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Assembling the Team for a Regulation A Offering (and how much it costs)

To conduct a successful offering under Regulation A, you need the right team. Every offering needs a:

- Lawyer
- Platform
- Accountant
- Transaction Engine
- Internal Client Team
- Marketing Group
- Fund Manager
- Transfer Agent
- EDGAR Filer

Some offerings might also need a:

- Distribution Network
- Clearing Broker
- Escrow Agent

In this post, I'm going to explain briefly what every team member does and estimate the cost. At the end, I've included a sample worksheet for an issuer to list the team members and budget the total cost.

Be aware that the Regulation A market, like all of Crowdfunding, is just beginning. If Company X is playing this role in Regulation A and charging this much today, by tomorrow both the role and the cost could be different.

Lawyer

Role

The lawyer should understand what the client is trying to achieve and help the client achieve it. Toward that end, the lawyer:

- Helps select the type of offering
- Helps the client comply with the requirements of the offering type
- Prepares contracts and other legal documents
- Tries to protect the client from legal liability from investors and others
- Tries to balance the goals of the client in the offering with the client's other goals
- Prepares the Offering Circular
- Communicates with the SEC

Platform

Role

Regulation A doesn't require issuers to use the Internet. But it's hard to think of a reason not to.

Some issuers will sell Regulation A securities on their own platform. As things are shaping up today, however, most will list on an existing platform because of (1) the experience of the platform in conducting offerings, and (2) the built-in pool of investors the platform brings to the table.

Crowdfunding platforms are like retail stores: that's where consumers (investors) will go to buy products (securities).

Cost

The legal fees associated with Regulation A offerings vary widely, probably a sign of an inefficient market. Some lawyers charge as little as \$50,000 while others charge more than \$300,000. My own fees are toward the lower end of that range. I expect that legal fees, like all of the costs in Crowdfunding, will stabilize and fall with increasing standardization.

Cost

Platforms will be compensated in at least five ways:

- Platforms that are affiliated with broker-dealers will charge commissions, probably in the range of 4% to 8%.
- Platforms that are not affiliated with broker-dealers will charge fixed fees, as they do now for Title II offerings. For Title II offerings, the going rate is in the neighborhood of \$40,000 - \$65,000. Presumably that figure will increase for Regulation A offerings.
- Platforms that are not affiliated with broker-dealers will charge per-investor fees, in the neighborhood of \$50 - \$75 per head.
- All platforms might also ask to be reimbursed for certain out-of-pocket costs.
- Platforms might also engage in marketing activities associated with the Regulation A offering, although those that are not affiliated with a broker-dealer could find themselves walking a fine line.

Accountant

Role

The accountant audits the issuer's financial statements for a Tier 2 offering.

Cost

When the JOBS Act was enacted we fretted about the very high cost of audits, thinking an issuer might have to spend \$30,000 or more. That concern disappeared when highly qualified accountants began offering audits for under \$5,000 for a startup and under \$10,000 for a small operating company.

Transaction Engine

Role

When the investor clicks "Invest Now," at least two things must happen:

- The investor must sign documents
- The investor must transmit money for the investment

If those two tasks are not handled by the platform itself, they must be handled by a separate transaction engine.

Cost

The cost of the transaction engine is often not separately broken out. If the platform itself handles the documents and payments, the cost is typically included in the platform's fee. If an escrow agent like FundAmerica handles those tasks, the cost is typically included in its escrow fee.

Internal Client Team

Raising capital is a business within a business. The issuer should expect to spend a significant amount of time on a Regulation A offering and, if possible, designate a team and a team leader.

Among other things, the team and team leader will:

- Interface with the service providers
- Provide the service providers with information and direction
- Make decisions
- Allocate resources
- Coordinate communications
- Keep everyone on schedule
- Ensure that the business goals of the issuer are kept front and center

Marketing Group

Role

The marketing group helps to sell the securities. I'm sure a marketing firm will suggest a better description, but here are some things that come to mind:

- Help the issuer decide what kinds of securities investors want
- Help the issuer figure out an investor profile
- Determine the most cost-effective marketing channels
- Prepare written, visual, and audiovisual content
- Develop and implement a social media strategy
- Develop a test-the-waters campaign, both to gauge interest and introduce the issuer to the market

Fund Manager

Role

Once an issuer has brought on board a few hundred or a few thousand investors, somebody has to be responsible for:

- Making distributions
- Sending year-end tax forms
- Sending the reports required by law
- Sending investor relations updates
- Otherwise communicating with investors

Those tasks will overwhelm an issuer used to keeping track of its investors on a simple Excel spreadsheet.

