SECURITIES CROWDFUNDING

Know What You are Getting Into
or “Sound and fury, signifying not much”

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WHAT IS “CROWDFUNDING?”

- Traditional—smiling photos, tee shirts and discount coupons
- Equity—stock and other equity
By definition, crowdfunding involves “public solicitation”

No investor qualifications, like “accredited investor”

Web host might be a broker-dealer

Where’s the “full and fair disclosure of material facts”?
• “Creating Jobs” + campaign year (2012) = who can afford to oppose a jobs bill emerging from the Great Recession?

• Several Capital Formation Statutory Changes – needed SEC rulemaking to implement
  – Reg D amended to provide for public solicitation of some Rule 506 deals = new Rule 506(c)
    – sales to “verified accredited investors” only
    – old Rule 506, now Rule 506(b), still in place

• Regulation A raised from $5 million to $50 million with states preempted for some deals with tougher SEC requirements

• Equity Crowdfunding created by statute
• Rule 504 offerings
• Rule 506(c) offerings
• State Crowdfunding statutes and rules for intrastate offerings
• “Regulation A+” offerings
• SEC Equity Crowdfunding offerings
• raise up to $1 million
• no investor qualifications
• freely tradable securities
• but state registration required for public solicitation
RULE 506(c)
(Implementing rules went effective in September 2013)

- no limit on amount raised
- no limit on number of investors
- public solicitation and advertising permitted
- sales to accredited investors *only*, and issuer must *verify* status
- neutral internet hosting permitted without broker-dealer registration
- states preempted (Form D and fees still required)
• generally, mimics of proposed but not yet enacted SEC rules

• limited to *intrastate* offerings only (under ’33 Act sec. 3(a)(11) and SEC Rule 147)

• usually around $1 million limit and require use of some form of independent funding portal and escrow
• public solicitation permitted
• no investor qualifications
  – “Tier I”
    • up to $25 million
    • reviewed by both SEC and states
    • eased financial reporting and audits
    • freely tradable securities
  – “Tier II”
    • up to $50 million in
    • SEC review only; states preempted
    • audited financials and reporting
• limited to $1 million a year
• limitations on how much an investor can invest in one year
• must be done through an SEC registered, FINRA member “funding portal”
• funds must be escrowed until closing
• audited financials
• mandated disclosures and reporting
• enhanced liability
TAKEAWAYS FOR REAL ESTATE CAPITAL FORMATION

- Rule 506(c) is where it’s at
- SEC and state crowdfunding caps make it unrealistic for real estate syndications
- Reg. A+ more suited to stock deals, and SEC (and maybe states as well) still must review offering materials first
- Public solicitation not all it’s cracked up to be
- You still have to “make money the old fashioned way – you have to earn it”