5 THINGS EVERY SYNDICATOR MUST KNOW TO STAY OUT OF JAIL

MAURICIO J. RAULD, ESQ

#1 BEST-SELLING AUTHOR

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ISEG MEDIA
NEWPORT BEACH

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ISEG Media
5020 Campus Dr, Suite 747
Newport Beach, CA 92660

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Introduction

Are you going to jail if you violate securities laws?

Probably not, unless you are intentionally trying to defraud investors. Is it possible? Absolutely. Just ask Bernie Madoff.

I thought about changing the title of this e-book, but at the end of the day, I wanted to emphasize that violating securities laws is a serious matter, and carries with it significant consequences. As someone who spends his entire professional life working on securities offerings (aka 'syndications') and talking to thousands of syndicators every year, I've come to notice that many don't seem to takes these securities laws seriously and even worse, some gurus actually teach you strategies and tactics that blatantly violate these laws.

After all, how bad can it be? It's only one small post on Facebook or Instagram. Everyone is doing it. What's the harm in compensating my buddy John for sending over an investor for one of my deals? Who's going to find out? What's the worst that could happen. Everyone is doing it (did I say that already?)

But nevertheless, the consequences for violating securities laws are severe and as a syndicator, you should not take this responsibility lightly.

At worst (putting aside jail time) you may be committing a felony … At best, you are guaranteeing your investors' returns, meaning you will have to return investor monies, plus interest. Most likely, that money will be long gone. And if you're like most syndicators, you likely don't have millions of dollars laying around, and thus you may be forced into bankruptcy.

Not to mention you will be barred from raising money in the future and your reputation will be destroyed. None of these options seem attractive.

Now to be clear, although sometimes I'm affectionally referred to as 'the wet blanket', the purpose of this e-book is not to scare you. The purpose of this e-book is to simply make you aware of common mistakes many syndicators make or are unaware of, and then provide actionable solutions to many of these issues.

After all, the number one legal concern expressed by most syndicators is the fear of the unknown. Syndicators simply not knowing what they don't know.

With that in mind, I created this checklist, of sorts, that will allow every syndicator to know exactly what the most common issues are, from an SEC and State regulatory compliance standpoint. So, without further ado….

CHAPTER 1

Creatively Structuring Your Real Estate Syndication To Avoid Securities Laws Won't Work

Both beginner and seasoned syndicators are often guilty of this one. The SEC and State regulators simply don't care how you structure your syndication when analyzing whether you are violating securities laws.

Calling your deal, a 'joint venture' or structuring your syndication as a loan, tenants-in-common, profit sharing agreement, side contract, a handshake, a high-five, doesn't matter. The structure itself is irrelevant.

Whether your deal involves selling a security comes down to this:

> Are you taking money from investors, where there is an expectation of a return, and where those returns are generated by ***your*** efforts?

If you are, then you are selling securities.[1]

Beginner Syndicators

By far, the most common mistake beginner syndicators make, is not realizing they are selling securities in the first place and thus don't even think about the securities laws.

This makes sense. To be honest, it is perfectly reasonable to question why the SEC (Securities and Exchange Commission) or your State securities regulators are even involved in the first place when you are simply taking money from friends and family and buying real estate. After all, you're offering them real estate, not securities, right?

This mistake is even made by seasoned and sophisticated lawyers. I can't tell you the amount of times I have consulted with attorneys who do not specialize in securities laws who are often surprised to learn that real estate transactions can be viewed as securities.

But as we learned above, you now know better. What you are buying and how you are structuring things don't matter. If you are taking money from investors, where there is an expectation of a return, and where those returns are being generated by ***your*** efforts, then you are selling securities.

[1] For those looking for the more legal definition, it can be found in the landmark U.S. Supreme Court case of SEC v. W. J. Howey Co., 328 U.S. 293 (1946), the result of which has become commonly known as the "Howey Test." Under the Howey Test, an investment is a security if there is (i) An investment of money, (ii) in a common enterprise (iii) with an expectation of profits (iv) which are derived solely from the efforts of the promoters or third parties.

Seasoned Syndicators

Seasoned syndicators or those that understand that securities laws may apply to them, often believe they can get around the securities laws by simply changing the structure of their syndication.

