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The Honorable Pat Toomey

United States Senate

Committee on Banking, Housing, and Urban affairs

Washington, DC 20510

Dear Senator Toomey,

I would like to thank the Committee for the opportunity to comment on and applaud your effort to enact common sense legislation to provide innovative paths to capital formation, while protecting the interests of shareholders.

Background

Two key reasons for private companies decide to trade publicly are:

1. Access to funding to sustain and grow the company and
2. A public market functions as a built-in exit strategy for management and investors

Public companies trading on exchanges generally have reasonable options to raise capital. They are more likely to enjoy institutional sponsorship and are permitted to file shelf registrations to sell shares on the market (ATM) if the need requires.

The problem area for funding and investing is in the off-exchange public issuers, generally companies that trade on the over-the counter-markets (OTCM). These

companies suffer from a severe lack of funding options due to a burdensome and treacherous labyrinth of regulations related to follow-on capital raises (generally Reg D offerings).

The Challenge

The advent of FINRA Regulatory Notice 09-05 placed tremendous responsibility upon custodians, clearing agents, and broker dealers to verify the legitimacy of shares acquired through these placements, the transaction by which it originated, and the origin of the source of funding. This has resulted in almost no clearing firms accepting paper certificates and therefore few options for investors to sell shares acquired through follow-on PIPE offerings, destroying investor demand and therefore all but eliminating PIPEs as a follow-on funding option for most off-exchange issuers.

The Solution

The following proposed rules, some of which borrow from existing exemptions, would help small public companies access capital and greatly broaden the pool of public investment by fostering transparency and liquidity for exempt offerings:

Incorporate elements of Regulation Crowdfunding (Reg CF) into Reg D offerings

Regulation Crowdfunding (Title III of the JOBS Act of 2016) has been a success providing access to investment opportunities for a larger pool of investors and stimulating innovation and entrepreneurship. This has been achieved by way of a measured approach to widening the pool of potential investors.

The key factor is technology.

Transactions under Regulation Crowdfunding are *required* to take place online through an SEC-registered intermediary, either a broker-dealer or a funding portal.

All Reg D offerings, like crowdfunding offerings, should be required to be administered electronically, through an SEC registered ATS or funding portal. This requirement accomplishes the following:

For Investors:

1. Resolves questions regarding share origination (Notice 09-05)
2. Makes offerings available to a larger pool of investors
3. Consolidates availability of issuer information on disclosures, filings, news, etc.
4. Electronically indicates timing with regards to restriction and tacking for resales
5. Provides market transparency
6. Efficient market= improved price discovery= less dilution for existing shareholders

For Issuers:

1. Consolidates filings and disclosures
2. Electronically tracks limitations on issuance
3. Greater access to capital through a transparent market

For Regulators:

1. Electronically monitors offering
2. Electronically monitors issuer's status (shell, promotion, bad actor)
3. Simplifies investor oversight (shorting vs restricted shares)

4. Monitors and mitigates suspicious activity and AML issues

For Private Investment In Public Entities (PIPEs) to be administered electronically, minor amendments and clarifications to Rule 506 (b) and 506 (c) of Regulation D must be implemented.

Suggested Amendments to Rule 506(b)

Companies conducting an offering under Rule 506(b) can raise an unlimited amount of money and can sell securities to an unlimited number of accredited investors. An offering under Rule 506(b), however, is subject to the following requirements:

1. *No general solicitation or advertising to market the securities*

Suggested Amendment: Require all PIPE offerings to be posted on the SEC's EDGAR system with basic information commensurate with a "tombstone" including date of offering, offering size, intermediary and an electronic link to the offering. Specifically exclude this required posting from the definition of "general solicitation or advertising".

2. *Securities may not be sold to more than 35 non-accredited investors (all non-accredited investors, either alone or with a purchaser representative, must meet the legal standard of having sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment*

Suggested Amendment: Do not limit a seemingly arbitrary number of non-accredited investors that may invest in a single offering. Rather, as with Reg CF limit the amount an individual non-accredited investor can invest across all exempt offerings in a 12-month period.

Expand the definition of accredited investor to existing shareholders

Existing shareholders in the issuer facilitating the PIPE were already determined to be suitable to own the shares in the company through the BD from which the shares were purchased. As shareholders, they are familiar with the issue that is being placed in the exempt follow-on offering. This familiarity and previously determined suitability makes a strong case for existing shareholders to be considered suitable to buy and hold restricted shares in the same security, This accreditation standard has been in place on most Canadian exchanges for several years. They impose dollar investment limits of C$10,000 or C$15,000 on a twelve month rolling basis. This amendment addresses accredited investor requirements for Rule 506 (b) and 506 (c).

Reduce the holding period for Rule 504 offerings to three months

Rule 504 of Regulation D, limits a $5 mm aggregate offering size on a 12-month rolling basis, as opposed to Rule 506 offerings, which have no offering limitations.

A shorter holding period for these micro-offerings would, as it has in the past, entice more investment in discounted restricted shares while resulting in these shares changing hands at higher valuations, thereby mitigating the resulting dilution. This greatly improves financing prospects for micro caps and providing greater impetus for companies to go public.

Conclusion

Only through a transparent electronic market is it possible to foster a transparent and dynamic market for follow-on offerings for public companies seeking to sustain and expand their businesses. Accessible markets for exempt offerings will also be a much needed safety net for public companies, encouraging companies to be publicly traded, while providing maximum protection for investors.

I again appreciate the opportunity to comment.

Respectfully,

Jason Weisz

Founder, The PipeX