Facebook and Groupon: Faux I.P.O.s & Lame PPMs

The sizzling, shadowy secondary market in Groupon, Facebook, Zynga and other tech start-ups is based on private offerings with private placement memorandum that lack the necessary information for an informed decision by smaller investors.

Other than the private offering exchanges that have been getting a lot of ink lately, there are new ways to get in on the trendy secondary market. For instance, Andrew Ross Sorkin mentioned a closed end mutual fund formed just, ". . . as a way for mom and pop to acquire shares of Facebook without being a wealthy client of Goldman Sacks."

These private offerings are in fact public offerings, as everyone knows. [What happened was that Federal regulators have allowed Rule 506 of Regulation D to permit hundreds of individuals to be one investor. Go figure. What is the reason for the rule again?] A PPM contains whatever a lawyer decides to put into it; it is a legal cowboy land: there are no rules other than "disclosure." Disclose what?

Facebook's private placement memorandum (PPM) does not disclose all that it could; it does not comply with financial reporting requirements and other regulations applicable to a public offering; it merely discloses revenue and profit for the last two years. Similar money raising efforts by other companies will eventually result in claims by investors asking why they were not told all the known facts when they were asked to invest.

Doubt It? "*Groupon Raises, Like, a Billion Dollars*:" That was the headline of recent press release from Groupon corporate headquarters announcing a $950 million capital raise, allowing the board of directors to cash out over $344 million. Without full disclosure, the insiders are already taking out a third of a billion, and making an (admittedly funny) joke out of it! If they can do that, others may well decide to push the envelope in non-disclosure while raising money, with the usual social cost and legal fees down the road.