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“Crowdfunding” vs. crowdfunding

On May 16, 2016, the JOBS Act “Crowdfunding” began. Does it apply to EB-5?

What is the more general definition of crowdfunding?

- Title II - Regulation D, Rule 506
- Title III - “Crowdfunding”
- Title IV - Regulation A

Regulation D, Rule 506

- 506(b) - friends and family
- 506(c) - general solicitation

Rule 506(c)

Permits general solicitation and advertising in private placements

- Reasonable steps must be taken to verify each investor is accredited.
- All statements made are subject to the anti-fraud provisions.
- Try to avoid projections in advertising materials.

*NOTE: If projections are used, include appropriate legends.

Rule 506(c) - Items for Legend

- “Securities may only be purchased by accredited investors.”
- “These securities are being sold upon reliance of an exemption from the securities registration requirements under federal and state securities laws.”
- “Neither the SEC nor any state securities regulator has passed upon the merits of or given approval to the securities, the terms of the offering, or the accuracy or completeness of any offering materials.”
- “Investing in securities involves risk, and investors should be able to bear the loss of their investment.”

Accredited Investors Defined

- Any individual (alone or jointly with a spouse) with a net worth at least \$1 million (not including the value of his or her primary residence)
- Any individual with adjusted gross income of at least \$200,000 (or \$300,000 jointly with a spouse) in each of the last 2 years.

Conditions To Meet Regulation S

- Offer and sale must occur in an Offshore Transaction: Seller reasonably believes the buyer is offshore at the time of the offer and sale.
- Cannot involve any Directed Selling Efforts (efforts reasonably expected to condition the U.S. market for the securities).

*NOTE: Can have isolated, limited contact within the U.S. Routine information will not constitute direct selling efforts.

Concurrent Offerings

Regulation D Rule 506(c) and Regulation S offerings will not be integrated.

- Issuers must maintain the separate nature of each offering
- When relying on Regulation S, an issuer must be careful not to target U.S. persons.

Potential Solutions

- Use separate documents for Reg S and concurrent Reg D Rule 506(c) offerings
- Do not use website to solicit investors for Reg S offering or
- Construct separate web portals for each offering or have generic landing page that directs visitors to appropriate content, tailored to the specific exemption.

Broker Dealer Involvement

- What are the Broker Dealer services involved in 506(c) offerings?
- What are the costs associated with crowdfunding?

Reference

- See “Website Guidelines for Concurrent Rule 506(c) and Reg S EB-5 offerings by Robert Ahrenhwlz and Mariza McKee, published August 21, 2015, by EB5Investors magazine.