SOS APA Form 001

Mississippi Secretary of State
125 South Congress St., P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME		CONTACT PERSON	TELEPHONE NUMBER	
Mississippi Secretary of State		Cheryn Netz	601-359-1334	
ADDRESS		CITY	STATE	ZIP
125 S. Congress Street		Jackson	MS	39201
EMAIL	SUBMIT DATE	Name or number of rule(s):		
Cheryn.netz@sos.ms.gov	01/12/16	Title 1 Part 14, Rule 7.21 Invest Mississippi Crowdfunding Intrastate Exemption		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: This Rule is being amended to include credit unions in the definition of bank, allow broker-dealers to be escrow agents, to authorize the Division access to the intermediary's website portal and to authorize the Administrator to grant waivers to the provisions of this Rule. The Rule is also being amended to allow the issuer to return offering proceeds at its option.
Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. Section 75-71-203

List all rules repealed, amended, or suspended by the proposed rule: 1 Miss. Admin. Code Part 14, Rule 7.21. This rule supersedes the temporary rule filed on 1/6/16, system number 21715

ORAL PROCEEDING:

☐ An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____

☒ Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

ECONOMIC IMPACT STATEMENT:

☒ Economic impact statement not required for this rule. ☐ Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
_x_ Original filing	Action proposed:	Date Proposed Rule Filed:
_____ Renewal of effectiveness	New rule(s)	Action taken:
To be in effect in _____ days	_____ Amendment to existing rule(s)	_____ Adopted with no changes in text
Effective date:	_____ Repeal of existing rule(s)	Adopted with changes
_x_ Immediately upon filing	_____ Adoption by reference	_____ Adopted by reference
_____ Other (specify): _____	Proposed final effective date:	_____ Withdrawn
	_____ 30 days after filing	_____ Repeal adopted as proposed
	_____ Other (specify): _____	Effective date:
		__ 30 days after filing
		_____ Other (specify): _____

Printed name and Title of person authorized to file rules: Cheryn Netz, Assistant Secretary of State
Signature of person authorized to file rules: Cheryn Netz

DO NOT WRITE BELOW THIS LINE

OFFICIAL FILING STAMP	OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
FILED JAN 12 2016 MISSISSIPPI SECRETARY OF STATE		
Accepted for filing by #21719	Accepted for filing by	Accepted for filing by

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Title 1: Secretary of State
Part 14: Securities - Securities Regulation

Part 14 Chapter 7: Exemptions

Rule 7.21 Invest Mississippi Crowdfunding Intrastate Exemption. By authority delegated to the Secretary of State in Section 75-71-203 of the Act, the Division has adopted an exemption from the registration requirements of the Act for any offer or sale of securities offered or sold in compliance with Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 CFR Section 230.147 and any amendments thereto, which also satisfy the further conditions and limitations set forth in this Rule below.

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 this state or of the United States, is authorized to do business in this state and is located in this state. For purposes of this Rule, a credit union is included in the definition of bank.

4. **IMC Form** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Form."

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 exemption provided in 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 the exemption provided in this Rule which amount shall be set out on the IMC Form.

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 Form 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.

B. In order to comply with this Rule, the following conditions and limitations are required in order to be exempt from the registration requirements of the Act:

1. The securities must be offered to and sold only to persons who are residents of this State at the time of purchase.

2. 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.

3. 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).

4. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this Rule during the 12-month period preceding the date of such transaction, is not more than:

   a. One Million Dollars ($1,000,000.00), if the issuer has not undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year; or

   b. Two Million Dollars ($2,000,000.00), if the issuer has undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year.

The documentation in a financial audit to be made available to each prospective investor shall consist of a balance sheet and a statement of income and expense for the issuer's most recently completed fiscal year if the issuer has been in existence for twelve (12) months or more and shall be certified by an independent certified public accountant. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles ("US GAAP"), complete with footnote disclosure. 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. If the issuer is not providing a financial audit, then the issuer must provide to each prospective investor an unaudited balance sheet and statement of income and expense of its most recently completed fiscal year. In addition, regardless of whether the annual financial statements are audited or unaudited, the documentation to be made available to each prospective investor shall also

include interim unaudited quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Form; and shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Form. The non-audited financial statements 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.