By far, the most common attempt is the 'joint venture.' "It's not a securities offering", they say. "It's a joint venture."

The first thing to recognize is that whether your deal is a securities offering or a joint venture is not something you get to decide. You can call it whatever you want, but we will always go back to our trusty definition in order to determine what it really is. It's very similar to when employers try and categorize their labor as independent contractors as opposed to employees. Or when you try and write-off your entire car payment as a business tax deduction. Ultimately, the SEC or State regulator will make that call, just like your State employment division or the IRS will make those other calls.

Second, in order to have your deal considered a joint venture, all of the partners need to be actively involved in the deal so that the returns are not being generated by the efforts of one or more participants, but are being generated by the efforts of everyone. This is why it's difficult to prove you have a joint venture if you have too many people in the deal. After about five participants, the SEC starts to question whether all participants are really carrying their weight or are primarily funding the deal.

If one of the parties has little say or voting power, has no involvement in the business or investments, and no experience that would provide any benefit to the business or the investment, it will be a hard sell to convince regulators this is not a security.

Mauricio's Solutions

If you are trying to legitimately structure your deal as a joint venture and not a security, here are a few considerations you should keep in mind.

1. Limit the joint venture participants to five (5) or less;

2. Make sure all joint venture participants have proportionate voting rights;

3. Make sure all joint venture participants can vote on key decision-making functions. (Note: Everyone doesn't need to be part of the day-to-day management team but, but everyone should have a real opportunity to use their voting rights).

4. Don't give yourself unlimited control as manager. The more control you have, as manager, the more it looks like a security.

5. In real estate transactions, have all the joint venture participants have a vote (via majority vote) on the hiring and firing of the management team, the hiring and firing of the property

manager, whether to obtain financing or a refinance (ideally signing on the loan), whether to sell property.

6. Make sure all the joint venture participants have some sort of experience and skills in the specific business that would provide a benefit to the joint venture.

Another common strategy syndicators attempt is to structure offerings as a loan, instead of equity and claim the offering is not a security. Never mind that the actual definition of a security starts with a note. According to the securities act of 1933, the official definition of a security is "any ***note***, stock, treasury stock…"[2].

Now… not every promissory note is a security. For example, a note that is nine months or less by definition is not security so long as it is not fractionalized between several investors. Most other notes are presumed to be a security which a syndicator can rebut if the note bears a resemblance to one of the following categories. This "family resemblance" test includes the following categories.

1. a note delivered in consumer financing;

2. a note secured by a mortgage on a home;

3. a short-term note secured by a lien on a small business or some of its assets;

4. a note evidencing a character loan to a bank customer;

5. a short-term note secured by an assignment of accounts receivable;

6. a note which simply formalizes an open-account debt incurred in the ordinary course of business (particularly if, as in the case of the customer of a broker, it is collateralized); and

7. a note evidencing loans by commercial banks for current operations.

For real estate investors, the second category is probably the most commonly relied upon and if your single note is secured by a property which has sufficient equity that in the event of a default, the note holder will gain access to the property, then an argument can be made that you are exempt from being a security.

2 The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing." Section 2(a)(1) of the Securities Act of 1933.

Notwithstanding syndicators' attempts to circumvent the securities laws with creative structuring, once you realize that you are selling securities, then there are really only three (3) things you need to think about:

First, registering your security with the SEC,

Second, finding an exemption to registration, or

Third, its illegal.

It's that simple.

For more details on these three considerations, please visit one of my more popular YouTube videos (https://bit.ly/31RGsDU).

CHAPTER 2

The SEC has a Zero Tolerance Policy Towards Advertising Your Syndication When Prohibited

(Including Social Media)

If you rely on exemptions that allow you to advertise your offering (like Rule 506c or Reg A) then post away! This section does not apply to you.[3]

But, if you are like the vast majority of real estate syndicators, you likely rely on Rule 506(b) to exempt your offering from registration and thus are prohibited from advertising or generally soliciting your deals.

There is nothing special about social media. Making a post on social media that is public, is no different than taking out a full-page advertisement in the Wall Street Journal or New York Times. This fact is generally overlooked since it is so easy and free to make information available to the public.

