

due no later than fifteen (15) days after the first date of sale in the State. There is no limit on the dollar amount raised. **Note: The SEC has recently amended Rule 506 to permit general advertising in certain types of Rule 506 securities offerings.** See MCA §75-71-302(c) and Rule 229.



Offerings Only to “Accredited Investors.” State law provides an exemption for offerings by certain non-excluded issuers to accredited investors. A general announcement is permitted, but it may only contain certain information. **Requirements:** a Notice of Transaction filed with the Securities Division, including a copy of the general announcement, and a \$300 filing fee due no later than fifteen (15) days after the first date of sale in the State. See MCA §75-71-203 and Rule 717.

Domestic Issuer Offerings to 35 or Fewer Purchasers. State law also provides an exemption for issuers organized in Mississippi for sales to both residents and non-residents. **Requirements:** MS Rule 703 form, prospectus and a \$300 filing fee to be filed with the Secretary of State’s Office and written acknowledgment by the Securities Division prior to sales; sales to not more than 35 persons; and no general advertising is permitted. There is no limit on the dollar amount raised. See MCA §75-71-203 and Rule 703.

Coordination with Federal Exemptions

All securities sold in Mississippi must also be properly registered or exempted under federal law. Like the Securities Act, federal securities laws contain certain exemptions from securities registration. The following is a list of commonly used federal registration or exemption provisions which may have corresponding State provisions. **Remember, even notice filings made with the Securities Division require filing fees.**

Federal Regulation A and Rule 504. Mississippi has no corresponding exemption to these federal exemptions. Offerings made pursuant to these federal exemptions must be registered with the Securities Division by qualification.

Federal Regulation D Rule 505. Administrative Rule 701 (§75-71-203) (ULOE) generally provides a corresponding Mississippi exemption for an offering up to \$5 Million, pursuant to Federal Regulation D Rule 505.

Federal Regulation D Rule 506. Mississippi Administrative Rule 229 (§75-71-302(c)) generally provides a corresponding exemption for securities offerings pursuant to Federal Regulation D Rule 506.

Section 3(a)(11)/Rule 147. Section 75-71-202(14) of the Securities Act is the most commonly used exemption for small (10 or fewer purchasers) intra-state offerings exempt federally pursuant to Section 3(a)(11) of the 33 Act or Federal Rule 147. For intra-state offerings with over 10 purchasers, the Domestic Issuer Offering exemption (§75-71-203; MSA Rule 703) may be used for up to thirty-five (35) purchasers. Intra-state offerings under Section 3(a)(11) of the 33 Act or Rule 147 with more than thirty-five (35) purchasers generally must be registered with the Securities Division.

ABOUT THE SECURITIES DIVISION

The Securities Division of the Office of the Secretary of State is responsible for regulating the offer and sale of securities investments. These may include many types of stocks, bonds, limited partnerships, viatical settlement investment contracts, some oil and gas investments, and other investment contracts. Other activities include the registration of securities offerings, the licensing of broker-dealers and investment advisers, and the investigation of alleged violations of securities laws. The Securities Division may be reached by calling (601) 359-1334 or toll free at (888) 236-6167.



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
Securities Division
(601) 359-1334
Fax: (601) 359-1499
www.sos.ms.gov**

Mississippi
Securities Law
for Start Up and
Small Businesses



DELBERT HOSEMANN
Secretary of State

Mississippi Secretary of State
401 Mississippi Street
P.O. Box 136
Jackson, Mississippi 39205
(601) 359-1350

Cheryn Netz
Assistant Secretary of State
Securities Division
601-359-1334

There are many legal considerations in the start-up and operation of a small business, such as the legal structure of the entity (corporations, LLC, partnership, etc.), tax considerations and filing requirements with various government agencies.

Federal and State securities laws apply when a business seeks to raise money by issuing ownership interests (stocks membership or partnership interests), debt obligations (bonds or promissory notes), or when the business promises a return to investors.