5. The aggregate amount sold to any single investor by multiple issuers in reliance on the exemption provided in 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.

6. 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.

7. 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 in a bank with a bank or a broker-dealer acting as escrow agent;

   b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement with 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 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 or the intermediary to release the remaining proceeds to the issuer or may be returned at the issuer's option if the issuer or the intermediary provides written notice to the escrow agent authorizing an instructing the escrow agent to return the remaining investor's amounts contributed; 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 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.

8. No offerings of securities shall be made in reliance on this exemption until the issuer files an IMC Form with the Division completed with specificity as required by the instructions in the IMC Form and as required by the Division, in writing or in electronic form as specified by the Division, and the issuer receives an acknowledgement of a completed IMC Form from the Division. The issuer must also include in such filing a copy of the escrow agreement as required by subsection (B)(7) above, all other exhibits to the IMC Form except 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. A copy of the IMC Form is available upon request.

9. The Division will issue a written Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form within five (5) business days after receiving the completed IMC Form and all other exhibits to the IMC Form except as otherwise specified by the Division. Incomplete IMC Forms, Forms with responses that are not specific as required by this Rule and the instructions or Forms with missing exhibits will be returned to the issuer for completion and/or resubmission. No offerings or sales may be made in this State until the written Acknowledgment has been issued.

10. The completed IMC Form, including exhibits, shall be provided to the relevant intermediary and shall be made available to potential investors after the Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form has been issued by the Division.

11. The issuer shall inform all investors under this Rule that the securities have not been registered under federal or state securities law and the securities are subject to limitations on resale.

12. 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, that each investor is a resident of this State and, if applicable, either an accredited investor or a qualified purchaser; and

    b. The aggregate amount of securities sold to the investor in reliance on the exemption provided in 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 the greater of:

            (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.

c. The issuer must maintain records of investors' residence and provide ready access to the records to the Division, upon request. The Division may access, inspect, and review such records.

13. Offers and sales of securities pursuant to this Rule must be made in compliance with Section 3(a)(11), and SEC Rule 147, 17 CFR Section 230.147 and any amendments thereto.

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 to the exemption provided in 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 the exemption provided in 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 to the exemption provided in 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 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, including the name of the payor, the date of payment and name of the issuer;

    b. Name of 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 a Mississippi resident;

g. Any information used to establish that a prospective purchaser or investor is an accredited investor or qualified purchaser;

h. Any correspondence or other communications with issuers, prospective purchasers, and/or investors;

i. Any information made available through the Internet website relating to an offering; and

j. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.

9. The records and Internet website portal of an intermediary or intermediary applicant under this Rule are subject to the reasonable periodic, special, or other audits inspections access or review by the Division, in or outside Mississippi, as the Division considers necessary or appropriate in the public interest and for the protection of investors (collectively "audit"). 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 limit website access to the offer or sale of securities conducted pursuant to this Rule to only Mississippi residents;

b. Shall not hold, manage, possess, or handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;

c. 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.

d. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Section J of this Rule to

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)

e. 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.

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 within Mississippi 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. The notice must contain a disclaimer that reflects the offering is limited to Mississippi residents and offers and sales of the securities appearing on the Internet website are limited to persons that are Mississippi residents.

D. Report. For so long as securities issued under the exemption provided in 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. An 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. Securities exempt under the provisions of this Rule may not be transferred for one (1) year after the date of purchase except in a transaction which is exempt from registration or in a transaction which complies with the registration requirements of the Act.

F. 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.

G. For offerings that exceed one (1) year, notification that the offering is continuing must be filed with the Division annually.

H. A notice of termination or completion of the transactions exempted 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, (3) the aggregate amount of securities offered in Mississippi, (4) the aggregate amount of securities sold in Mississippi, and (5) the date the offering was completed.

I. All sales that are part of the same offering, made in reliance on this exemption, must meet all of the terms and conditions of this exemption, except, 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.

J. Disqualification. The exemption allowed by this Rule shall not apply if an 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).

K. Nothing in this exemption shall be construed to alleviate any person from the antifraud provisions of the Act, nor shall such exemption be construed to provide relief from any other provisions of the Act other than as expressly stated.

L. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the intermediary's registration as an intermediary for any reason as determined by the Administrator in his sole discretion.