As a general rule, if you have an active offering going on, I simply recommend staying off social media as it relates to real estate or whatever you are usually raising money for. There are too many gray areas to get cute about it and to be honest, if you haven't done the work prior to the offering in shoring up your prospects, it's very difficult to get new investors off social media into your specific current deal.

The time to work the social media angle is before you have a deal or in between deals. This is when you should be out and about, meeting new people, attending seminars, attending meetings and getting into substantive relationships with your potential investors (see Chapter 3 below).

But if you are in between deals, let's compartmentalize social media posts into 3 buckets:

First, posts that are a clear violation of the advertising rules,

Second, posts that are clearly allowable, per the SEC, and

Third, posts that are in the gray zone.

[3] Keep in mind, however, that a 506c deal does not remove your obligations to oblige by the 'Anti-Fraud' statues so please consult with your attorney regarding overall recommendations regarding posting in 506c deals. Although a new rule (Rule 509) did not officially make it into the 506c rules, I still advise all my clients to follow, since the rule tells us what the SEC is thinking.

Bucket No. 1
(Posts that Violate Advertising Rules)

When it comes to social media, in general, most syndicators understand that you cannot directly advertise your deal if relying on a 506(b) offering. So blatantly posting that you are looking for $1,000,000 to take down an 85-unit apartment complex which will generate 12% cash-on-cash returns, is clearly a no-no. We get that.

But the biggest challenge in this category is that the SEC defines an "offer" extremely broadly and covers not only direct offers like the one above, but also what is called "conditioning the market." The SEC has long cautioned that publicity prior to a proposed offering may be considered an effort to "condition the market" and create interest in a syndicator or his/her deal in a manner that raises questions about whether such publicity is part of a selling effort.

Conditioning the Market

So, what is conditioning the market? Generally, it means any post that drums up interest in your deal and gets people excited enough to want to reach out to you. Even generic advertising to the effect that the syndicator sells securities in private placements and then inviting members of the public to call or write for additional information (the infamous "Ask me How") is a clear prohibition of the general solicitation rules as it conditions the market.

The popular tombstone posts can also condition the market. Tombstone posts are those advertisements that merely announce the completion of an offering and thank investors and all the team members. Are these considered "conditioning the market"? How can they? There is no active deal at this point, since the offering is closed.

Well, it all comes down to whether the post is used for the purpose of selling securities. In this case, future securities. How often you raise capital and when your next deal is coming down the pipeline will be a critical consideration.

Let me propose two scenarios at opposite ends of the spectrum. One is clearly ok. One is clearly not. Because every scenario is unique and the SEC will look at 'facts and circumstances', I will let you decide where your specific scenario fit in this spectrum.

Scenario 1: You are a tech start-up company that needed one-time funding to scale to the next level or maybe a real estate investor that typically does not use investor funds, but decided this particular project was an exception. In both instances, there is no intent to raise further money in the near future. Arguably, sharing a Tombstone post about how excited sponsors are for closing on the funding and thanking everyone in the process is OK.

Scenario 2: You are serial real estate syndicator who closes multiple deals a year and in fact, have one right around the corner in a few weeks, which you can't wait to get to. Now, the Tombstone post sounds a lot like "conditioning the market" for your next deal (assuming a 506(b)) and can be viewed by the SEC as you drumming-up interest for that next deal.

The further apart your tombstone post to your next deal, the better.

The same analysis I would apply to all the posts that show all the distribution checks going out for your successful deal. If you have an existing offering or an offering just around the corner, those posts may be conditioning the market.

And the most dangerous post of all…the tombstone post after you close on the property but have not yet collected all the money (meaning your raise is ongoing). When you collect the last $50,000 or $100,000 after the tombstone post, that last sale is likely compromised by your tombstone post.

There are many other examples, like bragging about prior returns or amazing track record for investors, but you get the picture. Using social media to talk about specific real estate transactions is problematic.

Bucket No. 2
(Posts that Acceptable)

There are two types of social media posts that I would argue, are within the guidelines of Rule 506b or any other exemption that prohibits advertising.

