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Frenzy For Facebook Shares Heats Up With A New Auction

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Image via CrunchBase

If you've been wanting to buy Facebook shares, you have at least \$100,000 cash to spare, and you meet some high net worth hurdles, this could be your week.

Facebook is still private and probably won't list its shares on the stock market until 2012. But on Dec. 16, SharesPost, a website that connects buyers and sellers of stock in private companies, will auction 100,000 Facebook shares at a minimum bid of \$23 a share, according to an investor who received an email from SharesPost. That's a 77% jump in price over what one private investor says he paid three months ago for shares of Facebook.

These days everyone with a spare \$100K to invest is dying to own a piece of Silicon Valley's most successful private companies –the super-hot Facebook, Zynga, LinkedIn and Twitter. Or so it seems, from talking to brokers who have set up special purpose funds to buy shares in companies like these.

"Every time we announce that we have stock, we get a surge. There's so much demand," says Larry Albuquerk, managing partner of EB Exchange Funds, a broker that creates special purpose limited liability companies (LLCs) to buy shares in very late stage private companies. One fund, now closed, that Albuquerk created to buy Facebook shares was three times oversubscribed. A Middle Eastern investor wired \$2 million to Albuquerk's

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company escrow account without signing any agreements. (Albukerk sent the funds back.)

“It’s becoming a must-have asset class,” says Frank Mazzola, a founder of Felix Investments, a boutique venture capital broker dealer in New York that has set up more than 10 special purpose LLCs to buy shares on the secondary market of successful private companies. “The majority of our investors are super high net worth individuals, but we also have a lot of hedge fund customers,” says Mazzola. “Hedge funds and private money managers missed out early on. They want to get in the game.”

Boaz Rahav, whose GreenCrest Capital also creates similar funds to buy the same kinds of shares, also reports tremendous demand.

The SharesPost auction is being conducted by SP Private Investments LLC, which appears to be a similar set up to EB Exchange Funds and Felix Investments. The email from SharesPost says the auction will be conducted “on a sealed bid basis” and is only open to accredited investors – which [the SEC defines as individuals with a net worth exceeding \\$1 million](#) (not including the value of your home).

These special purpose funds work by buying a chunk of stock — Facebook stock, for example — from ex-employees, consultants or existing investors. (Current employees of Facebook are not allowed to sell stock; employees hired since 2007 are granted restricted stock units that have no value unless Facebook goes public or is acquired.) The special purpose LLC owns the shares of Facebook stock, and investors buy shares in the LLC, the minimum investment being \$100,000. EB Exchange charges a 5% fee upfront and a 5% fee when it distributes the shares; the other funds charge fees as well. Facebook has the right of first refusal when ex-employees sell shares and can also designate that the shares be sold to an existing shareholder.

Facebook, like other private companies, has an interest in making sure that its shareholder count does not exceed 499. At 500 shareholders, Facebook would be required by the Securities and Exchange Commission to disclose its financials. Facebook declined to comment, but a person familiar with Facebook says the company has not crossed the 500 shareholder line. The SEC also declined to comment.

Keith Bishop, a partner with the law firm Allen & Matkins in Orange County, Calif. and a former commissioner of corporations for the state of California (the state-level counterpart of the SEC), points out that there is a clause in the SEC rule about keeping the shareholder count below 500 that essentially says that if the issuer knows that the form of holding securities is being used to circumvent the 499-shareholder count, the SEC can look through the shareholding vehicle to count the vehicle’s shareholders. If the SEC did that, and counted the number of limited partners in the venture firms that have invested in Facebook, the company would very likely have more than 500 shareholders. “If [Facebook] is pursuing this structure, then I think this is a problem,” says Bishop.

But the folks setting up the LLCs insist that there is a real arm’s length between them and Facebook, and that since Facebook is not setting up or orchestrating the LLCs, the SEC would have a hard time proving that the LLCs are trying to circumvent the shareholder count. Facebook did get [an exemption from the SEC staff in 2008](#) that excludes holders of Facebook restricted stock units from being counted toward the 499 shareholders.

One investor told me that Zynga has restricted its ex-employees from selling shares for 12 months, though it’s not clear whether that is to keep

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ABOUT ME

I’ve just switched gears from editing Forbes’ technology coverage to tracking wealth --still from my base in San Francisco. When time allows, I will keep following developments in clean tech. My colleague Luisa Kroll at Forbes in New York and I are overseeing the massive reporting effort that goes into Forbes’ World’s Billionaires List and the Forbes 400 Richest Americans list. The former will get me to use my rusty Spanish and Portuguese. Tracking wealth is familiar territory: I ran the Forbes Billionaires list for five years back in the late ’90s, when there were far fewer billionaires. Over the years my Forbes reporting has taken me to 17 countries on four continents, from the slums of Manila to palaces in Saudi Arabia. Follow me on Twitter @KerryDolan My email: kdolan@forbes.com
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its shareholder count low. Zynga did not reply to Forbes' request to confirm this information.

What I'm curious to know is just how crazily high the bids for Facebook stock will go, given the tremendous appetite to own the shares. If anyone finds out, please do let me know.

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KERRY A. DOLAN
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