M. The Administrator may by order waive any of the conditions of registration or other requirements set forth in this Rule.

Title 1: Secretary of State

Part 14: Securities - Securities Regulation

Part 14 Chapter 7: Exemptions

Rule 7.21 Invest Mississippi Crowdfunding Intrastate Exemption. By authority delegated to the Secretary of State in Section 75-71-203 of the Act, the Division has adopted an exemption from the registration requirements of the Act for any offer or sale of securities offered or sold in compliance with Section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(11), and SEC Rule 147, 17 CFR Section 230.147 and any amendments thereto, which also satisfy the further conditions and limitations set forth in this Rule below.

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 ~~(1) organized or chartered under Section 81-3-1, et seq., of the Mississippi Code of 1972, as amended, and authorized to exercise trust powers according to the provisions of Section 81-5-33 of the Mississippi Code of 1972, as amended; (2) organized or chartered under 12 U.S.C. § 21, et seq., and authorized to exercise trust powers according to the provisions of 12 U.S.C. § 92a; or (3) authorized to conduct trust powers and organized or chartered under similar laws of another state and authorized to conduct business as a bank within this state in accordance with the provisions of Section 81-8-1, et. seq., of the Mississippi Code of 1972, as amended, 12 U.S.C. § 36, and similar laws of its home state, as applicable. Additionally, in order to meet the definition of a Bank for the purposes of these rules, all activities for such an organization must be conducted through its main office or a branch office of the institution as that term is defined by Section 81-7-1, et seq., of the Mississippi Code of 1972, as amended, or 12 U.S.C. §36(j)~~ organized or chartered under the laws of this state or of the United States, is authorized to do business in this state and is located in this state. For purposes of this Rule, a credit union is included in the definition of bank.

4. **IMC Form** means the document, as adopted by the Division, entitled "Invest Mississippi Crowdfunding Form."

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 exemption provided in 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 the exemption provided in this Rule which amount shall be set out on the IMC Form.

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 Form 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.

B. In order to comply with this Rule, the following conditions and limitations are required in order to be exempt from the registration requirements of the Act:

1. The securities must be offered to and sold only to persons who are residents of this State at the time of purchase.

2. 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.

3. 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).

4. The aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under this Rule during the 12-month period preceding the date of such transaction, is not more than:

a. One Million Dollars ($1,000,000.00), if the issuer has not undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year; or

b. Two Million Dollars ($2,000,000.00), if the issuer has undergone and made available to each prospective investor the documentation resulting from a financial audit of its most recently completed fiscal year.

The documentation in a financial audit to be made available to each prospective investor shall consist of a balance sheet and a statement of income and expense for the issuer's most recently completed fiscal year if the issuer has been in existence for twelve (12) months or more and shall be certified by an independent certified public accountant. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles ("US GAAP"), complete with footnote disclosure. 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. If the issuer is not providing a financial audit, then the issuer must provide to each prospective investor an unaudited balance sheet and statement of income and expense of its most recently completed fiscal year. In addition, regardless of whether the annual financial statements are audited or unaudited, the documentation to be made available to each prospective investor shall also include interim unaudited quarterly financial statements if the issuer's fiscal year ended more than ninety (90) days prior to the date of the IMC Form; and shall include the issuer's financial projections of income and expense for two (2) years from the date of the IMC Form. The non-audited financial statements 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.

5. The aggregate amount sold to any single investor by multiple issuers in reliance on the exemption provided in 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.

6. 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.

7. 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 in a bank with ~~thea~~ bank or a broker-dealer acting as escrow agent;

b. For each investment, the issuer will provide to the escrow agent a copy of the subscription agreement with 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 or the intermediary to release the remaining proceeds to the issuer or may be returned at the issuer's option if the issuer or the intermediary provides written notice to the escrow agent authorizing an instructing the escrow agent to return the remaining investor's amounts contributed; 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.

8. No offerings of securities shall be made in reliance on this exemption until the issuer files an IMC Form with the Division completed with specificity as required by the instructions in the IMC Form and as required by the Division, in writing or in electronic form as specified by the Division, and the issuer receives an acknowledgement of a completed IMC Form from the Division. The issuer must also include in such filing a copy of the escrow agreement as required by subsection (B)(7) above, all other exhibits to the IMC Form except 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. A copy of the IMC Form is available upon request.