First, the SEC has been very clear that "factual information" about you and your company can be communicated without being considered advertising. The SEC acknowledges that companies need to continue to advertise their products and services even while an offering is ongoing. Just because a securities offering is planned or ongoing, a company need not stop advertising its products or refrain from issuing press releases regarding factual developments in the business (ie: for real estate investors, the status of value-add projects or the successful exit of a property.)

The SEC Staff has explicitly stated that syndicators may widely disseminate information not involving an offer of securities and not be considered advertising, including "factual information" about the syndicator that "does not condition the public mind or arouse public interest in a securities offering." Therefore, normal and usual posting of "factual information" about what you do and what your company does is permissible.

What is "factual information?" The SEC will evaluated this on a case-by-case basis, but typically should be limited to information about the syndicator's (a) business; (b) financial condition; (c) products; and/or (d) services, as well as advertisements of such products or services, provided that such information is not presented in such a manner as to constitute an offer of the syndicator's securities. However, such information does not generally include any (1) predictions, (2) projections, (3) forecasts, or (4) opinions concerning value.

As you can see, if you don't have an active deal, it is much easier to fall within the guidance provided by the SEC Staff.

Second, and in my opinion, the best way to use social media is to add value. This strategy takes time, but creating content that people find extremely valuable and want to see is an excellent way to get acquainted with people who potentially fit your investor avatar.

There is nothing preventing you from writing a report, for example, on "Why Real Estate is the Greatest Wealth Creation Vehicle of all Times" or "Why Dallas is the Only Market You Should Consider When You Invest", or "Why Mobile Homes are the Best Real Estate Assets to Consider."

Notice these are generic value-add articles that do not talk about any specific offering and do not "condition the public mind or arouse public interest in a securities offering."

Its amazing what happens when you deliver value to people. It's not that hard to find you after you make a post and it is also possible to request an email address as a prerequisite to obtaining your valuable content.

Now… a word of caution. If you get into a conversation with someone who consumes your content, you absolutely cannot jump right in and invite them to invest in your current offerings. As discussed in more detail in Chapter 4, you need to establish a 'substantive relationship' prior to offering them a deal. But this is a great way for you to at least start the process of taking someone who is a complete stranger and getting to the point where you can have discussions relating to investing in your offering.

Bucket No. 3
(Posts that Gray Areas)

There are a lot of posts that arguably fall within the gray areas which is one of the reasons I highly recommend staying away from social media during an active offering. Remember, social media is fairly new and so we don't have sufficient guidance from the SEC regarding social media posts, specifically.

This makes sense if you realize when things are going great, SEC complaints are subdued, and we haven't had a serious downturn in the markets for over a decade. Although social media existed back in 2008 and 2009, it certainly was not as widely used as it is today. It will be important to pay close attention to what the SEC focuses on when (not if) the next downturn arrives.

My hope is we will get some guidance specifically as it relates to what the SEC considers 'conditioning the market' which, I'm sure you will agree, is quite vague and open to interpretation. For now, although certainly possible, I believe not having an active deal helps tremendously in avoiding 'conditioning the market' claims, especially if you add value and talk in broad terms.

Mauricio's Solutions

I believe one of the keys to not running afoul of the securities laws is consistency. If you are constantly posting "factual information" or providing general value-add posts, then it is much harder to show that you are conditioning the market for a specific securities offering. Otherwise it doesn't look good when all of a sudden, one-week before your offering, factual information picks up and then declines right after close

Think about the scenario where you never or rarely post "factual information" or add any value and then all of a sudden, a week before your offering, you all of a sudden start posting things on social media. And then after your offering closes and you are all happy, you no longer post anything on social media. If you were to graph your activities, they would look like steep bell curve. You are much better of being consistent whether or not you have a deal. ALWAYS add value on a consistent basis. That is what creates credibility and leads to people wanting to know more about you and what you do.

This is such a hot topic, that I put together a 5-part video series on 'How to Legally Use Social Media To Raise Money" which you can access, for free, by emailing social@premierlawgroup.net.

CHAPTER 3

You Cannot Pay Unlicensed People to Raise Money For You

THIS has become an epidemic!

More than any other issue out there, this one issue is the one I believe will really bring some syndicators down whenever they start having problems with their deals, most likely caused by the next recession, whenever that happens.

The epidemic is simply this: bringing people into syndications as pure "money raisers."

