

## **RULE 2.04**

### **Title 1: Secretary of State**

#### **Part 14: Securities - Securities Regulation**

##### **Part 14 Chapter 2: Notice Filing and Registration of Securities**

*Rule 2.04 Invest Mississippi Crowdfunding Simplified Registration Statement.* By authority delegated to the Secretary of State in Section 75-71-307 of the Act, and for the purposes of simplifying the registration statement for smaller offerings, the Division has adopted the Invest Mississippi Crowdfunding Simplified Registration Statement to be used as the registration statement for securities being registered under this Rule and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified herein. This rule offers an alternative method for state registration for issuers that are exempt from federal registration pursuant to Rule 504 of the SEC Regulation D, 17 CFR Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Section 77a, *et seq.*, and any amendments thereto.

A. Definitions. The following terms, as used in this Rule, shall have the meaning ascribed to them below unless the context requires otherwise:

1. **Accredited investor** is defined in 17 CFR 230.501(a) as currently enacted or as amended, and a non-accredited investor means an investor who does not meet the definition of an accredited investor.
2. **Annual Income** means:
  - a. For individuals, the sum of the individual's:
    - i. Wages, salary, commissions, bonuses and tips from all jobs before deductions for taxes, dues or other items;
    - ii. Self-employment net income (after business expenses);

- iii. Retirement pensions from companies and unions; Federal, State and local governments; and the U.S. military;
  - iv. Monthly income from annuities, IRAs or KEOGH retirement plans;
  - v. Interest, dividends, and rental income; and
  - vi. Partner, shareholder, and beneficiary income as reported to the Internal Revenue Service on Schedule K-1(Form 1065) (a reported loss on Schedule K-1 is counted against the sum of income).
- b. For entities: If investor is an entity, then the income determined in excess of expenses, including depreciation, determined before taxes and as filed with the Mississippi Department of Revenue or the Internal Revenue Service on the entity's last tax return.
3. **Bank** means a depository institution that is organized or chartered under the laws of Mississippi or of the United States, is authorized to do business in this State, and is located in Mississippi.
  4. **IMC Statement** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Simplified Registration Statement."
  5. **Intermediary** means a person that is registered with the Division pursuant to this Rule to be an intermediary who has been or will be retained by the issuer in conducting the offering and sales of securities through an Internet website. An intermediary can be a broker-dealer or agent that is registered with the Division or a bank or an intermediary funding portal.
  6. **Intermediary Funding Portal** is a person that is operating an Internet website and who is not a bank, or is not a broker-dealer or agent registered under the Act.
  7. **Intermediary Registration Form for Banks** means the document, as adopted by the Division, entitled "Intermediary Registration Form for Banks."
  8. **Intermediary Registration Form for Broker-Dealers** means the document, as adopted by the Division, entitled "Intermediary Registration Form for Broker-Dealers."
  9. **Intermediary Registration Form for Intermediary Funding Portals** means the document, as adopted by the Division, entitled "Intermediary Registration Form for Intermediary Funding Portals."

10. **Issuer** means a limited liability company or business corporation formed under the laws of the State of Mississippi that seeks to conduct an offering of securities in reliance on the this Rule.

11. **Minimum Target Offering Amount** when used in this Rule shall mean fifty percent (50%) of the total offering amount of an offering made by the issuer in reliance on this Rule which amount shall be set out on the IMC Statement.

12. **Net Worth** means the amount by which an investor's assets exceed liabilities, excluding the investor's primary residence, as defined in 17 CFR Section 230.501(a)(5)(i).

13. **Offering Deadline** when used in this Rule shall mean the date stated in the IMC Statement by which the sum of the offering proceeds held in escrow will equal the minimum target offering amount or investors may request a refund of their investment.

14. **Qualified Purchaser** is defined in Section 2(a)(51) of the Investment Company Act of 1940, as currently enacted or as amended.

15. **Rule 504**, when used in this Rule means Rule 504 of the SEC Regulation D, 17 CFR Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Section 77a, *et seq.*, and any amendments thereto.

B. Short-form registration statement. For any offer or sale of securities offered or sold in compliance with Rule 504 of SEC Regulation D, 17 CFR Section 230.504, promulgated pursuant to the Securities Act of 1933, 15 U.S.C. Section 77a, *et seq.*, and any amendments thereto, the IMC Statement shall be used as the registration statement required to be filed with the Division under this Rule. A copy of the IMC Statement is available upon request. Any offer or sale of securities offered or sold in compliance with this Rule must satisfy the following conditions and limitations:

1. The issuer of the securities is a business corporation or limited liability company formed under the laws of this State, with a principal place of business in this State and authorized to do business in this State;
2. The issuer is not either before or as a result of the offering, an investment company, as defined in Section 3 of the Investment Company Act of 1940, 15

