

Securities & Exchange Commission

Comments on File No. S7-07-12

Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144a Offerings.

Dear Commission Staff,

The Commission should consider focusing on two areas and adapting procedures to better protect investors while allowing for General Solicitation and General Advertising for Emerging Companies to attract capital under Rule 506 and Rule 144a Offerings as mandated.

Many comments have focused on what can go wrong and the attention should be put on how to best protect what can go wrong.

The goal is to promote greater flow of capital from Accredited Investors into Emerging Companies while maximizing Investor protections.

The main concerns are:

- A. Unethical activity increasing as a result of the proposed removal of the prohibition.
- B. Non Accredited Investor participation

(A)- Decrease the ability for unethical parties to convert investor funds for improper use.

Investors lose money and complaints occur. Some complaints are relevant from being a victim of an unethical practice, while others are expressions of frustration over loss in a legitimate investment.

Losses vs. Fraud- Investors will lose capital due to:

1. Companies with ethical intentions that didn't perform or didn't attract future capital and cease to continue operations.
2. Companies/Operators that had unethical intentions and fraudulent pretenses.

With respect to #1 the Commission can:

- Enhance the awareness of the importance of Investor diversification in high risk investments
- Create a system that will mandate issuers and third parties administer the Investors proceeds properly to protect their interest and heighten investor awareness of the proper procedures.

With respect to #2, several questions should be analyzed:

- What part of an unethical act does the investor become most harmed?
- How have the perpetrators succeeded in the past?
- How will the removal of this prohibition give them additional ways to act going forward?

#2 Answers/Observations:

- Improper conversion of funds to their benefit at the detriment of the investor.
 - No intention of building a successful enterprise for the investors benefit.
- Access and the ability to convert investor funds for personal benefit.
- Increased ability to broadly market and specifically target investors through the use of the web, email and telemarketing.

Analysis:

- Legitimate and illegitimate offerings will be solicited and advertised.
- It will be impractical to monitor all offerings being marketed.
- Unethical Issuers/Operators will succeed in garnering investor interest.
- Investors will seek to participate in these offerings.
- Must lessen the Unethical Issuer/Operator's ability for improper use of the investor funds.

Thoughts:

- Educate the Public on the proper format and procedures for legitimate offerings.
- Create a common ground methodology by which all Private placements are processed and heighten Investor awareness for transactions being conducted in a format not consistent with common ground practice. (I.e. making payment outside of an Ebay transaction)
- Focus the effort on monitoring the Use of Proceeds of the investor funds described by the Issuer/Operator and the proper disbursements of funds subsequent to closing.
- Create and maintain an approval process of Escrow agents that have been registered and or certified by the Commission to process transactions. Investors can visit the SEC site for confirmation upon learning the name of the escrow agent in a proposed transaction.
- All Issuers be required to file a FormUoP with the Commission stating the specific Use of Proceeds for the offering, prior to closing. This FormUoP should include amounts, counterparties and expected timeline for the proceeds to be deployed by the Issuer, as well as the name of the Banking institution responsible for disbursements. (The form can incorporate various proceeds categories and ranges for dollar amounts to allow for various needs and or future events for final deployment of the proceeds. State how long this capital will provide for the issuer to operate)
- Require the banking Institution for the Issuer receiving the funds from escrow to opine as to how the Use of Proceeds will be dispersed, and file their acknowledgment on the FormUoP prior to closing. In the event of a change in circumstance the Issuer will be required to file an amended FormUoP and the banking institution will be required to file an updated FormUoP prior to a change in disbursements.
- The Escrow agent will not process the closing and wiring of funds until the receiving banking institution has filed their FormUoP acknowledgement with the Commission. The Escrow agent will file the final FormUoP prior to closing the transaction. This will allow the investors to see a final Use of Proceeds to determine if this was the same as proposed during the marketing process.

This type of system will insure that investors will have the protection of knowing that investor funds are being deployed as filed, or must be updated if changes to proceeds are attempted. The banking institution will become a de facto administrator to the interests of the investors and the terms under which they agreed to have their capital deployed.

The Commission can incorporate the escrow agencies and the commercial banking system to help protect the investor by focusing on the proper administration of the proceeds as proposed to the investors and filed with the Commission.

While those Issuers with unethical intent will still exist, this process may deter their motivation to not have unfettered access to funds they can solicit and third parties involved in availing the process. Investor awareness that placements must occur through an approved Escrow agent will help to eliminate the ability for Unethical Issuers/Operators to directly access investor funds.

(B) Non-Accredited Investor participation

Currently the system is based on an Investor representing and acknowledging his or her qualification, typically with a form that allows them to check off which standard they qualify under and their signature. There should be a pre-existing relationship that suggests the Issuer or Agent has prior knowledge of a potential investor's accredited status and an understanding of their investment profile.

With the increased solicitation of offerings the rule change will bring, investors both Accredited and Non-Accredited will see an increased number of private placements being presented to them. As a result, some Non-Accredited investors being unpermitted to participate will believe they are sophisticated and should have the opportunity to participate. This will happen with and without the knowledge of the Issuer/Agent, and those investors will be determined to find a way to participate regardless of what they sign off on.

Conversely, the Accredited Investor may be less desirous to participate if he or she has to constantly prove their status and reveal personal financial information every time they want to participate in a transaction.

Implement the Commission Accreditation Process

- Investors must complete an Accredited Investor form/application with the Commission either online or by regular mail.
- Their submission will be kept confidential by the Commission but will require they fill out a form stating sources of wealth, investment experience and a brief exam on private placement investing, risks, and the legitimate process that Private placements must transact under. This can be done similar to any continuing education online exam.
- Upon proper completion and acceptance of the application/form the Investor will be issued his or her Accredited Investor ID Number. (Drivers license meets Social Sec/Tax ID #)
- This ID number must be provided as part of the information to the escrow agents as part of the closing process or the investor will not be allowed to participate.
- Like Continuing education, the Investor will be required to recertify annually to re-verify status and allow the commission to update the Continuing Education exam as to relevant factors in the future for investor awareness.

The idea of an investor representing his accredited status and financial information to the Commission in itself should act as a deterrent. Regardless, the idea that all investors must participate in the Accreditation Exam should increase the investor awareness as to the risks of investing and proper placement procedural conduct.

This will avoid the verification at the transactional level and in the event of a future complaint; the Commission will have a record of the complainer on file acknowledging their Accredited status.

While the measures discussed above will add additional steps to the process, it would help to ensure that the Private placement marketplace has a uniform system for both the distribution of investor funds and the certification and awareness process of Accredited Investors.

I hope these ideas can be useful.

Best,

John Clarke