As of this writing (early 2020), I am aware of at least two SEC investigations into this exact issue and my hope is that these investigations will bring with them, some much needed clarity.

In the old days (and by old days, I mean two to three years ago) it was common to see single syndicators or at most two or three syndicators. After all, most syndications can easily be done by two or three people and when you add more and more, you simply water down your returns as a sponsor. Even when more than two syndicators did a deal, these sponsors had been business partners for many years and had done multiple deals together.

However, over the past few years, we have seen the emergence of "money raisers" who's sole or primary role is to simply raise money. They go from deal to deal, offering to raise money in exchange for a "piece of the pie."

Well, the issue here is that in order to receive compensation for raising capital for others, you need to be licensed as a broker. You simply cannot compensate an unlicensed person for raising money.

A few things to consider. First, compensation is not just a cash payment. It can include any type of compensation whether membership units in the syndication entity, sharing of sponsor fees or profits and/or old fashion cash.

Second, if you are paying someone contingent on bringing in investors into the deal, or based on how much money from investors they are able to bring into the deal, you are dead in the water. Game over. End of story. Period! These types of compensation structures are known as "transaction-based" which are the hallmark of broker activity.

This doesn't mean if you avoid transaction-based compensation you are good. This simply means you haven't automatically fallen into the trap of being a broker. What needs to happen next is you need to analyze the particular 'facts and circumstances' of how the "money raiser" fits into the sponsorship group.

In order for anyone to be exempt from being considered a broker, they must fall into the 'issuer exemption' which requires the person to be a legitimate co-sponsor in the deal. They must

primarily be doing all the things that traditionally a co-sponsor would do in a deal. They would assist in the finding and vetting of deals, underwriting deals, performing due diligence, and all other functions relating to the acquisition of the particular asset. Then, once acquired, they would help manage the asset, execute on the business plan and ultimately, sell the asset. Not everyone needs to do everything on this list, as it would be reasonable to divide and conquer these tasks and responsibilities, but certainly the more tasks and responsibilities, the more likely you will be considered a legitimate co-sponsor of the deal and not simply a "money raiser."

Specifically, the issuer exemption requires (a) no transaction-based compensation, (b) sponsor engages in performing "substantial duties" and (c) the sponsor's "primary" role is to perform those substantial duties. Whether you fit into the issuer exemption is analyzed on a case by case basis looking at 'facts and circumstances.'

As you can see, there is a lot of room for interpretation, which is why I mentioned above that my hope is that these current SEC investigations will shed some light into what the SEC considers "substantial duties." I believe the other two items are fairly clear. The issue of what constitutes "transaction-based" compensation is fairly settled and "primarily" seems fairly straight forward as well. You just need to spend more time on the substantial duties than you do on the money raising.

But what about "substantial" duties? What does that cover? Is acting as an investor relations person sufficient? I believe that the analysis is not only case by case but also a sliding scale. The more ownership the sponsor has in the deal and the more money they bring in, the higher the requisite "substantial" duties they will need to prove. If the sponsor owns 2% of the deal and brings in an investor or two at the minimum amount, they can probably get away with doing less as clearly, they did not spend much time on the money raising side.

Mauricio's Solutions

Stay away from "marketing agreements" and "consulting agreements." These are common tactics that "money raisers" attempt to use to make it look like they are getting compensated for actual services as opposed to raising money.

The SEC is well aware of these tactics and at the end of the day, what you call the arrangement is completely irrelevant. It will be your burden to prove that you actually performed all the duties called for in these types of agreement and that the compensation was reasonably and commensurate with those proven duties performed.

Also, consider what your answer would be to the following question from a regulator: "What did you do in order to obtain your x% ownership in the deal?" Your answer cannot be "I helped raise the money." You will need to prove that you primarily performed "substantial duties"

CHAPTER 4

Syndicators Must Know What Constitutes a 'Pre-Existing Substantive Relationship"

By far, the most common way to establish that you have not advertised or generally solicited your syndication to a particular person is to show that you and the investor had a "substantive" relationship that pre-dated the commencement of the offering. This is not the only way, but I would argue it is used in 95% of the cases, so it is important you understand the concept around this.

I talk all about this in the following video (https://bit.ly/2X7O6FY).

