditing areas, Tim's clients rely on him as a trusted business advisor on a wide range of financial matters, from daily operations to acquisitions, ongoing financial advice and strategic approaches to reporting



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Brad has over 30 years of experience in accounting and auditing, servicing publicly traded and privately held clients. Brad offers extensive experience and specialized expertise in the technology, professional services, entertainment, and manufacturing/distribution industries.

Brad reviews financial statements of foreign and domestic companies to assure the application of generally accepted accounting principles of the United States, as well as the compliance with the Securities and Exchange Commission's rules and regulations. In addition to his responsibilities in accounting and auditing, Brad's clients rely on him as a trusted business advisor on a wide range of financial matters, from daily operations to acquisitions, going public decisions, on-going financial advice, and strategic approaches for optimal reporting.

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