From: "Gerald Niesar" <gniesar@nvlawllp.com>
Subject: Proposed Mass. Rulemaking ---Crowdfunding
Date: Tue, March 10, 2015 6:12 pm
To: james.klimek@klimek-law.com

Dear Jim:

I am a long-time member of the Middle Market, etc. Committee.

The proposed rule is a great experiment and should be implemented. It seems to go a step farther than what the SEC is authorized to do under the Jobs Act as that crowdfunding requires in all cases an audit which is impractical for early stage companies. Thus, being able to go to the offerees described in the proposed rule, and subject to the protections regarding disqualified participants as issuer agents, management, etc. is a much more practical approach, and one that might actually be used.

Specific comments:

Paragraph (8): as worded in the first two lines, it appears to be a guarantee. I would suggest:

"The issuer shall establish a minimum offering amount, which shall be set at a level *that the Board or other governing body reasonably believes is* sufficient to implement....."

Paragraph (9): as written it does not indicate how to get out of escrow. I presume the intent is that the funds are held in escrow until the Minimum Level in (8) is reached. This should be specifically stated in the Rule. Otherwise it might be feared by the Escrow Holder that some authority from the Commission is required for the release.

Paragraph 11: in the fourth line, after the word 'attorneys' I would suggest a comma. It might be argued by some overzealous plaintiff attorney that the description of activities after the word 'employees' also applies to accountants and attorneys.

Thank you for taking this on, and giving me the opportunity to comment. I look forward to seeing the final comment letter.

Best regards,

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MEMORANDUM

To: Peter Cassidy

From: Jim Klimek JAK

Re: Crowdfunding

Date: March 18, 2015

Here are some thoughts on the Division's request for comments on the proposed crowdfumding regulation:

1) As a practical matter, solicitations for investment are going to be made across state lines. A lot of people are going to go through their contact list and email everyone who they think might want to invest. When a client has a check in his hand, it's pretty hard to talk him out of cashing it.

I like regulation A because there is a lot of guidance out there about how to use it.

2) Facilitate offerings in more than one state - yes, see (1) above.

Coordination - Did this ever really take off with registration. I would probably advise a client not to use it because if we have a problem in one state, we have a problem everywhere. On the other hand, if we do it state-by-state, we might be able to sell the whole offering outside the problem state.

3) Stick with equity or debt. Do we want crowdfunding investors trying to figure out derivatives?

4) Ok, I have a start-up. They have no statement of cash flow and the balance sheet will show zero. So my client wants to raise $2,000,000 - he knows he can't execute the business plan without that much. So I tell him to get an audit of his company's balance sheet that says zero. This does not help investors.

The question of when to require an audit should depend on whether there has been a year of operations.

If I lose $20,000 in a $1,000,000 offering, do I feel better than if lose $20,000 in a $2,000,000 offering?

5) It is good to keep the limits low, even for high net-worth individuals. In Reg. D, the concept of the accredited investor assumes that wealth = sophistication. How good is that assumption?

It has to be a good faith belief based on representations in the subscription agreement. If we require the issuer to obtain Form 1040 from offerees, there won't be must investment.

How is the issuer going to know the amount of investment in crowdfunding? It could be put in the subscription agreement as a representation/warranty, but crowdfunding investors might not even know which investments "count" as crowdfunding.

6) Good idea.

7) 30% is too low. I don't think that many issuers are going to be able to execute the business plan at 30%, but there will be a temptation to say so.

8) Requiring escrow is practible. The church bond issuers do it, even for low offering amounts. That might even be in NASAA guidelines on church bonds.

9) One needs to keep bad actors out - too easy for them to prey on the unwary in this context. Might as well use the definition that is already out there.

10) You want to give as much guidance on disclosure as you can. This is a reason I like Reg. A - there is a fair amount of guidance about how to use it, even on the Form 1-A itself. This also creates a good opportunity to look to Regulation S-K for guidance.

Also, even though Form 1-A filings are not made on EDGAR, one can still find a lot of help on Form S-1/10K filings. I frequently look for guidance on risk factors on similar companies that are 34 Act companies.

Also, put yourself in the position of private counsel. My malpractice policy is a deeper pocket than the balance sheet of a start-up. I am happy to have as much guidance as possible on whether I discharged my duty. This is part of the reason I actually look to Form S-1/Reg. S-K for guidance on writing a PPM.

11) See 10, above.

12 and 13) Not that onerous and a good opportunity for red flags - reporting requirement not worth much without financials.

14) Not sure the portal adds much protection for all the trouble. Perhaps one of the SEC's attempts to kill crowdfunding by a thousand cuts. These securities will be sold by the issuers. "Real" broker-dealers won't touch an offering of less than $5,000,000 because the commission is not enough to justify the due dilligence.

15) No. Talking it up on social media? Recipie for misinformation and pumping.