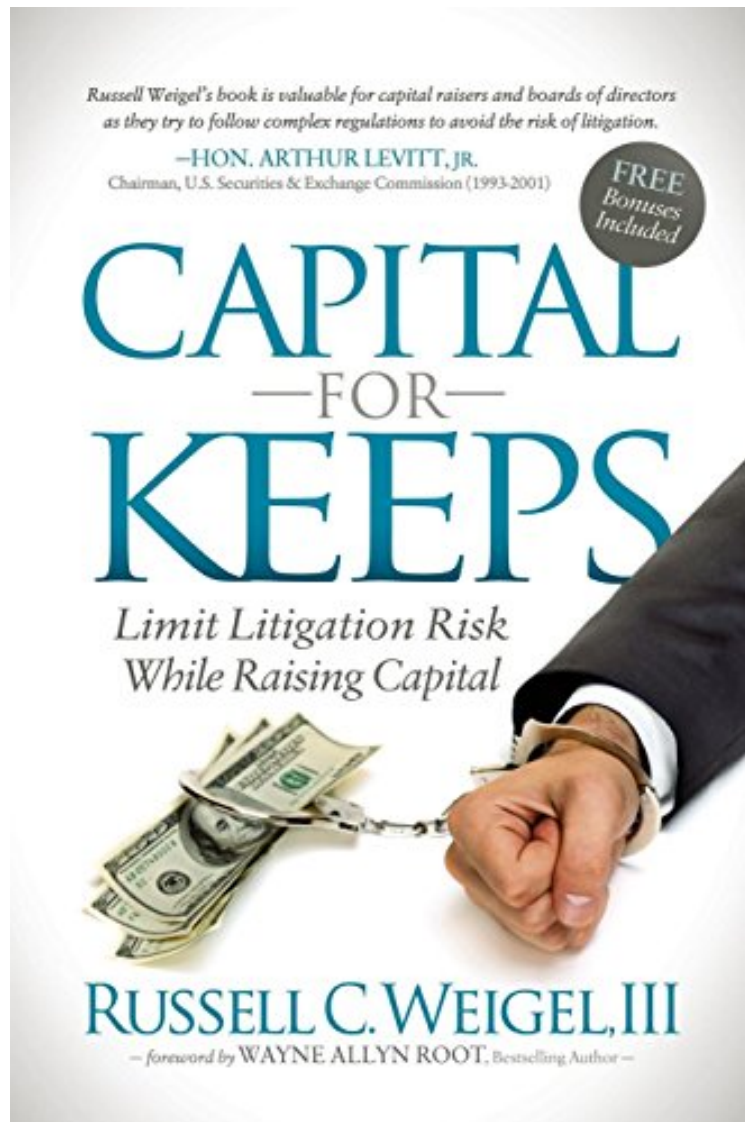


Capital For Keeps: Limit Litigation Risk While Raising Capital

Russell C. Weigel

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Raising Capital for Your Company or Your Real Estate Acquisition? Russell Weigel has been practicing securities law since 1990. For more than ten of these years he was an attorney for the Securities Exchange Commission. Since 2001, he has been in private practice counseling public and private capital raisers and defending the securities industry and corporate executives from SEC and FINRA enforcement matters. Russell Weigel opens your eyes to the risks of raising capital but shows you a path to minimize these risks. Whether private or public, companies raising capital the wrong way and not properly planning for unforeseen events can result in substantial loss. Capital for Keeps is designed to save the entrepreneur thousands of dollars in legal fees by educating them on their options and the standards of conduct expected of them to stay away from the courthouse.

Idquo;Russell Weigelrsquo;s book is valuable for capital raisers and boards of directors as they try to follow complex regulations to avoid the risk of litigation.rdquo; -- Hon. Arthur Levitt, Jr., Chairman, U.S. Securities Exchange Commission (1993-2001). Idquo;Russell's book is a great guide for small company execs. If it doesn't both help you and scare you at the same time, you weren't paying attention.rdquo; -- Jim Czirr, Executive Chairman, Galectin Therapeutics (NASDAQ: GALT). Idquo;Russell takes a very complex subject and presents it in a very readable form. This book is a must-read for startup executives. This information is important, few write about it, and no one else presents it to the people who need it most - the business community.rdquo; -- Ted Felix, CPA / Former Director AICPA Quality Control Division, a former vice-president and trustee of the New Jersey Society of Certified Public Accountants, and for a number of years the co-author of the Thomson Reuters loose-leaf treatise SEC Compliance: Financial Reporting and Forms. "Nearly every business from a start up to the most seasoned companies need capital. There are many sources of money. Connecting demand with supply while staying within the rules and regulations governing raising capital is what this book is about. Many people think they are following the correct path when looking to raise capital. Visit any business meeting, real estate investment association meeting or seminar where people are teaching how to connect with money and compare what is said and taught to what is in this book and you will see the problem. When learning a new topic it is wise to listen to an absolute expert. Russell is that person and he generously shares that expertise in this book. --Steve Pohlit, CPA / Real Estate Investing and Business Coach/ StevePohlit.comAbout the AuthorRussell C. Weigel, III, Esq., a Florida resident, has been practicing securities law since 1990. Mr. Weigel served as an attorney for the Securities and Exchange Commission (1990-2001), and then in private practice worked successively for two law firms as a securities transactional and litigation attorney (2001-2005). Mr. Weigel continued his transactional and litigation securities practice since 2005 at his own law firm. Mr. Weigel is an AV-rated securities attorney, a graduate of Vanderbilt University (B.A., 1986), and the University of Miami School of Law (J.D., 1989). Russell Weigel has been a featured speaker at conferences such as MegaPartnering VI, has taught webinars on securities law topics, and is a regular contributing author to the Microcap .Excerpt. copy; Reprinted by permission. All rights reserved.There are books on how to raise capital, how to crowdfund, how to find angel or venture capital, etc. This is a different kind of book. This book is about staying out of jail. It is about legal survival. It is about prudence. Capital for Keeps is about avoiding the errors that can force you give up the capital that you raised and more. Entrepreneurs seek and raise capital every day. Many entrepreneurs blindly seek capital from others completely oblivious to the strict laws that apply to this activity. So many people are doing it incorrectlyndash;making general solicitations for investments and advertising investment opportunitiesndash;that many people assume that it is okay to seek capital in that manner. It is not okay. In fact, under both state and federal law, the failure to adhere to strict investment or securities offering registration requirements can give rise to both criminal and civil liability for those participating in the improper investment solicitation. Recently, in August 2013, I attended a micro-finance networking event that included potential investors, real estate entrepreneurs, inventors, certified public accountants, attorneys, and start-up company representatives. I attended for the purpose of networking to generate deal flow for my law firm. I had never been to one of those events and was shocked at how blatantly start-up company representatives were permitted to showcase their companies and to pitch to prospective investors that they had never met and had never qualified. Most of the companies were seeking less than \$150,000 and some as low as \$30,000. Indeed, I was also surprised that the organizer of the event would help answer questions from the crowd and would express his personal knowledge about the enterprise that was making the pitch. In every situation he validated the bona fides of the company seeking money to the crowd. I suspect that this kind of situation goes on every day across the country. In fact, when I remarked to a couple of folks that I was surprised how this event was being conducted, one of them said

