



Get ready for real estate crowd funding and more advertising for investors

May 28, 2013 - Front Section

Crowd funding, the Internet era's answer to syndication, is expected to become a viable alternative to raise equity for commercial real estate deals. Perhaps the most well known example of crowd funding is the website Kickstarter, where entrepreneurs and artists seeking money are able to post a video describing their project and set a target for funding. It's been successful and entertaining. What it has not yet been is profitable for the investors - due to securities laws, the investors were limited to the equivalent of a tee shirt, mug or sample of the product.

The much publicized 2012 Jobs Act included several measures calling for the relaxation of several of the securities rules governing crowd funding. The rules have been controversial since the opportunity to defraud small investors is great and the SEC has limited resources to combat the potential fraud.

But the rules for crowd funding have not yet been issued by the SEC and when they are issued, there will be significant limits including caps on the amount to be raised and the need for websites called portals which will be organized to permit sponsors to accept investments.

A lesser known change in the Jobs Act, however, involves a relaxation of the rule prohibiting advertising in private offerings. For decades, sponsors of a real estate deal could raise money from accredited investors (institutions or individuals with more than \$200,000 per annum in income for two years which is expected to continue or \$1 million of net worth exclusive of residence) without formal registration under the securities laws. Known as Reg D offerings for the SEC regulation governing unregistered offerings, the current rules prohibit advertising - sponsors may only use personal relationships or broker-dealers to raise the money.

Once the SEC's advertising rules are final, sponsors will be able to advertise with one qualification. Under the Jobs Act, sponsors using advertising must take steps to investigate and confirm that an investor qualifies as accredited. The advertising rule has been proposed and is expected to become final in the next few months. Expect to see significant advertising shortly after it becomes final.

Among the websites commercial real estate sponsors and brokers interested in crowd funding should follow are: Crowdmason.com - a beta site set to link accredited investors with sponsors of commercial real estate projects; Fundrise.com - this site has actual investment opportunities for west coast properties with a theme that investors should invest in their local neighborhoods; and Realtymogul.com - a Microsoft backed site also based on the west coast with several residential rehab projects closed.

Sponsors and brokers interested in pursuing equity funding to help close deals should follow me on Twitter @TDKearns over the next several months as I tweet about developments in this area.

Tom Kearns is a partner at Olshan Frome Wolosky, New York, NY.