Regulation Crowdfunding

Timothy Chen | December 2, 2018

Introduction

Regulation Crowdfunding is a provision under the Securities Act that provides an exemption from SEC registration for certain crowdfunding transactions. Under Title III of the JOBS Act of 2012, Regulation CF fully took effect in May 2016. Alongside Regulation A+, Regulation CF aims to make funding from non-accredited investors for smaller companies more accessible. However, compared to the two-tiered process of Regulation A+ (oftentimes deemed as “Mini IPOs”), Regulation CF is designed mainly to help smaller businesses seeking crowdfunding of less than $1.07 million. Regulation CF has looser regulation requirements than Regulation A+, thus easing the compliance burden of smaller businesses through less paperwork and exemption of SEC registration for securities crowdfunding.

Highlights of the Regulation CF Exemption:

- **Capital Raise Limit:** Issuers can raise up to $1,070,000 within a 12 month period.
- **Investor Scope:** Both accredited and non-accredited investors are eligible to invest. However, both also have a limit to the amount they can invest.
- **Investor Limit Provisions:** Individuals with either a net worth or annual income less than $107,000 can invest up to the maximum of $2,200 or 5% of their net worth or annual income. Those with both a net worth and annual income greater than $107,000 can invest up to the maximum of $107,000 or 10% of their net worth or annual income.
- **Advertising Restriction:** Issuers can only advertise their offerings through the registered SEC broker dealer or funding portal that their company is listed on. Outside advertisement is prohibited.
- **Form C:** Each issuer is required to file the new Form C to the SEC prior to the start of the offering and provide the form to intermediaries and investors. The Form C is a disclosure document with information about the company, the type of securities being offered, and the intended use of raised capital to help investors make informed decisions.
- **Escrow Account:** Issuers are required to open an escrow account to keep investors’ funds in a safe place until the target offering amount is met. The target offering amount is the minimum capital needed to be raised before investor funds are transferred to the issuer.
- **Audited Financials not Required:** The tax information and financial statements of the issuer only need to be reviewed, not audited, by a CPA. In the case where the current offer and previous raises amount to less than $100,000, a principal executive officer can certify financial statements. However, if this is not the first

raise for the issuer, and the current and previous raises amount to $500,000 or more, then an audit is required.

- **SEC Filing Amendments:** Issuers that have sold securities through Regulation CF must make annual filings similar to that of initial filings within 120 days of the issuer's fiscal year-end. No accountant review or audit of financial statements in these filings are necessary.
- **SEC Filing Exemptions:** Issuers can cease filing ongoing annual reports to the SEC if they become a fully-reporting registrant with the SEC, have no more than 300 shareholders, and have no more than $10,000,000 in assets.
- **Intermediary Requirement:** The offering must be conducted exclusively through a SEC registered intermediary (ex: Seedinvest and StartEngine). An investor can only make a crowdfunding investment through an online platform. Multiple or concurrent offerings on different intermediaries relying on Regulation CF is prohibited.
- **Restricted Securities:** Investors are restricted from re-selling their shares for the first year, unless the shares are transferred to the company that issued the shares, a family member, or an accredited investor.
- **No Funds:** Investment companies (i.e. private equity funds, venture funds, hedge funds) may not use Regulation CF to raise capital.
- **Integration:** The amount of securities sold under other exemptions, such as Regulation D, does not counts towards the $1.07 million limit of Regulation CF.

Conclusion

Overall, Regulation CF helps smaller businesses raise money more efficiently and in a less burdensome fashion. There are more exemptions for filings, thus making capital raises much easier and cheaper. This form is much briefer and less strict than the Offering Circular required by Regulation A+.