to me, "People do this all the time. They do it in "Craig's Lists" all the time. Are you telling me that that isn't legal?" Yes, I am. While I do not know whether anybody in that event was properly licensed to sell securities, no disclosure was made whether anyone was licensed as a securities broker nor whether anybody involved was being compensated for introducing or sponsoring the companies that were showcased. As far as I could tell, the companies seeking investment had no prior business relationship with most or all of the potential investors in the crowd. Although there were some attorneys that appeared to be regular participants as potential investors at these events, the attorneys did not seem concerned or cognizant that they were witnesses to potentially illegal securities offerings, and their obvious presence in the audience might have provided false comfort to the organizers and capital seekers. Indeed, no one there seemed to have any knowledge of the legal risks they were engaging in by seeking capital in this manner. No one qualified as to whether I was financially suited to engage in inherently-risky investments in startup companies. Maybe they let me in because I have grey hair. But this is the economy that we live in today. I am not rationalizing or condoning noncompliance with legal requirements because of a need to survive. The fact is that bank financing simply is not available to start up companies or entrepreneurs whose businesses are not cash flow positive. So the only way small companies and entrepreneurs can obtain capital is from potential investors. The cost of obtaining capital from non-bank sources can be very expensive. For example, investment banking or hedge fund capital typically is not available to start up companies. These institutions are looking for bigger deals with less risk and higher returns than the startup company market can offer. They may also have programmatic limitations on the percentages of any one company that they can own. Thus, they cannot invest much money without owning a large chunk of a small company, which prevents them from making any investment in a small company. Venture capital might be available, but venture capitalists often insist on owning up to 50% or more of the company in exchange for their investment dollars and typically demand an exit strategy for their investment dollars. Venture capitalists also may insist on serving as the company's accounting department so that they can ensure that their monies are only used for permissible purposes. This makes them highly involved and perhaps puts them in control of the company's cash flow. Many businesses simply do not want to give up control to strangers. That leaves friends and family, pre-existing business relationships, and the general public, as potential investment sources. Until the September 2013 effectiveness of "advertised private offerings," unless the investment offer was registered appropriately under federal or state law or both, then a solicitation of an investment opportunity to people that you do not know was invariably illegal. The temptation and perhaps individual need to solicit funds from the general public is obvious because there are simply so many people out there who can be solicited. How wealthy are your friends, family, and pre-existing business relationships? For many entrepreneurs, these known persons lack the capital to contribute to the enterprise. They are not a realistic option. So, you ask, what can possibly go wrong? Frankly, deals do blow up. Companies fail every day. We live in a litigious culture. Personal liability for fraud, misrepresentation, unregistered securities sales, and unlicensed securities broker activity is the law in every state. Litigation is a possibility in every investment deal unless steps are taken to minimize the possibility of, or the possibility of the success of, such reputational-damaging allegations. Would you expect to be sued for securities fraud when your real estate investment goes south? How can that be avoided or the risk made more limited? Such legal theories can and are thrown at entrepreneurs and corporate management every day in attempts by investors to recoup their investments and shift their losses back to the investment promoter and issuer. In this book I attempt to show the entrepreneur and small company executive how to limit litigation risk while raising capital. Nobody can always predict the future accurately. If you knew your deal was going to explode, you would have taken steps in advance to minimize the consequences. Planning is everything. Prepared people persevere. There is a map to the minefield. What is the safest route? "Safer" means limiting your legal exposure because every capital raising event has potential legal exposure and consequences. In essence, you can seek investment funds from others in a legally compliant manner and reduce the risk of civil or criminal litigation from investors, securities regulators, and criminal authorities. While no book can be a substitute for competent professional advice and counsel, if you are made aware how you can raise capital in a legally compliant way, you will be able to make better decisions about your own abilities and whether and when to seek professional assistance. Know also that the securities laws will not allow you as the executive of the issuer to shift blame on your advisors and counselors. Your name is on the dotted line. You are personally responsible. If you are an entrepreneur or small company executive seeking investment funds for your business, to buy other companies, or to finance a real estate or other business acquisition, this book is for you.