Sponsored: Don’t Let Escrow Account Delays Hold Up Your Offering Launch

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By: Tim Cook, manager of corporate trust national sales, UMB Bank.

Even when an offering doesn’t require investor funds to be held in escrow, investors may insist on it. We have even seen some offerings get to the halfway point and have to pause and relaunch because some investors decline to participate until an escrow account is in place. In this post, we’ll take a brief look at three scenarios that show why escrow arrangements are best practice. Then we’ll relay three potential pain points to avoid.

What can go wrong.

Escrow accounts protect against both major and minor problems. At the major end of the spectrum is the potential for investor funds to be disbursed to a project prior to formal completion of the offering. In the event the offering
were pulled back, investors’ capital—not to mention the issuer/sponsor’s reputation—would be at risk.

Here are three typical scenarios in which an escrow account protects all parties:

Order threshold not met. Issuer/Sponsor fails to receive orders for the designated minimum level of subscriptions within the maximum offering period and are unable to close under their original terms. Funds would be returned to all investors.

Investor subscription documents not accurate or complete. Funds are held in escrow until the document errors are corrected or funds are returned to the investor.

Investor not qualified to participate. Investor doesn’t meet the minimum requirements for the definition of an Accredited Investor. Funds are returned to the investors. With the SEC recently announcing an expansion of the definition of Accredited Investor, close attention to this topic is even more imperative.

In the event one of these occurs, the escrow agent will return funds to the investor(s).

Escrow-related delays

In our conversations with industry participants, we hear most about timing-related pain points in these three areas:

Offering launch. An offering can take considerable time to plan and launch, the last thing you need is for your escrow agent to take more than a few days to establish the escrow account. A delay in establishing the escrow account can significantly impact the launch of your offering. Realize you may need your documentation amended as your offering evolves. Ask to work with a dedicated relationship manager to ensure the process doesn’t get stuck on procedural snags.

Capital deployment. Your escrow agent should be prepared to provide a daily accounting of all incoming investor funds. If your escrow agent doesn’t provide real-time reporting, then you run the risk of not being able to deploy investor capital as quickly and efficiently as you would like.

Project funding. Once the terms of the escrow account allow for funds to be released, your escrow agent should have the ability to release funds same day. Any delay in the release of the escrow deposits can significantly hinder the project timeline.

We also suggest establishing your escrow account as soon as possible in the securities offering process. In addition to avoiding any potential bottlenecks, the escrow arrangement itself contributes to a comprehensive, prepared pitch to potential investors.

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Tim Cook is UMB Bank’s manager of corporate trust national sales.

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