Running Another Offering With a Crowdfunding Offer by Bruce E. Methven

This is part of a series on crowdfunding; this part covers running another offer simultaneously with a crowdfunding offer.

Again, true crowdfunding -- offerings of stock, LLC units and promissory notes -- becomes available on May 16, 2016. Sales of the securities must be conducted through an intermediary/portal approved by the SEC and FINRA and an issuer can use only one intermediary.

Unlike most other offerings, crowdfunding can be used simultaneously with another offering. This is useful if the company plans on raising more than $1 million in 12 months (which is the limit for crowdfunding). It is also useful if the company believes it can raise some money outside of crowdfunding and wants to avoid paying the intermediary's commission on that money. (Another approach some companies may employ is to use a crowdfunding offering to raise the money for a larger offering, which can be done without the usual six-month waiting period between offerings.)

If the offering company wants to use a simultaneous private offering it may well choose a traditional federal Rule 506b private offering. That allows an unlimited amount of money to be raised; there can be an unlimited number of accredited investors and up to 35 non-accredited but sophisticated investors; investors can be from any state. Because a traditional Rule 506b offering is a private offering, a company pairing this with a crowdfunding offer has to be careful that it does not use the public advertising for the crowdfunding to attract investors to the private offering; this is an SEC requirement. As a practical matter that means keeping track of whether a potential investor learned first of the crowdfunding offer or the Rule 506b offer. If a potential investor first learned of the crowdfunding offering, that investor would be limited to investing through the crowdfunding intermediary and would count toward the $1 million crowdfunding limit.

Another alternative would be for the offering company to make a simultaneous (or subsequent) PUBLIC offering, either a single-state qualification by permit offering or a nationwide Reg. A+ Tier 2 offering (or possibly a nationwide S-1 offering, although that is more complicated). While these types of offerings require prior registration with the state or the SEC, they allow full public advertising, have few or no restrictions on investors and allow more money to be raised than the $1 million limit for a crowdfunding offering.

In any case, with a bit of planning a company can make both a crowdfunding offering and another offering simultaneously.

Bruce

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