USC Section 8a-3, or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC Section 78m and 78o(d);

3. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the simplified registration provided under this Rule during the 12-month period preceding the date of such transaction, is not more than One Million Dollars (\$1,000,000.00).
  - a. If the issuer has been in existence for twelve (12) months or more the issuer must provide to each prospective investor a balance sheet and statement of income and expense of its most recently completed fiscal year and interim quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Statement.
  - b. If the issuer has been in existence for less than twelve (12) months, the issuer must provide to each prospective investor a balance sheet and statement of income and expense for the time period since its existence.
  - c. The issuer shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Statement.
  - d. The financial statements, which may be unaudited, shall be signed by the principal executive officer of the issuer who shall certify under penalties of perjury that the statements therein are true, complete and correct in all material respects to the best of the signer's knowledge.
4. The aggregate amount sold to any single investor by multiple issuers in reliance on this Rule during the 12-month period preceding the date of such transaction:
  - a. For accredited investors, the aggregate amount sold by multiple issuers to any single accredited investor does not exceed the greater of:
    - i. If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together

with their spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or

ii. If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).

b. For non-accredited investors, the aggregate amount sold to a single non-accredited investor by multiple issuers does not exceed the greater of:

i. Five Thousand Dollars (\$5,000.00);

ii. If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with their spouse if married), five percent (5%) of the investor's annual income; or

iii. If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.

c. For investors that are qualified purchasers there shall be no aggregate limit on the amount the qualified purchaser investor can purchase from a single issuer or multiple issuers in offerings conducted pursuant to this Rule.

5. No remuneration shall be paid or given, directly or indirectly, for any person's participation in the offer or sale of the securities for the issuer unless the person is registered as an intermediary as such term is defined in subsection (A)(5) of this Rule.

6. All funds received from investors shall be deposited into a bank and all the funds shall be used in accordance with the representations made to investors and in accordance with the terms of an escrow agreement which provides that:
  - a. The investor funds will be deposited into an escrow account with the bank acting as escrow agent;
  - b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement setting forth the names, addresses and respective amounts paid by each investor whose funds comprise each deposit;
  - c. The issuer must raise the minimum target offering amount specified as necessary to implement the business plan by the offering deadline before the escrow agent may release the offering proceeds to the issuer upon joint written notice from the issuer and the intermediary;
  - d. If the issuer does not raise the minimum target offering amount by the offering deadline, investors will have the option to obtain a refund of their investment by providing written notice to the intermediary, which shall provide written notice to the issuer and the escrow agent at which time the escrow agent upon written notice from the intermediary shall return the investor's amount contributed;
  - e. All offering proceeds not returned to the investor by the escrow agent after the offering deadline as provided above will be released to the issuer when the escrow agent has received written notice from the issuer to release the remaining proceeds to the issuer; and
  - f. All offering proceeds not returned to the investor or released to the issuer after twelve (12) months may be returned to the investor by the escrow agent to the last known address of the investor, or if not, shall be submitted to the State Treasurer in accordance with the unclaimed property laws.

- g. The bank as escrow agent may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the minimum target offering amount is reached.
- 7. No offerings of securities shall be made in reliance on this Rule until the issuer files the IMC Statement, with the Division, completed with specificity as required by the instructions in the Statement and as required by the Division, in writing or in electronic form as specified by the Division, and the issuer is issued a Certificate of Invest Mississippi Crowdfunding Registration from the Division. The issuer must also include in such filing a copy of the escrow agreement as required by subsection (B)(6) above, all other exhibits to the IMC Statement as otherwise specified by the Division and any other documents or information the Division may require to administer and enforce the requirements of this Rule.
- 8. Registration by this Rule shall become effective on the issuance of a Certificate of Invest Mississippi Crowdfunding Registration by the Division which shall be issued within five (5) business days of receiving the completed IMC Statement and all other exhibits to the IMC Statement except as otherwise specified by the Division.
- 9. The completed IMC Statement, including exhibits shall be provided to the relevant intermediary and shall be made available to potential investors after the Certificate of Invest Mississippi Crowdfunding Registration has been issued by the Division.
- 10. The issuer shall inform all investors under this Rule that the securities have not been registered under federal securities law.
- 11. Prior to the consummation of a purchase, the issuer shall require the prospective investor to certify in writing or electronically as follows:
  - a. The investor's name, address, social security number, annual income and net worth; and, if applicable, that each investor is either an accredited investor or a qualified purchaser;

b. The aggregate amount of securities sold to the investor in reliance on this Rule during the 12-month period preceding the date of the purchase, together with the securities to be sold by the issuer to the investor:

i. For accredited investors that are not qualified purchasers the investor has not invested more than:

(1) If the investor has had an annual income of at least Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or Three Hundred Thousand Dollars (\$300,000.00) together with their spouse if married) and have the expectation to make the same amount in the current year, five percent (5%) of the investor's annual income, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00); or

(2) If the investor's net worth is at least One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth, not to exceed the aggregate amount of Fifty Thousand Dollars (\$50,000.00).

ii. For non-accredited investors, that the investor has not invested more than the greater of:

(1) Five Thousand Dollars (\$5,000.00);

(2) If the investor has had an annual income of less than Two Hundred Thousand Dollars (\$200,000.00) each year for the last two (2) years (or less than Three Hundred Thousand Dollars (\$300,000.00) together with their spouse if married), five percent (5%) of the investor's annual income; or

(3) If the investor's net worth is less than One Million Dollars (\$1,000,000.00), five percent (5%) of the investor's net worth.

12. Securities may only be registered pursuant to this Rule if they meet the requirements set forth in Rule 504.

C. Offers and sales of securities pursuant to this Rule shall be made exclusively through an Internet website that is operated by an intermediary. Each issuer and intermediary shall comply with the following:

1. Before any offer or sale of securities, the issuer must provide to the intermediary evidence the issuer is organized under the laws of Mississippi and is authorized to do business in Mississippi.
2. An intermediary is not required to register as a broker-dealer under the Act if all the following apply with respect to the Internet website and its operator:
  - a. It does not offer investment advice or recommendations;
  - b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet website;
  - c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet website;
  - d. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;
  - e. The fee it charges an issuer for an offering of securities on the Internet website is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet website, or a combination of the fixed and variable amounts;

- f. It does not identify, promote, or otherwise refer to any individual security offered on the Internet website in any advertising for the Internet website; and
  - g. Neither the intermediary, nor any director, executive officer, general partner, managing member, or other person with management authority over the intermediary, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933 (17 CFR 230.506(d)(1)) that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933 (17 CFR 230.506(d)) from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933 (17 CFR 230.506(a) to 17 CFR 230.506(c)).
- 3. If any change occurs that affects the intermediary's registration, the intermediary must notify the Division within thirty (30) days after the change occurs. Within thirty (30) days of the delivery of the notice to the Division, the intermediary, shall, unless otherwise permitted or directed by the Division, cease and desist from operating as an intermediary pursuant to this Rule and shall notify each issuer within five (5) business days that the intermediary is conducting offerings for that the intermediary's registration has been revoked.
- 4. Subject to subparagraph (3) above, persons desiring to be an intermediary must register with the Division to be an intermediary.
  - a. Registered broker-dealers may register to be an intermediary by filing the Intermediary Registration Form for Broker-Dealers with the Division, a copy of which is available upon request. No filing fee shall be required for registered broker-dealers acting as intermediaries. The Form shall include the following information:
    - i. The identity and location of, and contact information for the broker-dealer, including the broker-dealer's CRD number;

- ii. The broker-dealer is authorized to do business in Mississippi; and
  - iii. The broker-dealer is using an Internet website to offer and sell securities pursuant this Rule.
- b. A bank may register to be an intermediary by filing the Intermediary Registration Form for Banks with the Division, a copy of which is available upon request. No filing fee shall be required for banks acting as intermediaries. The Form shall include the following information:
  - i. The identity and location of, and contact information for the bank;
  - ii. The bank is authorized to do business in Mississippi;
  - iii. The bank is using an Internet website to offer and sell securities pursuant to this Rule; and
  - iv. The bank meets the requirements set forth in subsection (C)(2) of this Rule.
- c. An Internet website operator may register to be an intermediary by filing the Intermediary Registration Form for Intermediary Funding Portals, a copy of which is available upon request, accompanied by a nonrefundable annual filing fee of Two Hundred Dollars (\$200.00), that includes the following information:
  - i. The identity and location of, and contact information for the intermediary funding portal;
  - ii. The intermediary funding portal is authorized to do business in Mississippi;
  - iii. The intermediary funding portal is using an Internet website to offer and sell securities pursuant this Rule; and
  - iv. The intermediary funding portal meets the requirements set forth in subsection (C)(2) of this Rule.