According to the SEC, a relationship is "substantive" where the syndicator has sufficient information to evaluate a potential investor's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor. "Pre-existing" means pre-existing the offering.

Luckily for us, this issue is one of the few instances where the SEC has provided clear guidance on what constitutes a "pre-existing, substantive relationship." The guidance comes to us in the form of an SEC 'no-action' letter. In certain instances, syndicators will try and obtain clarity from the SEC and write a letter requesting confirmation that if they were to follow a certain fact pattern that they believe is in compliance with the SEC rules and regulations, then the SEC would not take any action against them. Often, the SEC ignores these requests, but every so often, they confirm and issue what is called a 'no-action letter.'

In the Citizen VC matter, the syndicator had the following processes and procedures in place to take a complete stranger and establish a substantive relationship with them. They asked the SEC whether what they were doing was OK, and the SEC said yes.

They offered investments and had a website that they acknowledged was public and therefore anyone could land on the website, even non-accredited investors and investors they did not have a substantive relationship with.

But they had a password protected tab on their website that the visitor did not have access to until they became a member. And to become a member, they had to establish a Substantive Relationship.

Here are the eight actions that Citizen VC did to connect with the prospective investor and collect information it deemed sufficient to evaluate the investor's level of sophistication, financial circumstances, and its ability to understand the nature and risk relating to the investment.

1. Upon landing on the homepage of their website, a visitor wishing to investigate the password protected sections of the website (accessible to Members only) had to first register and be accepted by completing a generic online questionnaire. *(Please see 'Attachment 1' for a questionnaire I have put together that you are welcome to use).*

2. Contacting the prospective investor offline by telephone to introduce a representative of the Citizen VC and to discuss their investing experience and sophistication, investment goals and strategies, financial suitability, risk awareness, and other topics designated to assist Citizen VC in understanding the investor's sophistication.

3. Sending an introductory email to the prospective investor;

4. Contacting the prospective investor online to answer questions they may have about Citizen VC, the website, and the potential investments;

5. Utilizing 3rd party credit reporting services to confirm the prospective investor's identity and to gather additional financial information and credit history information to support the prospective investor's suitability;

6. Encouraging the prospective investor to explore the website and ask questions about Citizen VC's investment strategy, philosophy, and objectives;

7. Generally fostering interactions both online and offline between the prospective investors and Citizen VC; and

8. Advising prospective investors that there will be a significant minimum investment in every deal which will be no less than $50K and in some offerings significantly higher.

All of the foregoing activities and interactions were specifically designed to create and strengthen a real, substantive relationship between Citizen VC and the prospective investor, and to verify and ensure that the offering was suitable for them.

Importantly, the SEC commented that:

1. If these are the processes and procedures that are in place, then a substantive relationship has been established;

2. They agreed that the quality of the relationship between Citizen VC and a prospective investor is the most important factor in determining whether a "substantive" relationship exists;

3. They noted that the Citizen VC's policies and procedures were designed to evaluate the prospective investor's sophistication, financial circumstances and ability to understand the nature and risks of the securities to be offered; and

4. They agreed that there is no specific duration of time or particular short form accreditation questionnaire that can be relied upon solely to create such a relationship. Whether Citizen VC had sufficient information to evaluate, and did in fact evaluate, a prospective offeree's financial circumstances and sophistication depended on the facts and circumstances.

To be clear, this is not the only way you can prove that you did not advertise or generally solicit your syndication, but following these steps would allow you to take someone you just met, a complete stranger, and turn them into a ‘substantive relationship’ so that you can offer them a *future* deal. Future deal, because that substantive relationship must pre-exist the current offering.

CHAPTER 5

Don't Use Someone Else's PPM Templates

You can always get a private placement memorandum (PPM) off the internet, but let's discuss why that is a really bad idea.

I recently spoke with a prospective client that had raised $600,000 from an investor using one of my 'templates' that she obtained at an event I had spoken at. She wrote the PPM herself!

The first thing to understand is that the goal is not to simply get your investors a bunch of disclosure documents. The goal is to raise the capital in full compliance with securities laws. While getting your investors a thorough set of disclosure documents is critical, it is just a small portion of what needs to be done. Your specific deal, structure, and compensation model needs to be vetted to ensure it fully complies with all the rules and regulations.

