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SEC Charges Crowdfunding Issuer and Portal for the First Time

On September 20, 2021, the U.S. Securities and Exchange Commission ("SEC") charged a "Crowdfunding" securities issuer ("Issuer"), three of its principals and a registered Crowdfunding portal and its CEO for the first time. The SEC complaint filed in the U.S. District Court for the Eastern District of Michigan seeks disgorgement, interest, penalties and permanent injunctions, including bans against the charged individuals. A copy of the complaint can be found **here**.

In the complaint, the SEC alleges that the Issuer and three principals raised nearly $2 million through two fraudulent and unregistered cannabis and hemp-related offerings on a registered Crowdfunding portal, hiding one of the principal's criminal history and diverting the funds raised to personal use. The portal and its CEO were also charged in the scheme for failing to police the offering and ignoring red flags about the Issuer principal's criminal history and the offerings' fraudulent nature.

Crowdfunding, legalized in the U.S. by the 2012 JOBS Act and codified in Securities Act section 4(a)(6) and SEC Regulation CF, is a quasi-public limited offering method for securities issuance exempt from Securities Act section 5 registration. Last year, the SEC raised the Crowdfunding aggregate offering limit to $5 million from $1.07 million, making the exemption more useful for Issuers but also potentially more attractive for fraudsters. See our "Raising Capital through Private Placements: Deal Points," section VI, p. 21 and Appendix 1 Securities Act Exemption Chart, available for download at **Kurtin PLLC Whitepapers and Advisories**.

We reported earlier this month that the SEC had charged three companies $539 million in disgorgement and other penalties for conducting an illegal and unregistered stock and digital assets offering (**see, SEC Charges Three Companies...,"** also available at **Kurtin PLLC Whitepapers and Advisories**). In this case, the similar disgorgement and permanent ban remedies sought by the SEC at a far lower offering dollar amount should be taken as a warning that the SEC is concerned that the availability of Crowdfunding for solicitation of the general retail investing public, unusual for section 5-exempt unregistered offerings, is enticing for potential fraudsters and that the low dollar offering limit has engendered an unhealthy belief among bad actors that Crowdfunding offerings will "fly under the radar screen," a set of circumstances that the SEC appears awakened to and determined to police.

For additional information, please contact us at **info@kurtinlaw.com**.

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