That's where the professional fund manager comes in.

Cost

As yet there is no standard price for marketing a Regulation A offering, e.g., 10% of the raise. For one thing, the industry is too new. For another, marketing a "sexy" company that already has 25,000 Facebook followers is probably different than marketing a boring (and highly profitable) REIT. With some exceptions, most companies trying to raise, say, \$20M can probably expect to spend well into the six figures, anyway.

Cost

Today, the cost of a fund manager is in the range of \$8,000 as a setup cost and maybe 20 basis points per year charged on the capital raised.

Transfer Agent

Role

The transfer agent serves two purposes:

As the name implies, the transfer agent keeps track of who owns which securities of the issuer, in the beginning and as the securities are transferred from one person to another.

If an issuer has a class of equity securities owned by more than 500 non-accredited investors or more than 2,000 investors in total, then the issuer generally must become a full reporting company under the Exchange Act, an expensive proposition. But investors who acquire securities issued in a Regulation offering aren't counted toward these thresholds as long as the issuer satisfies certain requirements, including use of a licensed transfer agent.

Cost

For a barebones transfer agent, an issuer can pay as little as \$250 per month. For a full-service provider the cost is considerably more, but as yet there is no "standard" price for Regulation A issuers. Transfer agents come from the world of public companies with hundreds of thousands of investors, and are still adjusting to the Regulation A world.

EDGAR Filer

Role

The Regulation A Offering Statement must be filed with the SEC electronically, through the EDGAR system. That means translating all the Word, Excel, Power Point, and PDF documents into the EDGAR "language." The EDGAR filer translates the documents and files them with the SEC.

Cost

Some providers charge by the page, while others offer fixed fees. The cost is in the neighborhood of \$5,000 - \$7,500.

Distribution Network

Role

With the help of a marketing team, some Regulation A issuers will be able to fill their own offerings. Other issuers will look to a more traditional distribution network of "selling" broker-dealers.

Cost

Depending on a number of factors, including the size of the offering and the nature of the company, I would expect commissions to range between 4% and 8%. But this is a brand-new market, and it's anybody's guess.

Clearing Broker

Role

As described at length in this blog post, there is some question whether an issuer in a Regulation A offering may legally sell its own securities, in light of the laws in some states (including Texas) that seem to require that all securities be sold through licensed brokers.

So far, most Regulation A issuers seem to be taking the position that these state laws are either invalid or don't apply. An issuer wanting to take the more conservative position would have its securities sold through a "clearing broker" licensed in every state where the securities will be offered.

Escrow Agent

Role

Most Regulation A offerings (and other offerings, for that matter) have "minimums" based on the minimum offering size that would allow the issuer's business to be viable. For example, if a commercial real estate development requires \$28 million of equity, it won't do any good to raise \$22 million of equity.

These offerings typically use an escrow agent to hold investor money until the minimum investment size is achieved. If it is achieved, then the escrow agent releases the escrow funds to the issuer. If it is not achieved, then the escrow agent returns the money to investors.

Cost

Today, the cost of a clearing broker seems to be in the neighborhood of 100 basis points.

Cost

Escrow services are often bundled with other services, like technology and payment processing services. Today, 50 basis points is a going rate for a bundle of services that includes escrow services.

Worksheet

Provider	Contact Information	Cost Before Qualification	Cost After Qualification	Total Cost
Lawyer		\$ _____	\$ _____	\$ _____
Platform		\$ _____	\$ _____	\$ _____
Accountant		\$ _____	\$ _____	\$ _____
Transaction Engine		\$ _____	\$ _____	\$ _____
Marketing		\$ _____	\$ _____	\$ _____
Fund Manager		\$ _____	\$ _____	\$ _____
Transfer Agent		\$ _____	\$ _____	\$ _____
EDGAR Filer		\$ _____	\$ _____	\$ _____
Distribution Network		\$ _____	\$ _____	\$ _____
Clearing Broker		\$ _____	\$ _____	\$ _____
Escrow Agent		\$ _____	\$ _____	\$ _____

About Mark Roderick



Mark Roderick spearheads the Crowdfunding practice at Flaster/Greenberg. He writes a blog on the Crowdfunding industry at CrowdfundAttny.com, speaks at Fintech and Crowdfunding events around the country, and represents many portals and other players in the Crowdfunding field from across the U.S. and around the world. In addition to a law degree from the University of Virginia, Mark holds a Master's degree in mathematics as well as a J.D. from the University of London.

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