This brochure provides basic general information about Mississippi securities laws, *but is not a substitute for competent legal counsel.* Additional information should be obtained by contacting the Securities Division and reviewing the Secretary of State website at www.sos.ms.gov. See the Federal Securities and Exchange Commission (<http://www.sec.gov>) website for information on Federal securities law.

An overview of the Mississippi Securities Act

The Mississippi Securities Act and administrative rules which are administered and enforced by the Securities Division of the Secretary of State's Office apply to all sales of securities in Mississippi. See MCA §75-71-101 et seq.

A security is defined in §75-71-102(28) of the Securities Act and includes a wide range of investment opportunities, business plans, and typical investments, such as stocks, bonds, options, and promissory notes. The Securities Act also includes formal legal documents constituting investment contracts. An investment contract includes, among other contracts: an investment in a limited partnership, an interest in an LLC, or an

investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor.

A "sale" is broadly defined in the Securities Act to include every contract of sale, contract to sell, or disposition of a security or interest in a security for value.

An "Offer to sell" includes every attempt or offer to dispose of, or solicitation of, an offer to purchase a security for value.

If the Securities Act applies: (1) the person selling the securities must be registered with the Securities Division or properly exempted from registration; (2) the securities being sold must be registered with the Division or exempt from registration; and/or (3) anti-fraud standards apply and prohibit fraudulent tactics, including false representations and omissions, in the sale of securities. Similar aspects of the Federal securities law also apply.

The Act's anti-fraud standards

The Securities Act's anti-fraud standards prohibit fraudulent activities, statements, behavior and omissions in connection with the offer or sale of a security. The standards



also provide for penalties for filing inaccurate or misleading information. Violation of these standards may result in both civil liability and criminal prosecution, and may also result in administrative actions. Those actions include the denial or revocation of a registration and sale of securities in Mississippi.

The Act's registration requirements

The Securities Act requires:

- All securities issuers or agents of an issuer must be registered with the Securities Division, or properly exempted from registration.
- All securities broker-dealers and broker-dealer agents must be registered with the Securities Division, or properly exempted from registration.
- All investment advisers and adviser representatives must be registered with the Securities Division, or properly exempted from registration.

Securities Act: Registration and exemption

The following information is a summary of these requirements. Comprehensive requirements and additional details on how to comply are set forth in the Mississippi Securities Act and administrative rules.

Perhaps the most important consideration for a small business seeking to raise money by issuing securities is registration. All securities sold in Mississippi must be registered with the Secretary of State's Office or properly exempted from registration.

- **Securities Registration.** There are two ways to register securities with our office under the Securities Act. An issuer registering securities with the Securities and Exchange Commission under the Securities Act of 1933 may file a registration by

coordination with the Securities Division. Issuers not eligible for registration by coordination may pursue registration by qualification.

- **Exemptions from Securities Registration.** Because securities registration can be complicated and time-consuming, issuers of securities often seek to fit within an exemption. The most commonly available exemptions to the Mississippi securities laws for start-up and small businesses are:

Ten or Fewer Purchasers. The Securities Act provides an exemption for the sale of securities by the issuer to not more than ten (10) purchasers in Mississippi. There is no limit on the dollar amount raised. **Requirements:** the issuer must believe the investors are purchasing for investment; sales commissions may only be paid to broker-dealers and agents who are registered in Mississippi; and no general advertising is permitted. No filing with the Securities Division is required for this exemption. See MCA §75-71-202(14).

Private Offerings up to \$5 Million. The administrative rules provide a uniform limited offering exemption (ULOE) for private offerings up to \$5 Million. **Requirements:** compliance with Federal Rule 505 and a notice filing with the Securities Division of a Form D, prospectus and \$300 filing fee; written acknowledgement by the Securities Division prior to sales; sales commissions may only be paid to registered broker-dealers and agents; sales to not more than thirty-five (35) persons; and no general advertising is permitted. See Rule 701.

Offerings Pursuant to Regulation D Rule 506. State rules and regulations provide an exemption for transactions within the "safe harbor" of Federal Rule 506. **Requirements:** compliance with Federal Rule 506 and a notice filing with the Securities Division of a Form D and \$300 filing fee