

The Impact of SEC's Re-Interpretation of Rule 415

The following are Excerpts and Highlights of the December 06 Luncheon Presentation and Discussion by George Roth of Securities Compliance Control, LLC

The text of Rule 415 -- Delayed or Continuous Offering and Sale of Securities can be found at

<http://www.law.uc.edu/CCL/33ActRIs/rule415.html>

The SEC's revisions to Rule 415 has confused the PIPE market by raising the suggestion that large private placements constitute primary offerings. The gist of the re-interpretation, which remains without any as-yet defined boundaries, is that large raises for small companies constitute "underwritings," that the investors in such deals are "underwriters", and that such "underwriters" must sell to the market at one fixed, pre-determined price, as in a firm-commitment IPO. Sales into the market at prevailing prices are NOT acceptable. The size of the deal compared to the float of the company is key. We don't know whether it is 10%, 20%, 30% or 50%, but there is some trigger where the deal ceases to be a "resale" and becomes a primary offering. There arise therefore questions about the impact on current private offerings, as well as registered offerings already underway, submitted but not yet effective, and already completed; and other concerns about possible "aggregation" issues as well as many other questions yet to be encountered in the fallout.

At this time, panels of experts are being convened around the country to discuss the likely impact on micro cap issuance, reverse merger financing, and SB-2 issues, to come up with ideas on alternative deal structures.

On December 7 DealFlow Media is presenting a live Webinar in connection with their PIPE Report on the subject of Rule 415 and Amendments to Reg. SHO regarding short sales.

Details can be found at <http://www.dealflowmedia.com/webinars/registration10.html>

The search of the SEC Division of Corporation Finance
MANUAL OF PUBLICLY AVAILABLE TELEPHONE INTERPRETATIONS

http://www.sec.gov/interps/telephone/cftelinterps_rule415.pdf

produced little useful information bearing on the issue,

**The following was posted by Brian A. Lebrecht, Esq. on Friday,
September 15, 2006 at 17:19**

<http://www.thelebrechtgroup.com/news.asp>

Rule 415 PIPE Financings

"It has become common knowledge among those of us involved in PIPE financings that the SEC has recently changed its views with respect to these financings and Rule 415. The issue is a fairly technical one, and centers around whether or not

equity-line or convertible debenture financings where the investor doesn't put up the money until after the registration statement is effective are primary or secondary offerings.

Historically, these have been considered secondary offerings, and the registration statement covered the resale of the common stock by the investor into the public market. Secondary offerings can be done pursuant to Rule 415. However, recently, the SEC has indicated that they may consider these to be primary offerings in some cases. The problem from a practitioner's point of view is that there is no clear and definite guidance from the SEC. The last we heard, and I am told by a fellow practitioner that this was put in writing in the form of SEC comments to a registration statement, that if the number of shares being registered represents less than 20% of the issued and outstanding common stock of the issuer, then the SEC will consider it to be a secondary offering. We know that registering a number of shares greater than the outstanding is going to be considered a primary offering. Where is the line between 20% and 100%? Stay tuned.....”

The Above Posted by Brian A. Lebrecht, Esq., Friday, September 15, 2006 at 17:19 <http://www.thelebrechtgroup.com/news.asp>

There have been a number of “no action’ letters issued by the SEC regarding delayed offerings in the last 90 days, and in the light of the current circumstances, this is an avenue that an issuer may have to pursue to avoid risks in conducting offerings even after being declared effective. This very well could overwhelm the SEC staff and add to the delays already encountered in getting registrations involving Rule 415 for continuous and delayed offerings declared effective.

10/6/06 SEC No Action letter on the subject
<http://www.sec.gov/divisions/investment/noaction/2006/nuveen100606.htm>

An excellent article on the SEC attitude since the 2005 reform of Rule 415:
BEHAVIORAL ECONOMICS AND THE REGULATION OF PUBLIC OFFERINGS
http://www.lclark.edu/org/lclr/objects/LCB_10_1_Choi.pdf

In conclusion I would like to say again, experts are being convened around the country to discuss the likely impact on micro cap issuance, reverse merger financing, and SB-2 issues, to come up with ideas on alternative deal structures. We invite SCIA members to do the same, and share information and experiences related to this subject with other SCIA members.

For additional information and copies of SEC materials handed out at the presentation, contact George Roth at HYPERLINK "<mailto:groth@sccllc.net>"groth@sccllc.net