Watch out House! Here comes the Senate with it's own Crowdfunding Bill!

Congressional support and momentum for crowdfunding is growing. Crowdfunding advocates received another boost in the Senate with the proposed *Democratizing Access to Capital Act*[S.1791]. Bipartisan support combined with a lot of national support seems to indicate that it's just a matter of time before crowdfunding becomes the next big thing for startups to seek investment.

Not to be outdone by the House, Senator Scott Brown of Massachusetts introduced S.1791 "[a] bill to amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes." As proposed, there are nine major components of the legislation (see below), but it's the first two that will get most of the attention, (1) Crowdfunding offerings are capped at $1 million; and, (2) Investors are limited to no more than $1,000 per person.

Bill Status -a little bit of school house rock

S.1791 is well on its way to becoming a law. Or more accurately, it's on the path to merge with H.R. 2930 into some final passable legislation. Currently, S.1791 has been submitted, Read twice and referred to the Committee on Banking, Housing, and Urban Affairs. Translation: the Senator proposed the Bill, there were no objections, and now it's in the proper committee.

Assuming support in committee is unanimous, something that isn't assured, the Bill must be placed on the legislative calendar then debate on the Senate floor can happen. To provide some comparison, H.R. 2930, the House version, effectively flew through the process, with only two minor amendments before going in front of the entire House and receiving 407 votes in favor to just 17 votes against. In Legislative terms, that's light-speed.

Granted, if the Senate version is passed, H.R. 2930 and S.1791 will need to be reconciled. The key elements, however, such as the $1 million cap in capital, is the same in H.R. 2930. So reconciling the two Bills should be fairly painless. Fingers crossed.

I haven't yet done a deep dive on the language, but at first read it appears that the exemption is only effective if the offering is done through a intermediary such as a crowdfunding site (whatever that will be defined as). If that holds true, that will be a clear failure of this legislation and one that will hopefully be addressed in committee.

Nine major components as listed on Senator Brown's website

(1) Defines crowdfunding offerings as aggregate investment offerings of $1 million or less in any six month period. Companies seeking to raise larger amounts already have access to other funding methods.

(2) Defines crowdfunding investments as those totaling no more than $1,000 per person. This investment limit mitigates the investor's risk in any given company.

(3) Exempts crowdfunding offerings and investments made through an intermediary from certain SEC requirements. Many of these costly requirements are prohibitive for startups, deter offerings altogether, and have little positive impact on smaller investment offerings.

(4) Provides strong state and federal investor protections consistent with those afforded to other investors. This bill requires companies raising capital through crowdfunding to disclose risk, incorporate pursuant to state law, and register with the SEC.

(5) Requires crowdfunding intermediaries to positively identify issuers and conduct background checks on their principals.

(6) Cash-management must be performed by a qualified third party such as a federally-insured bank or a traditional broker-dealer. Records must be kept to SEC standards.

(7) Makes crowdfunding offerings subject to the "bad actor" provision of the Dodd-Frank Consumer Protection Act. This provision of the 2010 Wall Street reform law, which Sen. Brown supported, prevents known bad actors from participating in securities markets.

(8) Establishes trust in the marketplace by ensuring that regulated crowdfunding sites do not engage in activities that pose a conflict of interest. Intermediaries are prohibited from offering investment advice. Their employees are prohibited from having any interest in any offering made through their firm.

(9) Provides a complaint process for investors and a variety of dispute resolution avenues.

(10) Provides one nationwide standard for crowdfunding, so that investors can depend on the same rules anywhere they invest in the country. Regulations that are understandable and credible to all parties are essential to the development of any market.