5. The intermediary funding portal is not required to register as a broker-dealer under subparagraph (4) above if the intermediary funding portal is a funding portal registered under the Securities Act of 1933 (15 U.S.C. 77d-1) and the SEC has adopted rules under authority of Section 3(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(h)) and P.L.112-106, Section 304, governing funding portals.
6. Registration as an intermediary expires at the close of the calendar year, but subsequent registration or for the succeeding year shall be issued upon filing of a renewal form, a copy of which is available upon request and upon payment of the appropriate renewal fee.
7. The issuer must maintain records of all offers and sales of securities effected through the intermediary and must provide ready access to the records to the Division, upon request.
8. The intermediary shall maintain and preserve for a period of five (5) years from either the date of the document or communication or the date of the closing or termination of the securities offering, whichever is later, the following records related to offers and sales made of issuer securities effected by the intermediary through the intermediary's Internet website and related to transactions in which the intermediary receives compensation from the issuer for such services, including but not limited to:
  - a. Records of compensation received for acting as an intermediary for an issuer, including the name of the payor, the date of payment and name of issuer;
  - b. Name of the issuer, and name, address and amount of purchase of investor for each offering effected by the intermediary through the intermediary's Internet website;
  - c. Copies of information provided by the intermediary to issuers offering securities through the intermediary, prospective purchasers, and investors;

- d. Any agreements and/or contracts between the intermediary and an issuer, prospective purchaser, or investor;
  - e. Any information used to establish that an issuer is a Mississippi resident;
  - f. Any information used to establish that a prospective purchaser or investor is an accredited investor or qualified purchaser;
  - g. Any correspondence or other communications with issuers, prospective purchasers, and/or investors;
  - h. Any information made available through the Internet website relating to an offering; and
  - i. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.
9. The records of an intermediary under this Rule are subject to the reasonable periodic, special, or other audits or inspections by the Division, in or outside Mississippi, as the Division considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Division may copy, and remove for audit or inspection copies of, all records the Division reasonably considers necessary or appropriate to conduct the audit or inspection. The Division may assess a reasonable charge for conducting an audit or inspection under this Rule.
10. The intermediary:
- a. Shall not hold, manage, possess, or handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;
  - b. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Section I of this Rule determine if such person is subject to any disqualification contained in SEC Rule 262 as promulgated under the Securities Act of 1933 (17 CFR Section 230.262).
  - c. Shall ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than

the minimum target offering amount and allow investors to cancel their commitments to invest and obtain a refund if the minimum target offering amount is not raised by the offering deadline;

- d. Shall ensure that each investor answers questions demonstrating:
  - i. An understanding of the level of risk generally applicable to investments in startups and small issuers; and
  - ii. An understanding of the risk of illiquidity, including an acknowledgment that there is no ready market for the sale of the securities acquired from an offering under this Rule; it may be difficult or impossible for the investor to sell or otherwise dispose of an investment under this Rule and the investor may be required to hold and bear the financial risks of this investment indefinitely.

11. The intermediary shall not purchase or receive more than fifteen percent (15%) of the securities in the offering and shall prohibit its directors, officers or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services as an intermediary, unless the financial interest in the aggregate does not exceed fifteen percent (15%) of the ownership of the issuer.

12. All communications between the issuer, prospective purchasers, or investors taking place during the offer of securities pursuant to this Rule must occur through the intermediary's Internet website. Notwithstanding the foregoing, the issuer or the intermediary may distribute a notice limited to the statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted and a link directing the potential investor to the intermediary's website.

D. Report. For so long as securities registered under this Rule are outstanding, the issuer shall provide a quarterly report to the issuer's investors. The report required by this Rule shall be free of charge. An issuer may satisfy the reporting requirement of this Rule if the

information is made available within forty-five (45) days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. The issuer must provide a written copy of the report to any investor upon request. The issuer shall make each such quarterly report available to the Division upon request. The report must contain each of the following:

1. Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and
  2. An analysis by management of the issuer of the business operations and financial condition of the issuer.
- E. The Division and every investor or prospective purchaser shall be notified within thirty (30) days of any material change in the issuer's information submitted in accordance with this Rule.
- F. A Certificate of Invest Mississippi Crowdfunding Registration is effective for one (1) year after its effective date. Applicants for registration under this Rule may re-register a security by submitting a report for sales of the securities sold in Mississippi for the preceding twelve (12) month period.
- G. A notice of termination or completion of the offering under this Rule must be filed with the Division within thirty (30) days of termination or completion stating (1) the name of the issuer, (2) a description of the securities registered in Mississippi, (3) the aggregate amount of securities registered in Mississippi, (4) the aggregate amount of securities sold in Mississippi, and (5) the date the offering was completed.
- H. Offers and sales to controlling persons shall not count toward the limitation in subsection (B)(4) of this Rule. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

- I. Disqualification. The simplified registration allowed by this Rule shall not apply if the issuer, any of its officers, directors, ten percent (10%) or greater stockholders, promoters, or selling agents, or any officer, director or partner of any selling agent is subject to any disqualification contained in SEC Rule 262 as promulgated under the Securities Act of 1933 (17 CFR Section 230.262).
- J. Nothing in this Rule shall be construed to alleviate any person from the antifraud provisions of the Act, nor shall such simplified registration be construed to provide relief from any other provisions of the Act other than as expressly stated.
- K. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the registration of an intermediary for any reason as determined by the Administrator in his sole discretion.