9. The Division will issue a written Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form within five (5) business days after receiving the completed IMC Form and all other exhibits to the IMC Form except as otherwise specified by the Division. Incomplete IMC Forms, Forms with responses that are not specific as required by this Rule and the instructions or Forms with missing exhibits will be returned to the issuer for completion and/or resubmission. No offerings or sales may be made in this State until the written Acknowledgment has been issued.

10. The completed IMC Form, including exhibits, shall be provided to the relevant intermediary and shall be made available to potential investors after the Acknowledgment of Completed Invest Mississippi Crowdfunding Exemption Form has been issued by the Division.

11. The issuer shall inform all investors under this Rule that the securities have not been registered under federal or state securities law and the securities are subject to limitations on resale.

12. 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, that each investor is a resident of this State and, if applicable, either an accredited investor or a qualified purchaser; and

    b. The aggregate amount of securities sold to the investor in reliance on the exemption provided in 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 the greater of:

            (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.

c. The issuer must maintain records of investors' residence and provide ready access to the records to the Division, upon request. The Division may access, inspect, and review such records.

13. Offers and sales of securities pursuant to this Rule must be made in compliance with Section 3(a)(11), and SEC Rule 147, 17 CFR Section 230.147 and any amendments thereto.

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 to the exemption provided in 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 the exemption provided in 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 to the exemption provided in 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 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:

k. Records of compensation received for acting as an intermediary, including the name of the payor, the date of payment and name of the issuer;

l. Name of issuer and name, address and amount of purchase of investor for each offering effected by the intermediary through the intermediary's Internet website;

m. Copies of information provided by the intermediary to issuers offering securities through the intermediary, prospective purchasers, and investors;

n. Any agreements and/or contracts between the intermediary and an issuer, prospective purchaser, or investor;

o. Any information used to establish that an issuer is a Mississippi resident;

p. Any information used to establish that a prospective purchaser or investor is a Mississippi resident;

q. Any information used to establish that a prospective purchaser or investor is an accredited investor or qualified purchaser;

r. Any correspondence or other communications with issuers, prospective purchasers, and/or investors;

s. Any information made available through the Internet website relating to an offering; and

t. Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts.

9. The records and Internet website portal of an intermediary or intermediary applicant under this Rule are subject to the reasonable periodic, special, or other audits ~~or~~ inspections access or review by the Division, in or outside Mississippi, as the Division considers necessary or appropriate in the public interest and for the protection of investors (collectively "audit"). 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 limit website access to the offer or sale of securities conducted pursuant to this Rule to only Mississippi residents;

b. Shall not hold, manage, possess, or handle investor funds or securities, unless it is a bank operating as an escrow agent for the offering;

c. 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.

d. Shall perform a background and securities enforcement regulatory history check on each person holding a position listed in Section J of this Rule to 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)

e. 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.

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 within Mississippi 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. The notice must contain a disclaimer that reflects the offering is limited to Mississippi

residents and offers and sales of the securities appearing on the Internet website are limited to persons that are Mississippi residents.

D. Report. For so long as securities issued under the exemption provided in 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. An 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. Securities exempt under the provisions of this Rule may not be transferred for one (1) year after the date of purchase except in a transaction which is exempt from registration or in a transaction which complies with the registration requirements of the Act.

F. 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.

G. For offerings that exceed one (1) year, notification that the offering is continuing must be filed with the Division annually.

H. A notice of termination or completion of the transactions exempted 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, (3) the aggregate amount of securities offered in Mississippi, (4) the aggregate amount of securities sold in Mississippi, and (5) the date the offering was completed.

I. All sales that are part of the same offering, made in reliance on this exemption, must meet all of the terms and conditions of this exemption, except, 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.

J. Disqualification. The exemption allowed by this Rule shall not apply if an 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).

K. Nothing in this exemption shall be construed to alleviate any person from the antifraud provisions of the Act, nor shall such exemption be construed to provide relief from any other provisions of the Act other than as expressly stated.

L. The Division may deny, refuse to renew, condition, limit, suspend, or revoke the intermediary's registration as an intermediary for any reason as determined by the Administrator in his sole discretion.

M. The Administrator may by order waive any of the conditions of registration or other requirements set forth in this Rule.