We discuss exactly what a PPM is below, and why it is important, but the bottom line is that the PPM is just a 'conduit or a 'pipe' that you use to provide full disclosures to your investors. The 'conduit or the 'pipe' in and of itself is worthless. What you fill-up those pipes with is what it is critical to avoid getting into trouble with the regulators.

So, let's back-track. A PPM is a legal document where you disclose all the risks involved in your syndication and all the relevant information about the deal (including a clear outline of how you are getting compensated and how you are compensating others).

I always like to analogize the PPM to a medical consent form. Have you ever gone in for surgery? Remember that yellow sheet of paper that they have you sign prior to the procedure, where they list all the ways your surgery or procedure can go wrong?

I've has oral surgery on more than one occasion (yes, I have terrible teeth) and they always give me this medical consent form where they disclose that, even though I am simply having some teeth removed, I could develop an infection, have excessive bleeding, or some prolonged I COULD DIE!

Although death is highly unlikely, it is listed. The same goes true for your PPM. No matter how unlikely or how optimistic you are, every single piece of information that an investor might feel is relevant to making an intelligent decision whether to invest in your deal must be included in the PPM.

Now, if you simply take someone else's template, you are not doing the most critical part of the process. Understanding, underwriting, and uncovering ALL the risks of your unique investment and making sure the way you are raising the money doesn't violate securities laws.

Conclusion

My goal is always to simply clarify how the legal piece fits into the overall syndication puzzle. As a syndicator, it's not your job to understand every single securities law or regulation. That is what the technicians are for (in this case your SEC lawyer).

You are the quarterback of a team and your role is to know enough about the legal piece of the puzzle to have an intelligent conversation with you attorney or at least recognize that what you are doing or about to do may require a discussion with your SEC attorney.

Syndications are a great way to scale your business and my hope is that these five things outlined in this e-book and in my YouTube, channel help you feel just a little bit more comfortable in the capital raising process.

Attachment "1"

[Preliminary Questionnaire]

U.S securities laws limit the types of investors who can invest with us. The following questionnaire is intended to assist us in determining whether you meet suitability requirements for future investments. Any information you provide here will be kept in strict confidence.

Name:

Address:

Phone:

E-Mail:

Occupation:

Title:

Date of Birth:

What types of investments do you currently have?

- Real Estate
- Stocks
- Bonds
- Retirement Funds
- Gold / Silver
- Bitcoin
- Running Business

What are your overall investment goals?
(Please put a number from 1 through 4 next to each of the following to rank your investment objectives; 1 being the highest:)

__ Cash Flow
__ Appreciation
__ Preservation of Capital
__ Tax Mitigation

What is your risk tolerance?
(Please check the box that best represents your risk tolerance.)

- Highly Aggressive
- Somewhat Aggressive
- Moderate
- Conservative
- Very Conservative

What is the value of your investments?

- Less than $100,000
- Between $100,000 - $500,000
- Between $500,000 - $1,000,000
- Above $1,000,000

Number of Private Placements Invested: __

Are you an Accredited Investor? (<Link to Definition>)

- No
- Yes (Income)
- Yes (Net Worth)

What is your approximate net worth?

- Less than $250,000
- Between $250,000 - $500,000
- Between $500,000 - $1,000,000
- Between $1,000,000 - $2,000,000
- Above $2,000,000

What is your approximate Income?

- Less than $100,000
- Between $100,000 - $250,000
- Between $250,000 - $500,000
- Over $500,000

Estimated Liquid Assets (Cash in Bank, Readily Marketable Stocks/Bonds, Precious Metals)

- Less than $100,000
- Between $100,000 - $200,000
- Between $200,000 - $300,000
- Above $300,000

Please estimate when you will need your liquidity back (such as a need for a house down payment or some other major financial need)

- Less than 2 years
- From 2 to 5 years
- From 5 to 10 years
- More than 10 years

Other Considerations

(Please feel free to add any other considerations you feel would be relevant to establishing your suitability for private placement investments, including other education, business or financial experiences, investment considerations, financial situations, trainings (including seminars, contenting education, etc) or professional licenses and certifications.)

[ ]

Thank you!